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Brexit: EU Council adopts Trade and Cooperation Agreement

The EU Council has adopted a decision consenting to the conclusion of the Trade and Cooperation Agreement (TCA), which broadly establishes the basis for the EU-UK relationship. Following the Parliament's approval on 27 April 2021, the Council's decision marks the final stage in the EU's ratification of the TCA.

Both the UK and EU signed the TCA on 30 December 2020, which has been in force in the UK and provisionally applied in the EU pending full ratification since 1 January 2021.

The TCA and accompanying texts were published in the Official Journal by 30 April 2021, and entered into force in the EU on 1 May 2021.

CRR: EU Commission publishes draft Regulation to extend transitional provisions relating to own funds requirements for exposures to central counterparties

The EU Commission has published a draft Regulation on the extension of transitional provisions related to own funds requirements for exposures to central counterparties (CCPs) as set out in the Capital Requirements Regulation (CRR).

The draft Regulation extends by twelve months the transitional periods during which institutions can treat exposures to a third-country CCP that has not been recognised in accordance with the European Market Infrastructure Regulation (EMIR) as if they were exposures to a recognised CCP.

The aim of the extension is to enable:

- the EU Commission to finalise its assessments of CCPs' equivalence;
- the European Securities and Markets Authority (ESMA) to complete the recognition procedures for the third-country CCPs awaiting recognition; and
- institutions to properly prepare for the end of the current transitional periods.

The draft Regulation extends the transitional period until 28 June 2022. If adopted as drafted, it will apply from 29 June 2021, the first day after the expiry of the existing transitional period.

Comments are due by 26 May 2021.

Sustainable finance: EU consults on proposed directive amending corporate sustainability reporting framework

The EU Commission has launched a consultation on a proposal for a directive to enhance the corporate sustainability reporting framework set out in the Non-Financial Reporting Directive (NFRD).

The Commission notes that the information needs of investors are not being sufficiently met under the current legal framework, and that information reported under the NFRD is often unreliable, incomplete, difficult to find and difficult to compare. Further, some companies that users want sustainability information from fall outside the scope of the directive, and information on intangibles (such as human capital, brand and intellectual property) is largely under-reported.

The Commission is therefore proposing to amend the reporting framework through a directive which will revise Directive (EU) 2013/34 (the Accounting Directive), Directive (EC) 2004/109 (the Transparency Directive), Directive (EC) 2006/43 (the Audit Directive), and Regulation (EU) No 537/2014 (the Audit Regulation) in order to:

- extend the scope of the reporting requirements to additional companies, including all large companies and listed companies (with the exception of listed micro-companies);
- introduce assurance requirements for reported sustainability information;
- provide greater detail on the information that companies should report and require them to report in line with mandatory EU standards; and
- introduce requirements that all information is published as part of companies' management reports and is disclosed in a digital, machine-readable format.

Comments on the proposal are due by 23 June 2021.

EIOPA consults on use of blockchain and smart contracts in insurance

The European Insurance and Occupational Pensions Authority (EIOPA) has published a discussion paper on the use of blockchain and smart contracts in insurance. EIOPA is seeking feedback from stakeholders on various aspects including:

- use cases for blockchain and smart contracts in the EU insurance market, including in know-your-customer and anti-money laundering compliance, the underwriting process, the development of new products and services, the handling of claims, and the streamlining of information exchange and payments between insurers and reinsurers;
- use cases for cryptoassets, including the direct or indirect investment in cryptoassets;
- use cases for supervisory technology (suptech) and regulatory technology (regtech) solutions, including in the management of registers of insurance undertakings and intermediaries, and in the reporting and publication of data and statistics;
- the risks and benefits of blockchain and smart contracts for consumers, insurance undertakings and supervisors;
- regulatory barriers to the use of blockchain and smart contracts; and
- proposals for a harmonised European approach to blockchain and smart contracts, including in insurance.

Comments are due by 29 July 2021.

Deposit Guarantee Schemes Directive: EBA consults on delineation and reporting of available financial means

The European Banking Authority (EBA) has published for consultation draft guidelines on the delineation and reporting of available financial means (AFM) of deposit guarantee schemes (DGSs) under the Deposit Guarantee Schemes Directive (DGSD).

In January 2020, the EBA issued an opinion which highlighted the need to amend the DGSD to improve clarity and address inconsistencies in Member States' interpretation of the concept of AFM. As amendments to the DGSD will not be finalised for a number of years, the EBA is proposing to introduce guidelines to provide clarity in the meantime.

Specifically, the proposed guidelines clarify that AFM are comprised of two subsets:

- qualified AFM (QAFM), namely funds stemming directly or indirectly from contributions of DGS member institutions, which qualify towards reaching the target level of the DGS fund; and
- other AFM, namely any funds which are not QAFM, including borrowed funds that stem from liabilities such as loans. These AFM do not count towards reaching the target level of the DGS fund.

In consequence of this proposed split, the draft guidelines emphasise that DGSs should keep track of the origin of funds and how they are used and managed. DGSs will also be required to report their level of AFM (QAFM and other AFM), as well as their outstanding liabilities, alternative financing arrangements in place and the level of unclaimed repayments. The EBA proposes that this information should be published annually on its website.

Comments are due by 28 July 2021.

CRR: EBA consults on draft ITS on supervisory reporting for additional liquidity monitoring metrics

The EBA has published a consultation on proposed amendments to the implementing technical standards (ITS) on supervisory reporting with respect to additional liquidity monitoring metrics (ALMM) under the CRR.

The proposals amend the ITS to introduce new proportionality measures for small and non-complex institutions (SNCIs), in line with the provisions on SNCIs set out in the revised CRR (CRR2). In particular, the EBA is proposing that SNCIs are made exempt from reporting metrics designed to capture the concentration of funding by product type, the volume and prices of funding for various maturity lengths, and information about the volume of funds maturing and new funding obtained (roll-over funding), and that institutions that fall outside the SNCI or large institutions classifications are made exempt from reporting metrics on roll-over funding. It is also proposing minor amendments to the templates in order to streamline reporting requirements, address data gaps and further clarify the reporting instructions.

Comments are due by 28 July 2021.

CRR: EBA consults on draft RTS on assessment of appropriateness of risk weights and minimum LGD values

The EBA has published a consultation on draft regulatory technical standards (RTS) on the assessment of the appropriateness of risk weights for institutions applying the standardised approach (SA), and minimum loss given default (LGD) values for institutions applying the internal ratings-based (IRB) approach.

Under CRR2, relevant authorities designated by the Member State may set higher risk weights, impose stricter criteria on risk weights, or increase the minimum LGD values when the following conditions are met:

- the risk weights do not adequately reflect the actual risks related to the exposures secured by mortgages on residential property or commercial immovable property, or that the minimum LGD values are not adequate; and
- the identified inadequacy of these risk weights or minimum LGD values could adversely affect current or future financial stability in the Member State.

In this consultation, the EBA is seeking feedback on draft RTS which address the first condition. For institutions applying the SA, the draft RTS specify the types of factors that authorities should consider during the risk weight assessment on the basis of the loss experience of exposures secured by immovable property and forward-looking immovable property market developments. For institutions applying the IRB approach to retail exposures secured by residential or commercial immovable property, the draft RTS provide conditions to be considered when assessing the appropriateness of minimum LGD values.

Comments are due by 29 July 2021. The EBA intends to finalise the draft RTS and issue them to the EU Commission by 31 October 2021.

SRB publishes guidance on liquidity and funding in resolution

The Single Resolution Board (SRB) has published guidance for banks on liquidity and funding in resolution. The guidance provides detail on an expectation that banks develop methodologies to estimate the liquidity needs for implementing resolution strategies, as outlined in the SRB's Expectations for Banks (EfB) document.

The guidance is intended to enhance banks' resolvability and preparedness for a potential resolution, which will form part of the 2021 resolution planning cycle.

The SRB notes that guidance will be issued in 2022 on the elements of the EfB yet to be addressed, including the expectation that banks are able to:

- measure, report and forecast their liquidity position and relevant liquidity metrics during the resolution process; and
- identify and mobilise assets (especially those that are lower quality and less liquid) that could be used as collateral to obtain liquidity in resolution, anticipating any legal, regulatory and operational obstacles to their mobilisation under stressed conditions.

Financial Services Bill receives Royal Assent

The Financial Services Bill has received Royal Assent and has become an Act of Parliament.

Among other things, the Financial Services Act 2021:

- updates the prudential regulatory regime to implement the remaining Basel III banking standards;
- introduces an investment firms' prudential regime (IFPR);
- clarifies and extends the Financial Conduct Authority's (FCA's) powers to manage an orderly wind-down of a critical benchmark, such as LIBOR;
- extends the transitional period for third-country benchmarks from 31 December 2022 to 31 December 2025;
- introduces a new overseas funds regime (OFR) to allow overseas collective investment schemes to be marketed to all investors in the UK market on appropriate terms;
- introduces a Gibraltar Authorisation Regime (GAR) to ensure mutual market access and aligned standards;
- introduces measures to improve the functioning of the onshored Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation;
- brings interest-free buy-now-pay-later (BNPL) products into the scope of FCA regulation; and
- increases penalties for market abuse.

A number of provisions came into force on the day the Act was passed. Others will enter into force after a period of two months or on the date specified in regulations made by HM Treasury.

Draft Payment and Electronic Money Institution Insolvency Regulations laid before Parliament

HM Treasury (HMT) has laid the draft Payment and Electronic Money Institution Insolvency Regulations 2021 before Parliament and published its response to feedback to its December 2020 consultation, 'Insolvency changes for payment and electronic money institutions'.

HMT's proposals are intended to help protect customers in the event of an insolvency of a payments institution or electronic money institution (PI/EMI), in particular by establishing a new special administration regime for PIs/EMIs (pSAR). The draft statutory instrument (SI) would establish the pSAR and make changes to the Financial Services and Markets Act 2000 (FSMA), including extending Part 24 provisions to provide the FCA with specific powers to participate and protect consumers in the event of a PI/EMI insolvency. The draft SI also makes changes intended to correct a minor defect in the Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020.

HMT's consultation response details changes made to the proposed regulations following comments, amongst other points. It notes that further SIs containing the pSAR rules will be laid later in 2021.

Law Commission consults on digital assets and electronic trade documents

The Law Commission has launched a call for evidence and a consultation on two separate but related projects on digital assets.

In March 2020, the Government requested that the Law Commission:

- make recommendations to allow for the legal recognition of electronic trade documents; and
- review the law more generally and consider reform to ensure that it can accommodate digital assets, including cryptoassets.

The Law Commission is now undertaking the first stage of both projects.

Firstly, it has launched a consultation on its proposals for law reform to allow electronic forms of trade documents, such as bills of lading and bills of exchange, to have the same legal effects as their paper counterparts. Under English law 'possession' is associated with tangible assets and the law therefore does not recognise the possibility of possessing electronic documents. The Law Commission is proposing a Bill to introduce criteria under which an electronic document could be deemed to be 'possessed'. These include that the document:

- is a bill of lading, bill of exchange, promissory note, ship's delivery order, warehouse receipt, marine insurance policy or cargo insurance certificate;
- is capable of exclusive control; and
- is fully divested on transfer.

Simultaneously, the Law Commission has issued a call for evidence (CfE) on digital assets. The CfE builds on the electronic trade documents project, as well as the conclusions of the recent legal statement on the status of cryptoassets and smart contracts published by the UK Jurisdiction Taskforce (UKJT). It seeks feedback on the ways in which digital assets are being used, treated and dealt with by market participants, as well as the potential consequences of digital assets being 'possessable'. Once it has gathered feedback from the CfE, the Law Commission intends to consult on proposals for law reform.

Comments for both the consultation and CfE are due by 30 July 2021.

FCA and City of London Corporation publish report on digital sandbox pilot

The FCA, in collaboration with the City of London Corporation (CoLC), has published a report on the findings from its digital sandbox pilot. The pilot, which ran from November 2020 to February 2021, was designed to provide support to firms developing innovative solutions to challenges posed by the COVID-19 pandemic. It was also intended to allow the FCA to assess the efficacy of a digital testing environment. Participants were given access to a range of development tools, such as synthetic data assets for developing proofs of concept (PoCs) and a coding environment, as well as support from expert mentors.

In its report, the FCA provides an overview of the pilot, evaluates how it was used by its participants and sets out the lessons learned for future iterations. Key findings include:

- there is significant demand for a digital testing environment, particularly from early-stage firms and start-ups;
- the impact that access to the digital sandbox had on early-stage PoC development and design improvement was largely positive but varied, and the FCA has received feedback on changes to be made to enable participants to make greater progress;
- participants did not require additional tools but instead suggested improvement to those available;
- synthetic data was the most valuable feature but the addition of referentially linked data sets and more granular data would have been helpful;
- certain features, such as the application programming interface (API) marketplace and integrated development environment, delivered limited value for participants and could be de-prioritised for future versions;
- the scope of the pilot should be narrowed in future to avoid a disparate ecosystem and the requirement for a large number of data assets for the use cases;
- the application and approval process should be brought forward to allow successful applicants to be involved in the data generation process; and
- participants required more structured support, rather than being left to use the sandbox as a 'self-service' platform, and there should be clarification around the expectations of expert mentors to ensure consistent contributions.

In light of the feedback collected during the pilot, and the findings of the Kalifa Review of UK fintech which, recommended, among other things, that the FCA establish a permanent digital sandbox, the FCA and CoLC intend to run a second cohort of the digital sandbox in late 2021 which will focus on sustainability and climate change and will incorporate the lessons learned from the initial pilot and the suggestions made by its participants.

FCA consults on financial promotion rules for high-risk investments

The FCA has published a discussion paper (DP21/1) on proposals to strengthen its rules for the financial promotion of high-risk investments and for firms approving financial promotions.

The discussion paper, which follows feedback to the FCA's September 2020 call for input (CFI) on consumer investments, seeks views on three key areas where changes could be made to protect consumers from harm:

- the classification of high-risk investments;
- the segmentation of the high-risk investment market; and
- the responsibilities of firms which approve financial promotions.

Comments are due by 1 July 2021.

UK MiFID: FCA consults on changes to conduct and organisational rules

The FCA has launched a consultation (CP21/9) on proposed changes to the conduct and organisational rules in the UK Markets in Financial Instruments Directive (UK MiFID), specifically relating to research and best execution reporting.

The FCA and HMT are conducting a capital markets review aimed at ensuring the UK's regulatory regime is adapted to the structures of UK markets and maintains the highest regulatory standards.

CP21/9 sets out an initial set of changes within the wider context of this reform work, and includes the following proposals:

- exemption from the inducement rules for; and
- deleting the UK versions of RTS 27 and RTS 28 (obligations to produce best execution reports).

The FCA notes that while the issues in CP21/9 are in areas also covered by EU MiFID Quick Fix, the FCA's proposals differ as they seek to reflect the different circumstances in the UK. As to other areas covered by EU MiFID Quick Fix, HMT intends to consult in due course on proposed legislative changes relating to costs and charges disclosure for wholesale clients, electronic communications with clients, reporting to wholesale clients and changes to provisions linked to RTS 27 and 28.

The FCA also intends to publish at least two further consultation papers in 2021 on the consequences of LIBOR transition for the derivatives trading obligation (DTO) and changes to market requirements and technical standards.

Comments are due by 23 June 2021.

PRA consults on proposals for simpler prudential framework for non-systemic banks and building societies

The Prudential Regulation Authority (PRA) has published a discussion paper on proposals to create a simpler prudential framework for banks and building societies that are not deemed to be systemically important or internationally active.

The PRA seeks to develop a framework that remains consistent with the Basel Core Principles for Effective Banking Supervision but is simpler than the Basel standards that currently apply to large and internationally active banks. The discussion paper is the first stage of the PRA's work in this area, and responses to it will inform the PRA's development of detailed proposals for consultation and implementation.

The paper sets out some initial discussion points regarding:

- the options for determining the prudential requirements under the simpler framework, based on either a 'streamlined' approach that takes the existing prudential framework as a starting point and modifies any elements that are too complex for smaller firms, or a 'focused' approach that starts with a much narrower and more conservatively calibrated set of prudential requirements;
- the potential to reduce mandatory prudential disclosures, such as those under Pillar 3;
- operational considerations, such as minimising costs and ensuring firms can smoothly transition from the simpler regime to the one applicable to larger firms and vice versa; and
- the implications of upcoming legislative reforms, such as the finalised Basel reforms, and the outcomes of the Bank of England's review of its approach to setting minimum requirements for own funds and eligible liabilities (MREL) and the Financial Policy Committee and Prudential Regulation Committee's review of the UK leverage framework.

Comments on the discussion paper are due by 9 July 2021.

PRA consults on correcting definition of 'higher paid material risk taker'

The PRA has launched a consultation (CP9/21) on its proposal to correct an error in the definition of 'higher paid material risk taker' in the PRA Rulebook.

The purpose of this proposal is to align the 'higher paid material risk taker' definition with the PRA's intention of continuing the approach outlined in its supervisory statement 'Remuneration' (SS2/17). This follows a statement explaining the PRA's position in relation to the definition of 'higher paid material risk taker' published by the PRA on 25 February 2021. CP9/21 would result in changes to the Remuneration Part of the PRA Rulebook and SS2/17.

The PRA proposes that the implementation for the changes resulting from CP9/21 would take effect upon publication of the final policy, which the PRA intends to publish in Q2 2021. In order to avoid retroactivity, the PRA proposes that firms would not be required to apply the corrected definition to remuneration that has been paid, vested, or is subject to an obligation to pay or vest created before that date in respect of the first performance year beginning on or after 29 December 2020.

Comments are due by 26 May 2021.

Coronavirus: PRA issues statement on disclosure of exposures subject to support measures

The PRA has issued a statement setting out its expectations of firms regarding their disclosure of exposures subject to measures applied in response to the COVID-19 pandemic.

On 28 July 2020, the PRA issued guidance which stated that UK banks and building societies that are, or are controlled by, global systemically important institutions (G-SIIs) or other systemically important institutions (O-SIIs), and that have retail deposits equal to or greater than GBP 50 billion on an individual or consolidated basis, should make disclosures on COVID-19 lending for the highest level of consolidation in the UK for their semi-annual disclosure periods ending on dates up to, and including, 31 December 2020.

Given the continued use of COVID-19 support measures in lending, the PRA has decided to extend this guidance to cover semi-annual disclosure reference dates up to 31 December 2021. Firms should continue to use the templates published with the PRA's July statement.

Independent review launches call for evidence on impacts of ring-fencing regime and rules applied to proprietary trading

The Ring-fencing and Proprietary Trading Independent Review (RFPT) has launched a call for evidence on the impacts of the ring-fencing regime and rules applied to proprietary trading.

The review panel has been tasked by HM Treasury to undertake reviews into the operation of the legislation relating to ring-fencing, and separately banks' proprietary trading activities.

The call for evidence sets out a series of questions on a number of areas, including:

- the impact on financial stability;
- the impact on customers, competition and competitiveness;
- the operation of the ring-fencing regime;
- the adequacy and impact of rules applied to proprietary trading; and
- other impacts of ring-fencing and rules applied to proprietary trading.

The review panel intends to use the evidence and responses received to contribute to its analysis and inform any recommendations that the review panel makes in the future. Comments are due by 13 June 2021.

The panel is expected to finalise its written reports to HMT within one year of the beginning of the reviews. HMT will then lay the reports before Parliament.

AMF publishes revised instruction on rules applicable to digital asset service providers

The Autorité des marchés financiers (AMF) has published a revised version of its instruction DOC-2019-23 relating to rules applicable to digital asset service providers.

This instruction provides notably for:

- the list of information to be provided for the purposes of registering, or as applicable obtaining the licence as, digital asset service provider;
- equity requirements applicable to digital asset service providers; and
- post-trade transparency requirements.

The instruction entered into force on 23 April 2021.

Bank of Italy consults on proposals to amend supervisory regime for retail payment systems

The Bank of Italy has published a consultation document on proposed revisions to the supervisory regime for retail payment systems, as set out in the Bank of Italy Regulations dated 18 September 2012, implementing Article 146 of the Italian Banking Act.

The Bank of Italy notes that several factors have taken place since 2012 which require a comprehensive review of the regime. The changes set out in the consultation paper are intended to align local provisions with international supervisory standards (in particular, the Principles for Financial Market Infrastructures issued by the Committee on Payments and Markets Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO)), as well as to strengthen the operational and cyber security safeguards of operators, taking into account the evolution of risks in sectors, such as the payments sector, which are characterised by an intense use of digital resources.

In addition, the Bank of Italy is proposing to extend the scope of the regime, in line with the provisions of Article 146 of the Italian Banking Act, to include operators of instrumental technological and network infrastructures relevant to the payments system.

The consultation will end on 30 June 2021.

Bank of Italy consults on proposals relating to capital buffers and borrower-based macroprudential instruments for banks

The Bank of Italy has launched a consultation on regulatory proposals regarding capital buffers and borrower-based macroprudential tools for banks.

The consultation seeks comments and observations on proposed amendments designed to ensure full alignment with EU legislation and guidelines on capital buffers applicable to banks, and to introduce borrower-based instruments into national law.

In particular, the Bank of Italy is proposing to amend:

- Part One, Title II, Chapter 1 of the Bank of Italy Circular No. 285/2013, concerning provisions on banks' capital buffers; and
- the introduction of Chapter 12, Part Three of the Bank of Italy Circular No. 285/2015 for the introduction of borrower-based macro-prudential tools in the national legislation.

The amendments to Circular No. 285/2013 are aimed at introducing the systemic risk buffer (SyRB) for banks and banking groups authorised in Italy and aligning the rules on capital buffers and capital conservation measures with the evolution of the EU regulatory framework (amended by the revised Capital Requirements Directive (CRD 5)). With these regulatory changes, the EBA's guidelines (i.e. EBA/GL/2020/13 and EBA/GL/2020/14) will also be implemented.

The amendments to Circular No. 285/2015 are aimed at introducing into national law some borrower-based measures not regulated by EU legislation.

The consultation will end on 27 June 2021.

Luxembourg Government clarifies possibility for certain Luxembourg AIFs to use equivalent third-country GAAP for preparing annual reports

The Luxembourg Government has proposed to extend the scope of the Cross-Border Distribution Fund Implementing Bill n°7737 (Bill 7737), with a view to amending Article 20(3) of the Luxembourg law of 12 July 2013 on alternative investment fund managers (AIFM Law) concerning the annual reports of AIFs.

Bill 7737 was initially lodged with the Luxembourg Parliament in December 2020 in order to transpose the text of the Cross-Border Marketing Directive 2019/1160 (CBDF) into the Luxembourg legal framework by amending the AIFM Law and the Luxembourg law of 17 December 2010 on undertakings for collective investment (UCI Law).

The proposed amendments aim to clarify the AIFM Law so that Luxembourg authorised AIFMs, which are managing Luxembourg alternative investment funds (AIFs) established under the legal form of a special limited partnership (SCSp), may prepare the accounting information given in the annual reports of these SCSp-AIFs by using either Luxembourg GAAP, IFRS or other accounting standards considered as equivalent to IFRS by the EU Commission in its Decision of 12 December 2008 (as amended) on the use by third country issuers of securities of certain third country's national accounting standards (Third-Country GAAP) and IFRS. These equivalent standards include US GAAP but also the GAAP of the People's Republic of China, the Republic of Korea, Canada and, on a temporary basis, the GAAP of the Republic of India.

In January 2021, the Luxembourg supervisory authority of the financial sector (CSSF) had updated its FAQs on the AIFM Law to require that all Luxembourg authorised AIFMs managing Luxembourg AIFs use only Luxembourg GAAP or IFRS for preparing the annual reports of the relevant Luxembourg AIFs they manage, regardless of the legal form and legal regime of the AIFs concerned. This CSSF regulatory position had been criticised by the Fund and Asset Management Industry in Luxembourg, and the new proposed modifications aim to clarify - through an explicit legal provision - that Luxembourg SCSp-AIFs, which are managed by a Luxembourg authorised AIFM, are not obliged to have their annual reports prepared on the basis of Luxembourg GAAP or IRFS only, but may also use US GAAP or other accepted equivalent Third-Country GAAP.

The explanatory comments accompanying the proposed revised text of Article 20(3) further indicate that the use of other equivalent Third-Country GAAP apply with respect to all Luxembourg SCSp-AIFs irrespective of whether they qualify as a specialised investment fund (SIF), reserved alternative investment fund (RAIF) or other alternative investment fund, i.e. investment company in risk capital (SICAR) or unregulated AIFs.

CSSF-CODERES circular on raising of the 2021 ex-ante contributions to the Single Resolution Fund

The Luxembourg financial sector supervisory authority, the CSSF, and the Luxembourg Resolution Board, the Conseil de Résolution (CODERES), have issued circular 21/12 dated 23 April 2021 on the raising of the 2021 ex-ante contributions to the Single Resolution Fund (SRF).

The circular is addressed to all credit institutions established in Luxembourg and subject to the SRM Regulation ((EU) 806/2014), with the exception of Luxembourg branches of credit institutions established outside the EU. Luxembourg branches of credit institutions which have their head office in another Member State are covered by their head office.

The circular sets out that the 2021 ex-ante contributions to the SRF are due by 7 June 2021. The corresponding individual invoices will be distributed by the CSSF in the coming days. The relevant credit institutions are required to transfer the requested amounts to an account of the Fonds de Résolution Luxembourg, which will in turn transfer the collected amounts to the SRF.

The circular provides technical details on the computation of the contribution amount and informs relevant credit institutions of a substantial increase in most cases of the contribution compared to the 2020 ex-ante contribution.

The circular further notes that the conditions concerning irrevocable payment commitments (IPCs) remain unchanged compared to the 2020 contribution cycle. Credit institutions willing to apply for IPCs in 2021 need to send the completed application form by 13 May 2021 (via e-mail) to the CSSF and by 21 May 2021 as a physical package by registered mail to the SRB.

CRD V and BRRD II partially transposed into Spanish law

Royal Decree law 7/2021 of 27 April on the transposition of EU Directives in the fields of competition, anti-money laundering, credit institutions, telecommunications, taxation measures, prevention and remedying of environmental damage, posting of workers in the provision of transnational services and consumer protection has been published in the Spanish Official Gazette.

Royal Decree law 7/2021 partially transposes, inter alia, the following EU Directives into Spanish law:

- Directive (EU) 2019/878 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (CRD V); and
- Directive (EU) 2019/879 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC (BRRD II).

Save for certain provisions due to enter into force on a later date, Royal Decree law 7/2021 came into force on 28 April 2021.

CLIFFORD CHANCE

Hong Kong Government announces passage of Inland Revenue (Amendment) (Tax Concessions for Carried Interest) Bill 2021

The Hong Kong Government has announced that the Legislative Council has passed the Inland Revenue (Amendment) (Tax Concessions for Carried Interest) Bill 2021.

The Bill is intended to amend the Inland Revenue Ordinance to provide tax concessions for carried interest distributed by eligible private equity funds operating in Hong Kong. Qualifying carried interest recipients will be required to fulfil substantial activities requirements (including the number of qualified full-time employees employed and the operating expenditure incurred in Hong Kong) for the tax concessions to apply. In addition, the Bill expands the classes of assets that may be held and administered by a special purpose entity on behalf of a fund for the purpose of the profits tax exemption regime for funds, with a view to facilitating the operation of funds in Hong Kong.

The Bill will commence on the day on which the amendment ordinance is gazetted and will apply concessionary tax treatment to eligible carried interest received by, or accrued to, qualifying carried interest recipients on or after 1 April 2020.

The Hong Kong Monetary Authority and the Inland Revenue Department (IRD) have indicated that they will announce relevant implementation details regarding the Bill in due course.

HKMA publishes findings from thematic review of use of external information and data in AML/CFT systems

The Hong Kong Monetary Authority (HKMA) has published key observations and good practices from a thematic review of how authorized institutions (AIs) integrate various external source information and data into their anti-money laundering/counter financing of terrorism (AML/CFT) control systems to enhance effectiveness.

The review was carried out as part of the HKMA's response to emerging risks noted in the handling of increasing bank customer enquiries and complaints lodged with the HKMA in connection with COVID-19 related fraud as well as account networks and activities related to identity theft and investment scams.

The review findings include the good practices observed in some AIs' adoption of Regtech in AML/CFT. The HKMA has also provided examples of how AIs, of differing sizes and complexity, use external information and data in tackling emerging risks through proactive data analysis and information sharing.

The HKMA expects all AIs and store value facility (SVF) licensees to adopt appropriate arrangements, commensurate with the size, business scope and risks of individual AIs and SVF licensees respectively, in order to optimise the performance of their AML/CFT systems by making reference to the key observations and good practices from the thematic review.

HKMA revises supervisory policy manual module for systemically important banks

The HKMA has published its revised supervisory policy manual (SPM) module entitled 'CA-B-2: Systemically Important Banks' as statutory guidance by notice in the Gazette, under section 7(3) of the Banking Ordinance.

The revisions are mainly intended to:

- improve the assessment of authorized institutions' complexity in the domestic systemically important bank identification process; and
- update various sections of the SPM module to reflect recent developments.

The HKMA has indicated that the completion instructions for the return of information for assessment of systemically important authorized institutions (MA(BS)24) have also been updated correspondingly but no impact on authorized institutions' regulatory reporting is expected as a result.

QBS commences publication of Tokyo Term Risk Free Rate production rates

The QUICK Corp., a financial market information vendor which was selected by the Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks as a calculating and publishing entity of prototype rates in February 2020, along with its group company QUICK Benchmarks Inc. (QBS), has announced that QBS has begun publishing production rates for the Tokyo Term Risk Free Rate (TORF).

As a calculating and publishing entity of production rates for TORF, QBS intends to comply with the Principles for Financial Benchmarks set out by the IOSCO, maintain the transparency of its calculation and operational soundness, and contribute to the sound growth and development of financial and capital markets.

TORF is subject to the regulation of the Financial Services Agency (FSA) as a specified financial benchmark, which is defined in the Financial Instruments and Exchange Act as a financial benchmark that may have a significant impact on Japan's capital markets if its reliability is to decline.

QBS started to calculate and publish the production rates of TORF rate for actual trading from 26 April 2021.

Biden Administration releases US International Climate Finance Plan

President Biden's Executive Order on Tackling the Climate Crisis at Home and Abroad (E.O. 14008 signed 27 January 2021) called for the preparation of a Climate Finance Plan, which has been released in conjunction with the President's Summit on Climate held on 22 April 2021.

The Plan includes a wide range of actions including, among other things:

- scaling-up international climate finance, including an intention to double, by 2024, annual public climate finance to developing countries relative to the average level during the second half of the Obama-Biden Administration, and directing US executive directors in multilateral development banks (MDBs) of which the US is a shareholder to help ensure MDBs set and apply ambitious climate finance targets and policies, in partnership with other shareholders;
- mobilizing private finance internationally, including directing the Millennium Challenge Corporation (MCC) to expand partnerships and the use of blended finance to catalyse private capital for climate projects, the International Development Finance Corporation (DFC) to increase climate-related investments beginning in FY 2023, so that at least one-third of its

new investments are linked to addressing the climate crisis, and the Export-Import Bank of the United States (EXIM) to identify ways to significantly increase its support for environmentally beneficial, renewable energy, energy efficiency, and energy storage exports from the United States; and

- ending international official financing for carbon-intensive fossil fuel based energy, with US departments and agencies seeking to end international investments in and support for carbon-intensive fossil fuel-based energy projects.

The National Security Council staff will conduct a review of this Plan in FY 2023 to take stock of progress and assess whether changes are needed to increase ambition and impact.

RECENT CLIFFORD CHANCE BRIEFINGS

UK's prudential regime for MiFID investment firms – FCA publishes consultation on new remuneration code

The FCA has published a second consultation paper on its new investment firm prudential regime. As anticipated, a single remuneration code is being proposed for FCA investment firms authorised under MIFID (to be known as 'the MIFIDPRU Remuneration Code').

This will become new SYSC 19G in the Handbook and will replace the BIPRU and IFPRU Remuneration Codes. It will apply to performance periods beginning on or after 1 January 2022.

This briefing discusses the MIFIDPRU Remuneration Code.

https://www.cliffordchance.com/briefings/2021/04/uk-s-prudential-regime-for-mifid-investment-firms--fca-publishes.html

Clifford Chance Weekly Global Fintech Round-up – 23 April 2021

The Weekly Global Fintech Round-up is a summary of fintech regulatory developments that have happened around the world each week along with recent Clifford Chance fintech publications and upcoming events.

To view a copy of last week's Round-up, please click on the PDF link below. Alternatively, you can access the Round-up via the Clifford Chance Financial Markets Toolkit at the link below.

Click here to sign up to receive our publications, insights and event invites. You can sign up to receive future Round-ups directly to your inbox under the 'Briefings and regular newsletters' heading.

https://financialmarketstoolkit.cliffordchance.com/en/financial-markets-resources/resources-by-type/newsletters/Fintech.html

ESG trends – what the latest Paris Agreement commitments mean for US climate policy

With COP26 fast approaching, the US has announced its new Nationally Determined Contribution (NDC) under the landmark 2015 Paris Agreement, pledging to reduce greenhouse gas emissions by 50-52% below 2005 levels by 2030. The announcement was made at President Biden's Leaders Summit on Climate, a virtual gathering of world leaders and representatives of civil society and the private sector, aimed at raising global ambition on climate action.

The new NDC, along with a bundle of climate-focused government policies announced this week, are the Biden Administration's latest efforts to re-establish the US as a global leader on climate in the aftermath of the country's official withdrawal from the Paris Agreement under the Trump Administration. With the US having re-joined the Paris Agreement in February 2021, the announcements are a crucial step in rebuilding America's credibility on climate.

This briefing discusses the NDC.

https://www.cliffordchance.com/briefings/2021/04/esg-trends--what-the-latest-paris-agreement-commitments-mean-for.html

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