INTERNATIONAL REGULATORY UPDATE 5 – 9 JUNE 2023

- **Digital finance: MiCA and AML/CTF measures for cryptoassets published in OJ**
- **Investment firms: RTS and ITS on supervisory cooperation published in OJ**
- **AMLD6: EU Parliament and Council reach trilogue agreement on single access point to bank account registries**
- **EU Council and Parliament reach provisional agreement on Directive on distance financial services contracts**
- **Capital requirements: EBA publishes final draft ITS specifying data collection for benchmarking exercise in 2024**
- **MiFIR: ESMA writes to EU co-legislators on transparency regime for single name-CDS and standardised OTC-derivatives**
- **CCPRRR: ESMA publishes guidelines on methodology for determining valuation of contracts prior to termination**
- **ESMA publishes follow-up report to peer review on ETFs and UCITS issues guidelines**
- **ECB consults on counterparty credit risk governance and management**
- **UK EMIR: Central Counterparties (Equivalence) (India) (Reserve Bank of India) Regulations 2023 made**
- **Cryptoassets: FSMA (Financial Promotion) (Amendment) Order 2023 made**
- **Cryptoassets: FCA sets out final rules on financial promotions and consults on guidance**
- **EU Pilot Regime: AMAFI publishes note on regulatory changes to French Financial and Monetary Code and Commercial Code**
- **Bail-in: Bank of Italy complies with EBA guidelines**
- **Crowdfunding: New Consob Regulation published**
- **CSSF issues communiqué on adoption of EBA guidelines on remuneration data collection exercises and related CSSF circulars**
- **CSSF issues circular on scope of Luxembourg deposit guarantee and investor compensation scheme**
- **CSSF issues circular regarding Single Customer View file for deposit protection scheme**

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- **CSSF issues circular on application of ESMA guidelines on certain aspects of MiFID2 suitability requirements**
- **SFC updates guidance to prepare for HKD-RMB Dual Counter Model**
- **SFC concludes consultation on position limit regime**
- **Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) (Amendment) Bill and Computer Misuse (Amendment) Bill gazetted**
- **Singapore Economic Development Board appoints seven fund management companies as GIP-select funds**
- **Singapore launches AI Verify Foundation**
- **MAS issues notice on submission of returns by notified payment services entities**
- **MAS publishes circular on implementation timeline for final Basel III reforms in Singapore**
- **MAS to set expectations on credible transition planning by financial institutions**
- **ASIC highlights focus areas for 30 June 2023 reporting**
- **Australian Government releases strategic plan for Australia's payments system**
- **Australian Government consults on reforms to Payment Systems (Regulation) Act 1998**
- **APRA publishes statement of intent in response to Australian Government's statement of expectations**
- **Recent Clifford Chance briefings: Securitisation markets and regulation and generative AI. Follow this link to the briefings section.**

Digital finance: MiCA and AML/CTF measures for cryptoassets published in OJ

The Markets in Cryptoassets Regulation (MiCA) and the recast Regulation on information accompanying transfers of funds and certain cryptoassets have been published in the Official Journal.

MiCA establishes an EU regulatory framework for the issuance, offering, intermediation and dealing in cryptoassets, including licensing, conduct of business requirements and enhanced consumer protection, as well as a market abuse regime. The recast Regulation on information accompanying transfers of funds, which is part of a package of legislative amendments designed to strengthen the EU's anti-money laundering and counter terrorist financing (AML/CTF) rules, is intended to improve the traceability of cryptoasset transfers and the identification of suspicious transactions.

Both regulations will enter into force on 29 June 2023. The provisions under MiCA in relation to stablecoins will apply from 30 June 2024, with the remaining provisions on issuers of other cryptoassets and cryptoasset service providers applying from 30 December 2024, together with the transfer of funds rules.

Investment firms: RTS and ITS on supervisory cooperation published in OJ

An Implementing Regulation and two Delegated Regulations laying down technical standards on cooperation and information exchange between competent authorities involved in the prudential supervision of investment firms under the Investment Firms Directive (IFD) have been published in the Official Journal.

Implementing Regulation (EU) 2023/1119 sets out implementing technical standards (ITS) with regard to standard forms, templates and procedures for information sharing between the competent authorities of home and host Member States.

Delegated Regulation (EU) 2023/1118 sets out regulatory technical standards (RTS) on colleges of supervisors for investment firm groups specifying the conditions under which colleges exercise their tasks.

Delegated Regulation (EU) 2023/1117 sets out RTS specifying requirements for the type and nature of the information to be exchanged by competent authorities of home and host Member States.

All three Regulations enter into force on 28 June 2023.

AMLD6: EU Parliament and Council reach trilogue agreement on single access point to bank account registries

The EU Parliament and the EU Council have reached an agreement in trilogue on the proposed directive amending Directive (EU) 2019/1153 as regards access of competent authorities to centralised bank account registries through a single access point.

The proposed directive will extend the access to the bank account registers single access point, which will be established by the proposed sixth anti-money laundering directive (AMLD6), to any authorities designated by Member States as competent for the prevention, detection, investigation or prosecution of criminal offences under Directive (EU) 2019/1153.

The proposed directive will provide:

- direct access to bank account information across the EU for law enforcement authorities and Asset Recovery Offices through the single access point interconnecting bank account registries; and
- a common format for banks and crypto companies to provide information on transactions to law enforcement authorities. The specifics of the format will be defined in an implementing act.

The proposed directive must still be formally adopted by the EU Parliament and the Council.

EU Council and Parliament reach provisional agreement on Directive on distance financial services contracts

The EU Council and Parliament have reached a provisional political agreement on the EU Commission's proposal for a directive to repeal the Distance Marketing Directive (2002/65/EC) and to transfer the framework for consumer protections relating to financial services distance contracts to the Consumer Rights Directive (2011/83/EU).

The proposal broadly seeks to simplify existing legislation, enhance consumer confidence in distance selling and ensure a level playing field among traders.

The EU Council and Parliament must now formally adopt the directive.

Capital requirements: EBA publishes final draft ITS specifying data collection for benchmarking exercise in 2024

The European Banking Authority (EBA) has published its final draft ITS under the Capital Requirements Directive on the benchmarking of credit risk, market risk and IFRS9 models for the 2024 exercise. The changes compared to the data collection of 2023 include the roll out for the benchmarking of accounting metrics (IFRS9) to high default portfolios. For market risk, new templates have been added for the collection of additional information, notably the default risk charge and the residual risk add-on. For credit risk, only minor changes have been made.

The EBA benchmarking exercise is intended to ensure consistent monitoring of the variability of own funds requirements resulting from the application of internal models, as well as of the impact of several supervisory and regulatory measures, which influence the capital requirements and solvency ratios in the EU.

MiFIR: ESMA writes to EU co-legislators on transparency regime for single name-CDS and standardised OTC-derivatives

The European Securities and Markets Authority (ESMA) has written a letter to the EU Commission, EU Parliament and EU Council on the transparency regime for single name-credit default swaps (CDSs) and standardised OTC derivatives under the Markets in Financial Instruments Regulation (MiFIR).

ESMA believes that the single-name CDS markets remain opaque and subject to a high degree of uncertainty and speculation as to the actual trading activity and its drivers. The letter notes that actual transparency provided on trading activity in OTC derivatives remains limited due to ambiguity on the scope of OTC derivatives covered by the provisions and a complex deferral regime.

The letter calls for the co-legislators to strengthen the transparency regime applicable to standardised OTC-derivatives through the ongoing MiFIR review, particularly the regime for single-name CDSs, by broadening the scope of instruments subject to the requirements and providing for more real-time transparency and a streamlined deferral regime.

ESMA also believes that a globally co-ordinated approach is key to ensuring consistent rules and avoiding gaps and notes the International Organization of Securities Commissions' (IOSCO's) work on the transparency of the CDS market.

CCPRRR: ESMA publishes guidelines on methodology for determining valuation of contracts prior to termination

ESMA has published guidelines on the methodology to be used by a resolution authority for determining the valuation of contracts prior to their termination under Article 29(1) of the Central Counterparty Recovery and Resolution Regulation (CCPRRR).

The guidelines aim to promote the convergence of supervisory and resolution practices regarding the valuation methodology. Guidelines 1, 2, 3 and 5 cover the process of the valuation, its scope, the valuation according to the rules and arrangements of the central counterparty (CCP) which should be considered first and then the valuation using alternative price discovery methods and sources if necessary.

ESMA has expanded the scope of the guidelines beyond the scope set out by Article 29(7) of CCPRRR, and has decided to issue guidelines 4, 6 and 7 under Article 16(1) of the ESMA Regulation.

The guidelines will apply from two months after the date of publication on ESMA's website in the official languages of the EU.

ESMA publishes follow-up report to peer review on ETFs and UCITS issues guidelines

ESMA has published a follow-up report to its July 2018 peer review on the guidelines on exchange traded funds (ETFs) and other UCITS issues.

The report provides an update on the actions taken by national competent authorities (NCAs) to address issues identified in the 2018 peer review, and namely the need to improve their practices when supervising disclosures to investors, operational aspects of costs, fees and revenues for efficient portfolio management (EPM), and collateral management issues.

While NCAs were broadly found to have strengthened supervisory practices, enhanced internal and external guidance, and performed supervisory work, ESMA also notes concerns in relation to the level of costs for some UCITS using EPM techniques.

ESMA expects NCAs to continue monitoring the effective application of the guidelines and supervisory practices, noting that further work at EU level should continue in the areas of costs, fees, revenues for EPM techniques and instruments.

ECB consults on counterparty credit risk governance and management

The European Central Bank (ECB) has launched a public consultation on its report on sound practices in counterparty credit risk governance and management. The report summarises the results of the targeted review the ECB carried out in the second half of 2022 on how banks govern and manage counterparty credit risk (CCR). It highlights the good practices observed in the market and points to areas where improvement is needed.

Comments are due by 14 July 2023.

UK EMIR: Central Counterparties (Equivalence) (India) (Reserve Bank of India) Regulations 2023 made

The Central Counterparties (Equivalence) (India) (Reserve Bank of India) Regulations 2023 (SI 2023/599) have been made and published, together with an explanatory memorandum.

SI 2023/599 sets out HM Treasury's equivalence determination, under Article 25 of the onshored UK version of the European Market Infrastructure Regulation (UK EMIR), in respect of the regulatory framework that applies to certain CCPs that are established in India and authorised by the Reserve Bank of India (RBI).

The equivalence determination fulfils one of the conditions for specified CCPs authorised by the RBI to receive recognition from the Bank of England (BoE). Overseas CCPs are able to provide clearing services to UK clearing members and trading venues once they have been recognised by the BoE.

The Regulations will come into force on 28 June 2023.

Cryptoassets: FSMA (Financial Promotion) (Amendment) Order 2023 made

The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023 (SI 2023/612) has been made.

The Order, which forms part of the Government's wider staged approach to regulating the cryptoasset sector, amends the FSMA (Financial Promotion) Order 2005 (FPO) to include financial promotions in respect of qualifying cryptoassets, such as exchange tokens.

The Order also introduces a temporary, limited exemption for:

- cryptoasset businesses registered with the Financial Conduct Authority (FCA) under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (AML/CFT Regulations); and
- persons who communicate non-real time financial promotions prepared by a registered person on that person's behalf.

For the purposes of enabling the FCA to make rules and give guidance, the Order came into force on 8 June 2023. For all other purposes and to ensure compliance, there will be a four-month implementation period before the Order comes into force.

Cryptoassets: FCA sets out final rules on financial promotions and consults on guidance

The FCA has published a policy statement (PS23/6) summarising the feedback it received to its January 2022 consultation (CP22/2) in relation to cryptoassets and setting out its final policy position and near final Handbook rules.

The FCA intends to proceed with categorising cryptoassets as 'restricted mass market investments' and applying the associated restrictions on how they can be marketed to UK consumers, which include the requirement for clear risk warnings, banning incentives to invest, a cooling-off period, client categorisation requirements and appropriateness assessments. Firms issuing cryptoasset promotions will also have to follow the FCA's overarching requirements on clearness, fairness and accuracy.

The new regime will come into force on 8 October 2023.

The FCA has also launched a separate guidance consultation (GC23/1) on how it will approach, and how firms comply with, the requirement that cryptoasset financial promotions must be fair, clear and not misleading. Comments are due by 10 August 2023.

EU Pilot Regime: AMAFI publishes note on regulatory changes to French Financial and Monetary Code and Commercial Code

The Association Française des Marchés Financiers (AMAFI) has published a note setting out the changes to the French Monetary and Financial Code and the French Commercial Code resulting from the decree adapting French securities law to Regulation (EU) 2022/858 on a pilot regime for market Infrastructures based on DLT.

The EU regulation entered into force on 23 March 2023 and the French decree was published in the Official Journal on 2 June 2023. Following the legislative changes made by Law No. 2023-171 of 9 March 2023, the decree makes regulatory amendments to ensure the compliance of French national law with the EU Pilot Regime.

Bail-in: Bank of Italy complies with EBA guidelines

The Bank of Italy, in its capacity as national resolution authority, has notified EBA of its intention to comply with the EBA guidelines to resolution authorities on the publication of the write-down and conversion and bail-in exchange mechanic (EBA/GL/2023/01).

The EBA guidelines specify the information to be published by resolution authorities on how to apply write-down and conversion in the context of the bail-in, as required by the Bank Recovery and Resolution Directive (BRRD).

The implementation of the EBA guidelines will take place through the publication of the Bank of Italy's approach by 1 January 2024.

Crowdfunding: New Consob Regulation published

The Commissione Nazionale per le Società e la Borsa (Consob) has, with Resolution no. 22720 of 1 June 2023, adopted a new regulation on crowdfunding services. The new Consob regulation implements Regulation (EU) 2020/1503 on providers of crowdfunding services for business.

The EU Regulation establishes that, from 11 November 2023, only crowdfunding service providers authorised according to EU legislation will be allowed to operate in Italy. Providers authorised under national law are therefore being invited to submit their application for authorisation promptly in order to continue to operate without interruption.

The new Consob regulation repeals the previous Consob regulation on raising capital through online portals, adopted with Resolution no. 18592 of 26 June 2013.

CSSF issues communiqué on adoption of EBA guidelines on remuneration data collection exercises and related CSSF circulars

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a communiqué on the publication of the following three circulars adopting the EBA guidelines on remuneration data collection exercises:

- CSSF Circular 23/836 on the EBA guidelines on benchmarking data under the Capital Requirements Directive (CRD4);

- CSSF Circular 23/837 on the EBA guidelines on the high earners data collections under CRD4 and the IFD; and
- CSSF Circular 23/838 on the EBA guidelines on benchmarking data under the IFD.

These guidelines organise the remuneration data collection exercises, as mandated by requirements in the CRD and IFD frameworks.

Entities that are in scope of the EBA exercises will be informed by letter in due course.

According to the CSSF, the data collection format will be XBRL rather than Excel, starting from the data collection exercises in 2023 for financial year 2022.

The EBA data collection exercises, frequencies and data collection start dates of these exercises are listed in the communiqué.

The CSSF will also continue to conduct national data collection exercises including a wider scope of entities, in line with its supervisory role.

CSSF issues circular on scope of Luxembourg deposit guarantee and investor compensation scheme

The CSSF acting in its function as Depositor and Investor Protection Council (Conseil de Protection des Déposants et des Investisseurs) (CPDI), has published CSSF-CPDI circular 23/35 modifying Circular CSSF-CPDI 16/02 on the scope of the deposit guarantee and investor compensation.

The circular is addressed to all credit institutions and investment firms incorporated under Luxembourg law, to the POST Luxembourg, and to Luxembourg branches of non-EU/EEA credit institutions and investment firms, as well as to UCITS management companies and to alternative investment fund managers whose authorisation includes the management of portfolios on a discretionary, client-by-client basis.

The circular incorporates the provisions of Article 62 of the Investment Firms Regulation (EU) 2019/2033 (IFR) which affect the definition of financial institutions in Circular CSSF-CPDI 16/02. Financial institutions are excluded from the scope of deposit guarantee and investor compensation in Luxembourg.

Furthermore, in the context of the application of Articles 174 and 196(5) of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms, certain terms relating to the identification and indemnification of accounts where the holder is different from the person absolutely entitled are clarified.

A version of Circular CSSF-CPDI 16/02 tracking the changes is annexed to the circular.

The circular entered into force with immediate effect.

CSSF issues circular regarding Single Customer View file for deposit protection scheme

The CSSF acting in its function as CPDI has published CSSF-CPDI circular 23/36 amending Circular CSSF 13/555 on the Fonds de garantie des dépôts Luxembourg (FGDL).

The circular is addressed to all members of the FGDL (Luxembourg banks, Luxembourg branches of banks having their registered office in a third country and POST Luxembourg).

Circular CSSF 13/555 was issued in 2013 to implement the decision made by the Board of Directors of the Association pour la Garantie des Dépôts, Luxembourg (AGDL) to introduce a 'Single Customer View' (SCV) file within the deposit guarantee framework. The latest circular adds a new field to the SCV file in which the depositors' national identification number has to be recorded. The circular also introduces clarifications that concern the need to identify the beneficiaries of omnibus accounts and the requirement that the SCV procedures be in scope of the internal audit function.

Finally, the introduction of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms requires the use of obsolete terms such as AGDL to be updated by referring to either the FGDL or the CPDI in Circular CSSF 13/555. The circular carries out these updates, while maintaining the principles and practices of Circular CSSF 13/555 as far as possible.

A version of Circular CSSF 13/555 tracking the changes is annexed to the circular.

The addition of the new field to the SCV file will enter into force on 1 September 2023. All other amendments entered into force on 23 May 2023.

CSSF issues circular on application of ESMA guidelines on certain aspects of MiFID2 suitability requirements

The CSSF has issued Circular 23/835 on the application of the ESMA guidelines on certain aspects of the MiFID2 suitability requirements (ESMA35-43-3172).

The circular is addressed to all investment firms, credit institutions, UCITS management companies and external alternative investment fund managers authorised to provide the services of investment advice or portfolio management. The circular is intended to inform them of the application of the guidelines and their integration into the CSSF's administrative practice and regulatory approach.

Both the guidelines and the circular will apply from 3 October 2023. The previous ESMA guidelines on this topic will cease to apply on the same date.

SFC updates guidance to prepare for HKD-RMB Dual Counter Model

The Securities and Futures Commission (SFC) has published a revised guidance note on short selling reporting and stock lending record keeping to prepare for the launch of the Hong Kong Dollar (HKD) -Renminbi (RMB) Dual Counter Model in the Hong Kong securities market on 19 June 2023.

The guidance note has been updated to cover inter-counter transactions of securities under the Dual Counter Model. Corresponding revisions have also been made to the SFC's frequently asked questions on short position reporting.

The guidance note clarifies that as HKD and RMB counters for the same security are of the same class, the following inter-counter transactions fall within the current framework:

- when an investor buys a security at one counter first and sells at another, the sale is considered an ordinary sale; and
- when a Dual Counter Model market maker sells a security at one counter and buys it at another, the inter-counter transaction falls under the current exemption, subject to certain conditions.

SFC concludes consultation on position limit regime

The SFC has published the conclusions to its November 2022 consultation (second consultation paper) on proposed changes to the position limit regime for the derivatives market.

On 26 April 2022, the SFC published a consultation proposing several enhancements to the position limit regime (first consultation paper) to align its requirements with its regulatory policies and objectives in light of recent developments in Hong Kong's derivatives market. The SFC sought comments on the proposed enhancements as well as related amendments to the Securities and Futures (Contracts Limits and Reportable Positions) Rules and proposed updates to the Guidance Note on Position Limits and Large Open Position Reporting Requirements.

After considering the feedback received, the SFC concluded some of the proposals and further proposed amendments in a second consultation paper in relation to the application of position limits and reporting requirements to funds. The second consultation ended on 23 December 2022.

The SFC concluded in its second consultation that it will proceed with the proposals to give more clarity on regulatory requirements in relation to funds to facilitate compliance and provide more flexibility to the market by increasing position limits for certain products.

The SFC is working with the Department of Justice to finalise the text of the relevant amendments to the Rules. Subject to the legislative process, the SFC expects the amended Rules to become effective in December 2023.

Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) (Amendment) Bill and Computer Misuse (Amendment) Bill gazetted

The Singapore Government has gazetted the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) (Amendment) Bill and the Computer Misuse (Amendment) Bill, which were passed by the Singapore Parliament on 9 May 2023 and assented to by the President on 29 May 2023.

The Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) (Amendment) Act ((CDS(A)A)) amends the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 and allows consequential amendments to the Criminal Procedure Code 2010 and the Gambling Control Act 2022 respectively. The amendments create new money laundering offences which are designed to allow the Police to better act against money mules who facilitate the movement of scam monies. The new offences include:

- rash and negligent money laundering; and

- assisting another to retain monetary benefits from criminal conduct.

The Computer Misuse (Amendment) Bill aims to prevent abuse of the national digital identity service owned by the Singapore Government (commonly known as Singpass) for the perpetration of scams and other crimes, and will create new offences of:

- disclosing a user's own Singpass credentials to facilitate an Offence; and
- obtaining or dealing in Singpass credentials to facilitate criminal activities.

The CDS(A)A and the CM(A)A will come into effect on a date that the Minister appoints by notification in the Government Gazette.

Singapore Economic Development Board appoints seven fund management companies as GIP-select funds

The Singapore Economic Development Board (EDB) has announced the names of seven fund management companies that manage Global Investor Programme (GIP)-select funds. The introduction of new GIP-select funds was part of broader changes made to the GIP in March 2023.

Under the GIP, investors with strong entrepreneurial and managerial experience who meet prescribed qualifying criteria may apply for Permanent Residency (PR) in Singapore. Apart from other criteria, prospective applicants must meet an 'investment' criterion, for which there are three options applicants may fulfil. Under Option B, the applicant must invest SGD 25 million in a GIP-select fund.

The following seven fund managers were appointed as eligible managers of GIP-select funds after a call for proposal exercise conducted from 2 to 31 March 2023:

- B Capital Group Singapore Pte Ltd;
- East Ventures Advisory Pte Ltd;
- GGV Capital Pte Ltd;
- HHLR Management Pte Ltd;
- Insignia Ventures Partners Pte Ltd;
- Jungle Ventures Pte Ltd; and
- Vertex Venture Management Pte Ltd.

The GIP-select funds will invest at least 50% of GIP monies received or SGD 50 million of GIP monies received (whichever is lower) from GIP Option B investors, into Singapore-based companies that are in sectors promoted by EDB and other economic agencies.

Initially appointed for three years, the status of all fund managers is subject to renewal. The EDB has retained the discretion to call for proposals for new GIP-select funds every year.

Singapore launches AI Verify Foundation

The Singapore Government has launched the AI Verify Foundation, which is intended to harness the collective power and contributions of the global open-source community to develop artificial intelligence (AI) testing tools for the responsible use of AI, at the ATxAI conference, a part of Asia Tech x Singapore (ATxSG).

AI Verify is an AI governance testing framework and software toolkit, first developed by the Infocomm Media Development Authority (IMDA) in consultation with companies from different sectors and different scales. Launched as a minimum viable product for international pilot in 2022, AI Verify attracted the interest of over 50 local and multinational companies.

The AI Verify Foundation is intended to:

- foster a community to contribute to the use and development of AI testing frameworks, code base, standards, and best practices;
- create a neutral platform for open collaboration and idea-sharing on testing and governing AI; and
- nurture a network of advocates for AI and drive broad adoption of AI testing through education and outreach.

A list of seven pioneering premier members – the IMDA, Aicadium (Temasek's AI Centre of Excellence), IBM, Microsoft, Google, Red Hat and Salesforce will guide the strategic directions and development of the AI Verify roadmap. As a start, the Foundation will also have more than 60 general members such as Adobe, DBS, Meta, SenseTime and Singapore Airlines.

The IMDA and Aicadium have also published a discussion paper to share Singapore's approach to Generative AI governance. The paper identifies six key risks that have emerged from Generative AI as well as a systems approach to enable a trusted and vibrant ecosystem. The approach provides an initial framework for policy makers to:

- strengthen the foundation of AI governance provided by existing frameworks to address the unique characteristic of Generative AI;
- address immediate concerns; and
- invest for longer-term governance outcomes.

MAS issues notice on submission of returns by notified payment services entities

The Monetary Authority of Singapore (MAS) has issued 'Notice on Submission of Returns by Notified Entities' (MAS Notice FSM-N01) pursuant to Section 16(1) of the Financial Services and Markets Act 2022.

MAS Notice FSM-N01 applies to all persons who have notified the MAS and are relying on an exemption under the Payment Services (Exemption for Specified Period) Regulations 2019 (Exemption Regulations) (Notified Entities). The notice is intended to set out the reporting of information related to the payment services Notified Entities are providing under the Exemption Regulations.

Amongst other things, the notice requires a Notified Entity to complete and submit to the MAS by way of an e-mail the following forms in respect of each payment service that the Notified Entity carried on as a business, during the period from 1 January 2022 to 31 December 2022 (both dates inclusive), within 60 days from the effective date of the notice:

- Form A1 and Form A2 for account issuance service;
- Form B for domestic money transfer service;
- Form C for cross-border money transfer service; and

- Form D for digital payment token service.

MAS Notice FSM-N01 is effective from 1 June 2023.

MAS publishes circular on implementation timeline for final Basel III reforms in Singapore

The MAS has published a circular to all Singapore-incorporated banks regarding the implementation timeline for the final Basel III reforms.

The circular states that most of the final Basel III reforms in Singapore will come into effect from 1 July 2024. Specifically, the requirements in the revised MAS Notice 637 on Risk Based Capital Adequacy Requirements for Banks Incorporated in Singapore will come into effect as follows:

- for all standards other than the revised market risk and credit valuation adjustment (CVA) standards, to come into effect from 1 July 2024;
- for the revised market risk and CVA standards, to come into effect from 1 July 2024 for compliance with supervisory reporting requirements, and from 1 January 2025 for compliance with capital adequacy and disclosure requirements; and
- for the output floor transitional arrangement, to commence from 1 July 2024 and reach full phase-in on 1 Jan 2029, in the following manner: 50% with effect from 1 July 2024, 55% with effect from 1 January 2025, 60% with effect from 1 January 2026, 65% with effect from 1 January 2027, 70% with effect from 1 January 2028, and 72.5% with effect from 1 January 2029.

In December 2022, the MAS issued another circular on reporting schedules for submission via the MAS' data collection gateway (DCG) and implementation timeline, in which it deferred the implementation of the final Basel III reforms in Singapore for a period between 1 January 2024 and 1 January 2025 to:

- allow the industry sufficient time for proper implementation of systems needed to adopt the revised framework, including for regulatory reporting via the MAS' DCG; and
- ensure that the MAS's timeline is aligned with the intended implementation timelines of other major jurisdictions.

MAS to set expectations on credible transition planning by financial institutions

The MAS has announced that it will set supervisory expectations to steer financial institutions' (FIs') transition planning processes to facilitate credible decarbonisation efforts by their clients.

The guidance on transition planning will cover FIs' governance frameworks and client engagement processes to manage climate-related financial risks and enable transition in the real economy towards net-zero. The MAS has emphasised that FIs should not indiscriminately de-risk from particular sectors, but instead carefully assess clients' transition plans and provide the needed financing for transition where the plans are credible. More details will be set out in a consultation paper to be issued later this year.

The MAS has also announced:

- its ongoing collaborations with industry players to explore platforms to channel blended finance at scale into transition and green infrastructure projects in the region, with details to be announced in due course;
- the establishment of the Singapore Sustainable Finance Association, to be set up by the Association of Banks in Singapore, initially focussing on initiatives to scale voluntary carbon markets, transition finance, and blended finance; and
- the launch of a series of Finance for Net Zero Connect roundtables and workshops to facilitate sectoral deep dive discussions and the development of financing solutions relevant to Asia.

ASIC highlights focus areas for 30 June 2023 reporting

The Australian Securities and Investments Commission (ASIC) has highlighted its key focus areas for financial reporting for the period ending 30 June 2023. ASIC has urged directors, preparers of financial reports and auditors to assess the impact of uncertain market and economic conditions while reporting. In particular, the ASIC has highlighted the following areas:

- uncertainties and risks that may affect asset values, liabilities and assessments of solvency and going concern;
- asset values such as impairment of non-financial assets, values of property assets, expected credit losses on loans and receivables, financial asset classification, and value of other assets;
- provisions for matters such as onerous contracts, leased property make good, mine site restoration, financial guarantees given and restructuring;
- events occurring after year end and before completing the financial report to be reviewed as to whether they affect assets, liabilities, income or expenses at year-end or relate to new conditions requiring disclosure;
- disclosure consideration to include general considerations, disclosures in the financial report, disclosures in the Operating and Financial Review, non-IFRS financial information, disclosures in half-year reports; and
- the impact of the new accounting standard for insurers in the notes to financial statements.

In addition to the above focus areas, ASIC has also listed other key areas of concern including:

- consideration of whether off-balance sheet exposures should be recognised on-balance sheet, such as interests in non-consolidated entities;
- information about the impact where a group has operations in countries that have enacted Pillar II tax reforms and the group has operations in low tax jurisdictions;
- recognition of assets, liabilities, income and expenses in registered scheme balance sheets and income statements where individual scheme members have pooled interests in assets and returns with some or all other members in substance; and

- large proprietary companies that were previously 'grandfathered' will be required to lodge financial reports for years ending on or after 10 August 2022.

As in previous reporting periods, ASIC will review the full-year financial reports of selected listed entities and other public interest entities as of 30 June 2023.

Australian Government releases strategic plan for Australia's payments system

The Australian Government has published its strategic plan setting out its policy objectives and priorities for the payments system in Australia.

Developed through a consultation process in collaboration with regulators, industry, consumer, and business representatives, the strategic plan is intended to provide businesses with certainty and clarity on the Government's approach to important issues in the payments system. Under the strategic plan, the Government has identified the following key priorities:

- promoting a safe and resilient system;
- updating the payments regulatory framework;
- modernising payments infrastructure;
- uplifting competition, productivity and innovation across the economy; and
- Australia as a leader in the global payments landscape.

The strategic plan will be reviewed on an 18-month review cycle, to allow the Government to report on its progress against its objectives and priorities and ensure that the plan is responsive to advances in technology, competition and changes in consumer demand.

Australian Government consults on reforms to Payment Systems (Regulation) Act 1998

The Australian Government has launched a consultation seeking feedback on proposed changes to the Payments Systems (Regulation) Act 1998 (PSRA).

The consultation paper outlines proposals to update the PSRA to ensure regulators and Government can address new risks related to payments as the provision of payments evolves and increases in complexity. The proposals are consistent with the recommendations of the June 2021 Review of the Payments System in Australia.

Amongst other things, the Government is proposing to:

- expand the regulatory perimeter of the PSRA by updating existing definitions of 'payments system' and 'participant' to ensure that all entities that play a role in facilitating or enabling payments, including new entrants, are appropriately regulated; and
- introduce a new ministerial designation power that would allow particular payments services or platforms that present risks of national significance to be subject to additional oversight by appropriate regulators.

In addition to the above proposed reforms, the Government has welcomed stakeholders' views on other changes to the PSRA that could be considered, in line with the policy objective. The Government has specifically sought input from stakeholders on whether the reforms are commensurate with the magnitude of the problems identified and whether there is potential for any

unintended consequences not already identified, including with respect to regulatory benefits and costs of the proposed reforms.

Comments on the consultation are due by 5 July 2023.

APRA publishes statement of intent in response to Australian Government's statement of expectations

The Australian Prudential Regulation Authority (APRA) has published its statement of intent (SoI) in response to the Government's statement of expectations (SoE) regarding APRA's role, Government policy priorities, relationships with external stakeholders, and organisational matters.

Amongst other things, APRA has indicated that it intends to:

- continue to provide expert advice and work collaboratively with the Government, Treasury and other stakeholders to identify opportunities within APRA's role as prudential regulator;
- maintain a core focus on the ongoing resilience of the banking, insurance and superannuation industries for the benefit of depositors, policyholders and superannuation fund members;
- continue to promote prudent practices and transparency in relation to climate-related risks in the Australian financial system, consistent with the Government's sustainable finance reforms;
- continue to bring to bear expertise on insurance availability and affordability, including collection of data to support data-informed decisions;
- require continued improvement in superannuation transparency and efficiency, and seek to reduce the level of exposure of superannuation members to underperforming funds and funds with sub-standard practices including in relation to expenditure;
- take steps to improve the resilience of the financial system to cyber threats to seek to safeguard Australians' money and data;
- continue to engage with the Government, Treasury and other members of the Council of Financial Regulators (CFR) on reforms to modernise the payments regulatory framework;
- act independently in its supervisory and regulatory functions as per the SoE;
- maintain its working relationships with CFR members and other stakeholders including other agencies to coordinate regulatory activities and minimise undue costs and regulatory burdens;
- continue to engage closely with CFR members in connection with macroprudential policy measures designed to anticipate and respond to financial stability risks;
- continue to provide clarity to supervised institutions regarding APRA's principles-based prudential requirements and approach to exercising its powers, and consult with industry and broader stakeholders on proposed changes to APRA's prudential framework;
- work with international standard setting bodies and regulatory counterparts with a view to promoting financial stability in Australia; and

- meet the Government's expectations on organisational matters as set out in the SoE.

RECENT CLIFFORD CHANCE BRIEFINGS

Securitisation markets and regulation – choosing different paths?

Another year of change in the securitisation markets draws to a close with the anticipation that there will be further significant changes, particularly in regulation, over the next year. In the regulatory space, this may lead to some meaningful divergence in how the EU and UK approach regulation of securitisation even if the basic substantive structure of the rules is likely to continue to align. However, change is not limited to regulation: we have seen the mix of issuance affected by bumpy periods that mainly affect public ABS markets, while private securitisation financing has been more constant. New issuers have entered the market – particularly new specialty finance companies – and have secured financing of their product offerings which often contain innovative features. Not surprisingly given that, the market for esoteric securitisations has often been vibrant over the last year: another trend we expect to continue. In short, securitisation has continued to be a rich and diverse landscape and there is no sign of that changing!

Securitisation has not, however, been immune from macro events affecting the capital markets. The financial risks of COVID-19 may be losing prominence but there is still a war in Ukraine and most European economies (including the UK) as well as the United States are having to adjust to a period of high inflation – and corresponding interest rate rises. Moreover, bank failures and rescues have caused issuance and related activity to pause at times. The securitisation markets have nevertheless, on the whole, remained robust in the face of these challenges; but inevitably volatility will remain a fact of life.

Looking forward, we hope that the high level of engagement by policymakers and regulators and the oft-stated policy goal of securitisation being an important component of the EU and UK capital markets will lead to tangible steps being taken to encourage both issuers, through better-calibrated obligations, and investors, through better-focussed diligence requirements, to enter into and deepen the market for securitisation.

This annual Thought Leadership publication discusses the main topics in securitisation.

https://www.cliffordchance.com/briefings/2023/06/securitisation-markets-and-regulation--choosing-different-paths-.html

Generative AI – The big questions

With last year's public release of OpenAI's ChatGPT, generative AI went from niche to nova. Generative AI has reached an astonishing level of capability, from producing near-human text responses and photorealistic images of non-existent events, to suggesting software code and creating websites. In turn, political and regulatory focus has sharpened regarding how to ensure responsible AI use and development. Balancing risk and reward in the deployment of AI has entered uncharted territory as the legal landscape for AI evolves and this versatile technology disrupts the way we work and create across sectors.

As legal, technology and risk-management teams collaborate to support business-critical decisions, establish forward-looking frameworks and embed responsible AI in company strategy, being able to assess and advise on AI with a holistic understanding of the changing legal and policy landscape has never been more important.

This briefing paper examines some of the big questions to address when exploring generative AI opportunities.

https://www.cliffordchance.com/insights/thought_leadership/ai-and-tech/generative-ai-the-big-questions.html

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