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CRR/BRRD: Daisy Chain Regulation published in Official Journal

Regulation (EU) 2022/2036 relating to total loss absorbing capacity (TLAC) and the minimum requirement for own funds and eligible liabilities (MREL), referred to as the Daisy Chain Regulation, has been published in the Official Journal.

The Regulation makes targeted amendments to the Capital Requirements Regulation (CRR) and the Bank Recovery and Resolution Directive (BRRD) with the aim of improving institutions' resolvability.

The Regulation will enter into force and apply from 14 November 2022, with the exception of some amendments to the CRR, which will apply from 1 January 2024.

CRR: RTS relating to alternative internal model approach published in Official Journal

Three Commission Delegated Regulations setting out regulatory technical standards (RTS) under the CRR have been published in the Official Journal.

Commission Delegated Regulation (EU) 2022/2058 contains RTS on liquidity horizons for the alternative internal model approach (A-IMA).

Commission Delegated Regulation (EU) 2022/2059 contains RTS specifying the technical details of back-testing and profit and loss attribution requirements.

Commission Delegated Regulation (EU) 2022/2060 contains RTS specifying the criteria for assessing the modellability of risk factors under the internal model approach (IMA) and specifying the frequency of that assessment.

The Delegated Regulations will enter into force on 15 November 2022.

EU Commission adopts proposal on instant payments in euro

The EU Commission has adopted a legislative proposal to make instant payments in euro available to all citizens and businesses holding a bank account in the EU and in EEA countries.

The proposal fulfils a commitment in the Commission's 2020 Retail Payments Strategy, which aimed for the full uptake of instant payments in the EU. It amends the 2012 Regulation on the Single Euro Payments Regulation (SEPA) and consists of four requirements regarding euro instant payments:

- making instant euro payments universally available with an obligation on EU payment service providers that already offer credit transfers in euro also to offer their instant version within a defined period;
- making instant euro payments affordable, with an obligation on payment service providers to ensure that the price charged for instant payments in euro does not exceed the price charged for traditional, non-instant credit transfers in euro;
- increasing trust in instant payments, with an obligation on providers to verify the match between the bank account number (IBAN) and the name of the beneficiary provided by the payer in order to alert the payer of a possible mistake or fraud before the payment is made; and
- removing friction in the processing of instant euro payments while preserving the effectiveness of screening of persons that are subject to EU sanctions.

EMIR: EU Commission adopts RTS on temporary exemptions regime for intragroup contracts

The EU Commission has adopted two amending Delegated Regulations containing RTS that extend the temporary exemptions regime for intragroup contracts for three years under the European Market Infrastructure Regulation (EMIR).

The first RTS extend the deferred date of application of the clearing obligation for intragroup transactions set in Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 to 30 June 2025.

The second RTS extend the deferred date of application of the margin requirements for intragroup transactions set in Delegated Regulation (EU) 2016/2251 to 30 June 2025.

According to the Delegated Regulations, the extension under these RTS is necessary due to delays in the adoption of relevant equivalence decisions under EMIR. The Delegated Regulations will enter into force on the day after their publication in the Official Journal.

AML/CFT: EU Commission publishes third supranational risk assessment

The EU Commission has published its supranational risk assessment for 2022, comprising a report on the assessment of the risk of money laundering (ML) and terrorist financing (TF) affecting the EU's internal market and relating to cross-border activities, as well as an accompanying staff working document. This follows the Commission's two previous supranational risk assessments in 2017 and 2019.

The new report outlines areas in the EU financial system which continue to be vulnerable to money laundering and terrorist financing. It notes that, in the financial sector, a lack of clear and consistent rules, inconsistent anti-money laundering and countering the financing of terrorism (AML/CFT) supervision across the internal market, and insufficient coordination and exchange of information among Financial Intelligence Units (FIUs) continue affecting the EU's ability to address ML/TF risks.

The Commission considers that credit and payment institutions, bureaux de change, e-money institutions and credit providers (other than credit

institutions) appear to be most vulnerable to risks arising from weaknesses in AML/CFT systems and controls. The report also states that risks associated with cryptoassets call for ensuring not only a high level of consumer and investor protection and market integrity, but also for measures against market manipulation and to prevent ML/TF activities. It adds that financial stability and monetary policy risks that could arise from a wide use of cryptoassets and distributed ledger technology (DLT) based solutions in financial markets must also be addressed.

The report sets out a number of recommendations, including calling for:

- a higher level of transparency of beneficial ownership information;
- more appropriate resources for AML/CFT supervisors and FIUs;
- increased on-site inspections by supervisors; and
- FIUs, supervisors and other AML/CFT competent authorities to carry out thematic inspections.

The Commission has also published a separate staff working document on the use of public-private partnerships in the framework of preventing and fighting money laundering and terrorist financing.

Green finance: ESMA includes ESG disclosures in new USSPs

The European Securities and Markets Authority (ESMA) is changing its union strategic supervisory priorities (USSPs) to include ESG disclosures alongside market data quality. The new priority of ESG disclosures replaces costs and performance for retail investment products and forms part of the implementation of ESMA's strategy, which gives a prominent role to sustainable finance.

ESMA aims to foster transparency and comprehensibility of ESG disclosures across key segments of the sustainable finance value chain such as issuers, investment managers or investment firms and tackle greenwashing. In addition, a gradual promotion of increased scrutiny on ESG disclosures will take place through supervision. This will require building supervisory capabilities to fully embed sustainable finance into daily supervisory work and supervisory culture.

National competent authorities are required to take the USSPs into account when drawing up their work programme.

Investment Firms: EBA publishes report on supervision of ESG risks

The European Banking Authority (EBA) has published a report on incorporating ESG risks in the prudential supervision of investment firms under the Investment Firms Directive (IFD).

The report, which builds on and complements the EBA's June 2021 report on the management and supervision of ESG risks for credit institutions and investment firms, sets out the EBA's views and recommendations on the integration of ESG factors and risks under the main elements of the supervisory review and evaluation process (SREP).

Among other things, the EBA recommends that ESG aspects be integrated into the supervisory process gradually, prioritising the recognition of risks in

investment firms' strategies, governance arrangements and internal processes, and later incorporating them in the assessments of risks to capital and liquidity.

EBA launches call for input on guidelines to prevent abuse of fund transfers

The European Banking Authority (EBA) has published a call for input on joint guidelines by the European Supervisory Authorities (ESAs) to prevent terrorist financing and money laundering in electronic fund transfers under the Regulation on information accompanying transfers of funds (TFR).

The call for input seeks to identify practical issues that financial institutions experience when complying with the existing guidelines, which the EBA intends to amend and extend as part of the implementation of the forthcoming recast TFR.

The recast TFR, which is yet to be formally approved, is part of a package of legislative amendments designed to strengthen the EU's anti-money laundering and counter terrorist financing (AML/CTF) rules, including to improve the traceability of cryptoasset transfers and the identification of suspicious transactions.

Comments on the guidelines are due by 15 November 2022.

FATF consults on beneficial ownership of legal arrangements and legal persons

The Financial Action Task Force (FATF) has launched two consultations on:

- an updated guidance paper to recommendation 24 (R.24) on the transparency and beneficial ownership of legal persons; and
- proposed amendments to recommendation 25 (R.25) and its interpretative note (INR.25) on the transparency and beneficial ownership of legal arrangements.

At the March 2022 plenary, the FATF adopted amendments to R.24 and agreed to update the guidance on beneficial ownership, with a view to supporting the implementation of new requirements. The FATF are now consulting on its updated guidance paper to R.24.

The FATF has also launched a consultation on proposed amendments to R.25 and INR.25. This follows a white paper consultation published in June 2022. In particular, the FATF is considering an amendment of the definition of beneficial ownership in the glossary to provide more clarity regarding legal arrangements.

Comments on both consultations are due by 6 December 2022.

The FATF intends to consider the submissions received and proposals for revisions at its February 2023 meetings.

PRA publishes Dear CEO letter on climate-related financial risk

The Prudential Regulation Authority (PRA) has published a Dear CEO letter setting out thematic feedback on the PRA's supervision of climate-related financial risk and the Bank of England's (BoE's) Climate Biennial Exploratory Scenario exercise.

The letter provides:

- a summary of capabilities firms should be able to demonstrate in meeting the PRA's expectations set out in supervisory statement 3/19 (SS3/19);
- thematic observations on how firms are embedding the PRA's expectations; and
- examples of effective and less effective practices.

The letter also covers how firms should prepare for the impact of climate risk on their accounting practices, and lists key resources designed to assist firms in embedding the SS3/19 expectations.

The PRA notes that compliance will be assessed on an ongoing basis.

Green finance: FCA consults on Sustainability Disclosure Requirements and investment labels

The Financial Conduct Authority (FCA) has published a consultation paper (CP22/20) which proposes a package of new measures to tackle greenwashing. The measures are among several potential new rules which are intended to protect consumers and improve trust in sustainable investment products and form part of the commitment made in the FCA's ESG strategy and business plan.

The FCA is proposing to introduce:

- sustainable investment product labels with three categories underpinned by objective criteria;
- restrictions on how certain sustainability-related terms, such as ESG, green or sustainable, can be used in product names and marketing for products which do not qualify for the sustainable investment labels;
- consumer-facing disclosures to help consumers understand key sustainability-related features of an investment product;
- more detailed disclosures, suitable for institutional investors or retail investors that want to know more; and
- requirements for distributors of products, such as investment platforms, to ensure that the labels and consumer-facing disclosures are accessible and clear to consumers.

Comments are due by 25 January 2023.

FCA consults on competition impacts of big tech

The FCA has published a discussion paper (DP22/5) on the potential competition impacts of big tech firms' entry and expansion in retail financial services markets.

DP22/5 seeks views on the potential benefits and harms of big tech firms in the payments, deposit taking, consumer credit and insurance sectors, and includes the FCA's analysis of the economic incentives and entry scenarios in these sectors.

DP22/5 is intended to inform the FCA's regulatory approach to digital markets and does not propose any regulatory changes.

Comments on the discussion paper are due by 15 January 2023. The FCA intends to publish a feedback statement in H1 2023.

FCA publishes Dear CEO letter on governance of credit rating agencies

The FCA has issued a Dear CEO letter on the effectiveness of governance in credit rating agencies (CRAs).

The FCA observes that some CRAs could do more to benefit from the value that a well-functioning Board can bring to the strategic direction and oversight of an organisation.

The letter identifies a number of risks relating to:

- the purpose of the Board;
- the composition of the Board;
- the role of independent non-executive directors; and
- how the Board operates.

The FCA expects the senior leadership and Boards of CRAs to consider the risks outlined with regard to their business, how they monitor these risks and whether they have appropriate strategies in place to address them.

The FCA has asked CRAs to provide a Board-approved summary of their assessment of key risks and action plans by 30 January 2023. The FCA has also asked CRAs to notify it by 11 November 2022 of a member of the senior management team to oversee the implementation of the action plans.

Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2022 made and laid

The Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2022 (SI 2022/1080) have been made and laid according to the negative procedure.

SI 2022/1080 contains measures intended to address deficiencies in retained EU law by:

- remedying the territorial application of the Payment Services Regulations for small payment institutions to require applicant firms to satisfy the FCA in relation to their 'close links' with non-UK persons;
- expanding the scope of the Temporary Recognition Regime (TRR) to allow overseas central counterparties (CCPs) within the TPP to offer new products into the UK;
- clarifying that the FCA has the power to share information obtained under the UK Credit Rating Agencies Regulation (CRAR) with domestic and third country authorities;
- extending the temporary recognition of EU Simple, Transparent, and Standardised (STS) securitisations from 31 December 2022 to 31 December 2024; and
- extending the FCA's Temporary Transitional Power (TTP) for the purposes of modifying the application of the Share Trading Obligation (STO) and Derivatives Trading Obligation (DTO).

Unless annulled by Parliament, SI 2022/1080 comes into force on 15 November 2022.

AML/CFT: Amendments to Grand Ducal Regulation of 1 February 2010 published

The Grand Ducal Regulation of 25 October 2022 amending the Grand Ducal Regulation of 1 February 2010 providing details on certain provisions of the amended Law of 12 November 2004 on the fight against AML/CTF has been published in the Luxembourg official journal (Mémorial A).

The purpose of the Grand-Ducal Regulation is to clarify that each professional subject to AML/CTF requirements has to apply a risk-based approach which takes into account the information available on the risk level relating to the countries in which third parties are based when the professional relies on such third parties to perform customer due diligence measures.

The Grand Ducal Regulation has further repealed an exception to the prohibition of accounts and passbooks in fictitious names. The repealed exception specified the conditions under which the opening of numbered accounts was allowed. These conditions were intended to ensure the compliance by banks or financial institutions with their AML/CTF duties in relation to such types of accounts.

The Grand-Ducal Regulation entered into force on 26 October 2022.

Swiss Federal Council publishes report on Swiss National Bank and Switzerland's sustainability goals

The Swiss Federal Council has adopted a report on the Swiss National Bank and Switzerland's sustainability goals in response to a postulate from the parliamentary committee for Economic Affairs and Taxation.

The Swiss National Bank's (SNB's) legal duty, its mandate, is to ensure price stability while taking due account of economic developments. The Federal Council notes that the consequences of climate change and climate policy impact the SNB in the performance of this mandate and the associated tasks of contributing to financial stability and asset management. The report indicates that the SNB takes climate, environmental and other sustainability aspects into account, to the extent that they affect price and financial stability or entail financial risks for the SNB. Accordingly, the SNB addresses climate change and its consequences in its monetary policy analysis in its duty with regard to financial stability and in the management of its assets.

While certain other central banks that actively integrate climate goals into their activities have mandates that require them to support general economic policy as a subordinate task in addition to their primary goal of ensuring price stability, the Federal Council views the clear division of tasks and responsibilities between the SNB, Federal Council and Parliament as proper and necessary from a regulatory policy standpoint. According to the report, expanding the SNB's mandate would inevitably lead to conflict with the goal of price stability and politicise monetary policy.

CNMV consults on draft circular on accounting standards, annual accounts and interim financial statements of market infrastructures

The Spanish Securities Market Commission, the Comisión Nacional del Mercado de Valores (CNMV), has launched a public consultation on a draft circular on the accounting standards, annual accounts and interim financial

statements of market infrastructures, which will replace CNMV Circular 9/2008.

The main objective of the draft circular is to simplify and update the obligations, accounting standards and financial and activity statements included in Circular 9/2008, taking into consideration the applicable regulations in force, eliminating unnecessary redundancies and adapting it to the new reality of Spanish infrastructures.

The draft circular will be open for comments until 18 November 2022.

HKMA announces official launch of Commercial Data Interchange

The Hong Kong Monetary Authority (HKMA) has announced the official launch of Commercial Data Interchange (CDI). CDI is one of the key initiatives under the HKMA's 'Fintech 2025' strategy to create a next-generation data infrastructure and form an ecosystem for secure and seamless data exchange in Hong Kong.

CDI is a consent-based financial data infrastructure intended to enhance data sharing by facilitating financial institutions to retrieve enterprises' commercial data, in particular the data of small and medium-sized enterprises, from both public and private data providers. CDI allows financial institutions to digitalise and streamline financial processes, such as know-your-customer procedures, credit assessment, loan approval and risk management. The commercial data involved in the current phase will include e-trade declaration, e-commerce, supply chain, payment and credit reference data.

To ensure that all CDI participants follow a common set of rules for proper, fair and secure exchange of commercial data, the HKMA has also launched the CDI framework detailing the governance model and structure. The HKMA has indicated that it will continue to broaden the spectrum of data available through CDI, including data from government departments and analytics service providers.

MAS consults on proposed regulatory approach to stablecoin-related activities

The Monetary Authority of Singapore (MAS) has launched a consultation on its proposed regulatory approach to stablecoin-related activities. In particular, the consultation paper sets out the MAS' policy thinking regarding the overall regulatory approach to stablecoin-related issuance and intermediation activities and highlights the key requirements that will be imposed on such activities.

Amongst other things, the MAS is proposing to introduce a new regulated activity of 'stablecoin issuance service' under the Payment Services Act 2019 (PS Act), which is intended to capture the issuance of single-currency pegged stablecoins (SCS) in Singapore. Where the value of SCS in circulation exceeds or is anticipated to exceed SGD 5 million in value, the issuer will have to obtain a major payment institution licence under the PS Act and comply with the existing anti-money laundering / countering the financing of terrorism requirements, and technology and cyber risk management. Additionally, they will be subject to proposed requirements relating to:

- value stability – SCS issuers must hold reserve assets in cash, cash equivalents or short-dated sovereign debt securities that are at least

equivalent to 100% of the par value of the outstanding SCs in circulation, and these assets must be denominated in the same currency as the pegged currency. Requirements on monthly independent attestation, annual audits, segregation of reserves and timely redemption at par value will also apply;

- reference currency – for a start, the MAS proposes to allow the issuance of SCS that are pegged to the Singapore dollar or Group of Ten currencies;
- disclosures – SCS issuers must also publish a white paper disclosing details of the SCS. As a matter of good practice, a factsheet summarising key information should also be published;
- prudential standards – SCS issuers must meet a base capital requirement of the higher of SGD 1 million or 50% of annual operating expenses of the SCS issuer. They are also required to hold liquid assets which are valued at higher of 50% of annual operation expenses or an amount assessed by the SCS issuer to be needed to achieve recovery or an orderly wind-down; and
- business restrictions – an SCS issuer will not be allowed to undertake activities that introduce additional risks to itself, including investing in and extending loans to other companies, lending or staking SCSs and other digital payment tokens (DPTs), and trading of DPTs.

Banks in Singapore will be allowed to issue SCS without additional reserve backing and prudential requirements if the SCS is issued as a tokenised form of bank liabilities. However, such banks will have to comply with the proposed requirements relating to timely redemption at par and disclosures.

Banks that issue SCS backed by reserve assets that are segregated from the rest of the bank's assets will have to comply with all proposed requirements above, except for prudential requirements.

For SCS intermediaries, the MAS proposes to allow them to use or offer all types of stablecoins. However, SCS which are regulated by the MAS must be clearly labelled. SCS intermediaries which arrange for the transmission of MAS-regulated SCS are to complete the transfer of SCS within 3 business days. SCS intermediaries which provide services of transmission or custody of MAS-regulated SCS will be required to hold and segregate customers' MAS-regulated SCS from other customers' assets (e.g. DPTs) as well as their own assets in different custody accounts.

The MAS also proposes to make legislative amendments to empower it to supervise stablecoin arrangements as payment systems, and in particular, to designate a systemic stablecoin arrangement as a designated payment system under the PS Act.

Details on the regulatory requirements, legislative amendments and transitional arrangements of these proposals will be separately consulted upon.

Comments on the consultation are due by 21 December 2022.

MAS consults on proposed regulatory measures for digital payment token services

The MAS has launched a consultation on proposed regulatory measures for licensees and exempt payment service providers that carry on a business of

providing a digital payment token (DPT) service under the Payment Services Act 2019 (collectively known as 'DPT service providers' or DPTSPs).

The proposed measures cover three broad areas:

- consumer access;
- business conduct; and
- technology risks.

The proposed consumer access measures apply to retail customers resident or incorporated in Singapore and mean that:

- DPTSPs will be required to assess retail customers' (i.e. customers who are not accredited investors (AIs) or institutional investors) knowledge of risks of trading in DPTs. In this context, the MAS will be reviewing the treatment of DPT holdings for the purposes of determining AI eligibility and engaging stakeholders separately;
- DPTSPs will be restricted from offering incentives to retail customers; and
- DPTSPs must disallow the use of credit facilities and leverage by retail consumers for cryptocurrency trading.

With regard to business conduct, DPTSPs will be required to:

- implement proper segregation of customers' assets – in this context, the MAS is also seeking views on whether having an independent custodian to hold customers' assets is appropriate;
- provide written disclosures of arrangements and risks involved in having customers' assets held by DPTSPs;
- conduct daily reconciliation of assets held by the DPTSPs on behalf of customers;
- provide a statement of accounts minimally on a monthly basis;
- establish controls to safeguard private keys and storage of customers' DPTs;
- identify, disclose and mitigate any potential conflicts of interest; and
- establish complaints handling policies and procedures. DPTSPs should also not hinder retail customers from bringing disputes before the Singapore courts.

DPTSPs are also restricted from lending out or staking retail customers' DPTs. For non-retail customers, DPTSPs should provide a clear risk disclosure document and obtain the customer's explicit consent. DPT trading platforms will be required to disclose their DPT listing and governance policies (such as criteria, due diligence, processes and fees) and will be prohibited from buying or selling DPTs for their own account.

With regard to technology risks, DPTSPs will be required to maintain high availability and recoverability of their critical systems in accordance with the MAS Notice of Technology Risk Management.

To address market integrity risks, the MAS is also seeking comments on:

- effective systems, procedures and arrangements that DPT trading platform operators should implement, in order to promote fair, orderly, transparent trading of DPTs offered for sale on their trading platform; and
- effective measures, including the implementation of market surveillance mechanisms, to detect and deter unfair trading practices.

To implement these proposals, the MAS intends to issue guidelines and provide a transition period of 6 to 9 months for DPTSPs to meet the guidelines. Details on the regulatory requirements and subsidiary legislation will be consulted upon separately in due course.

Comments on the consultation are due by 21 December 2022.

MAS consults on proposed amendments to restrictions on personal payment accounts containing e-money

The MAS has launched a consultation on proposed amendments to the limits currently imposed on each personal payment account that contains e-money (e-wallet) issued by major payment institutions (MPIs).

Broadly, the consultation seeks comments on:

- proposed increases in the personal e-wallet stock cap from SGD 5,000 to SGD 20,000, and flow cap from SGD 30,000 to SGD 100,000; and
- proposed amendments the Payment Services Regulations 2019 to exempt an MPI in a 'white-label account issuance arrangement' from Section 24(1)(c) of the Payment Services Act 2019, so that the MPI will not be required to aggregate the e-money in e-wallets issued to the same payment service user under the arrangement for the purposes of applying the caps.

Comments on the consultation are due by 25 November 2022

APRA issues guidance for regulated entities following Medibank data breach investigation

The Australian Prudential Regulation Authority (APRA) has issued guidance for its regulated entities, noting that concern around identification and transaction fraud remains high due to the recent Medibank data breach incident. APRA urges entities employing online application and policy transaction processes to strengthen verification controls and increase vigilance on avenues of potential fraud, including the use of credit card information. It also requires regulated entities to:

- review incident response plans and ensure the regular testing of these plans;
- clearly define the information security-related roles and responsibilities of the Board, senior management, governing bodies and individuals so that they are in a position to respond and mitigate harm; and
- ensure that information security controls are in place and operating to safeguard them, along with the requirements and obligations of Prudential Standard CPS234: Information Security.

Further, APRA advises its regulated entities to appropriately communicate with their customers to raise awareness and direct them to reputable sources

such as Australian Cyber Security Centre, Moneysmart and the Office of the Australian Information Commissioner, which outline additional steps customers can take to limit the risk of fraud.

RECENT CLIFFORD CHANCE BRIEFINGS

Women on Boards Directive – moving forward

After a 10-year stalemate the EU Council has announced that it has adopted the final text of a directive to ensure gender parity on the boards of publicly listed companies in the EU; the so called 'Women on Boards Directive'.

Although the draft Directive must now be adopted by the European Parliament, if it progresses as anticipated, in scope companies will be required to achieve a target of 40% of nonexecutive director posts to be allocated to the underrepresented sex by 30 June 2026 ('40% Target') and Member States will be required to ensure that there are effective, dissuasive, and proportionate penalties in the event of noncompliance.

This briefing paper discusses the 'Women on Boards Directive'.

https://www.cliffordchance.com/briefings/2022/10/women-on-boards-directive-moving-forward.html

The EU financial services legislative pipeline

The current European Commission's financial services legislative pipeline is almost full, although some additional proposals are expected over the next year.

This briefing paper provides an overview of the nearly 40 existing and scheduled legislative proposals by the current Commission on financial services and related cross-cutting issues. The briefing also indicates where the European Parliament and the Council have already reached agreement on the proposal and where work will continue towards agreement during the remaining two years of the Commission's term.

https://www.cliffordchance.com/briefings/2022/10/eu-financial-services-legislative-pipeline.html

Dividend clawbacks – UK Supreme Court rules on directors' duty to consider the interests of creditors

In the present economic climate, it comes as no surprise that the spotlight is once again on the duties of directors as many companies grapple with financial pressures including rising costs and the competing demands of their stakeholders.

Section 172 of the Companies Act 2006 codifies one of the most fundamental and longstanding principles of company law: directors must act in a way that they consider, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole. The Supreme Court has now confirmed that directors of an insolvent or potentially insolvent company owe a duty to take the interests of creditors into account, and that this may intrude upon or override the duty to act in the best interests of shareholders. This 'creditor duty' was first recognised by the English and other Commonwealth courts in the 1980s, but there had been conflicting decisions on the scope of the duty and when it is engaged.

This briefing paper discusses the decision.

https://www.cliffordchance.com/briefings/2022/10/dividend-clawbacks-the-supreme-court-rules-on-directors-duty.html

Next steps after US President Biden issues executive order on US data transfers from 'Qualified States'

On 7 October 2022, US President Joe Biden issued an Executive Order 'On Enhancing Safeguards for United States Signals Intelligence Activities' to effectuate the preliminary agreement between US President Biden and European Commission President Ursula von der Leyen for facilitating trans-Atlantic data flows.

The Order aims to address concerns raised by the Court of Justice of the European Union (CJEU) in the 'Schrems II' decision of 16 July 2020, which invalidated the previous EU-US Privacy Shield (for additional background, see our more detailed briefing: US and EU Agree on Framework for Privacy Shield Replacement). In particular, the Order adds additional safeguards and redress mechanisms for persons in certain qualifying countries or regional economic integration organizations to protect and preserve privacy rights and civil liberties in relation to data collection practices and procedures of the US intelligence community.

This briefing paper discusses the Executive Order and next steps.

https://www.cliffordchance.com/briefings/2022/10/next-steps-after-us-president-biden-issues-executive-order-on-us-data-transfers-from-qualified-states.html

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