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NIS2 Directive: EU Commission guidelines on equivalence of cybersecurity requirements published in Official Journal

EU Commission [guidelines](#) on assessing whether cybersecurity risk-management provisions under sector-specific EU legal acts are equivalent to provisions under the Cybersecurity Directive (EU) 2022/2555 (NIS2) have been published in the Official Journal.

The guidelines seek to clarify the application of Article 4(1) and (2) of NIS2, which disapply relevant provisions of NIS2 to essential or important entities subject to equivalent requirements under sector-specific EU legal acts, and cover:

- assessing the equivalence of obligations to adopt cybersecurity risk-management measures and to notify significant incidents; and
- the consequences of equivalence, such as in relation to supervision and enforcement, and national cybersecurity strategies.

An appendix to the guidelines sets out a non-exhaustive list of EU legal acts that the Commission considers fall within the scope of Article 4, which at present only lists the Digital Operational Resilience Act (DORA). The Commission notes, among other things, that Member States should not apply relevant NIS2 provisions to financial entities covered by DORA.

EU Parliament publishes briefing on non-EU countries' regulation of cryptoassets and impact on EU

The EU Parliament has published a [briefing](#) on the regulation of cryptoassets in non-EU countries and the potential implications for the EU.

The briefing summarises the current status of relevant legislation in the UK and US and provides a brief overview of the global regulatory landscape. It highlights several potential issues including that:

- the UK framework appears to be taking an increasingly common law, principles-based approach to financial regulation, including in the cryptoasset space, which may result in regulatory divergence; and
- the US framework has wide variation at the state-level and a lack of clarity around what products within the cryptoasset space are under the jurisdiction of the financial markets supervisor.

The briefing concludes that the relatively strict regulatory framework within the EU should have limited but positive effects on global cryptoasset markets, but that further action from third countries is required to help strengthen financial stability and decrease the potentially negative impact of cryptoassets and stablecoins.

Taskforce on Nature-related Financial Disclosures publishes final recommendations

The Taskforce on Nature-related Financial Disclosures (TNFD) has published its [final recommendations](#). The recommendations include a set of general requirements for nature-related disclosures and a set of recommended disclosures structured around the four pillars of governance, strategy, risk and impact management, and metrics and targets. Key focus areas of the recommendations include:

- the importance of nature's health and resilience for societies, economies, business, and finance;
- an introduction to understanding nature and business;
- outline of the TNFD disclosure framework;
- conceptual foundations and general requirements for nature-related disclosures; and
- overview of metrics architecture and recommended set of disclosure metrics.

FSB consults on financial resources and tools for resolution of CCPs

The Financial Stability Board (FSB) has launched a [consultation](#) on its proposed financial resources and tools for the resolution of central counterparties (CCPs).

The report sets out the FSB's qualitative analysis of a set of financial resources and tools for resolution relating to:

- bail-in bonds;
- resolution funds;
- resolution-specific insurance;
- resolution-specific third-party contractual support;
- resolution cash calls;
- statutory or contractual variation margin gains haircutting for resolution; and
- equity in a first-loss position.

The analysis found that, when evaluated against the identified parameters and analytical dimensions, certain resources and tools have relative benefits and drawbacks based on how they are designed. The FSB believes that resolution authorities having access to a combination of complementary resources and tools may be advantageous when trying to achieve a successful resolution.

The proposals set out in the consultation paper include a toolbox approach comprising a set of resolution-specific resources and tools available for resolution and, if available, financial resources from access to non-exhausted recovery tools.

Comments are due by 20 November 2023.

HMRC publishes policy paper and draft legislation on removal of 1.5% charge on issues or transfers integral to capital raising

HM Revenue & Customs (HMRC) has published a [policy paper](#), [explanatory note](#) and [draft legislation](#) on the removal of the 1.5% stamp duty and stamp duty reserve tax charges on issues of UK securities into depositary receipt systems and clearance services and on certain related transfers, and to remove the 1.5% (or 0.2%) charge in relation to the issue of bearer instruments.

Following EU and UK court decisions (*HSBC Holdings plc and Vidacos Nominees Ltd v HMRC* (Case C-569/07) and *HSBC Holdings PLC and The Bank of New York Mellon Corporation v HMRC* [2012] UKFTT 163 (TC)), the charge on such transactions has been 0% due to the direct effect of EU law. The Government is required to legislate to maintain the 0% charge due to the removal of direct effect under the Retained EU Law (Revocation and Reform) Act 2023 (REUL Act) at the end of 2023.

The measures will have effect from 1 January 2024.

HMRC is seeking views on the draft legislation ahead of its inclusion in the upcoming Finance Bill 2023-24. Comments are due by 12 October 2023.

Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2023 made

The Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2023 ([SI 2023/1018](#)) have been made and laid before Parliament.

SI 2023/1018 extends by 12 months the transitional arrangements under the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 (SI 2019/589) enabling specified categories of Gibraltar-based firms to provide financial services in the UK and facilitating access by similar types of UK-based firms to Gibraltar's financial services market.

SI 2023/1018 comes into force on 15 December 2023.

In an explanatory memorandum to SI 2023/1018, HM Treasury notes that the transitional arrangements will be repealed once the new Gibraltar Authorisation Regime (GAR) comes into force.

FCA publishes findings on bank and payment account closures

The Financial Conduct Authority (FCA) has published a [report](#) setting out its initial findings following its August 2023 information request sent to banks and building societies for data to identify whether bank and other payment accounts were being closed for unjustified reasons, such as lawfully expressed political beliefs.

Noting data gaps and inconsistencies, the FCA initially finds that:

- the information received so far does not suggest that accounts have been closed due to the political views of account holders; and
- the most common reasons for declining, suspending or terminating an account were due to an account being inactive or due to financial crime concerns.

The FCA expects credit institutions and payments firms to consider the findings in the report and intends to carry out further analysis and supervisory work on bank account closures, and to engage with consumer groups and organisations.

The FCA has published an accompanying [letter](#) to HM treasury setting out issues the Government may wish to consider further, including:

- greater checks by Companies House to support the fight against fraud;
- the development of a strategic approach to digital identity to aid financial inclusion and lessen financial crime risk; and

- consideration, as part of the passage of the Online Safety Bill, of whether the cost of compensating for consumer losses due to fraud is being appropriately shared.

The FCA has also published separately a [research note](#) on international perspectives on de-risking.

FCA issues final warning for cryptoasset firms marketing to UK consumers to get ready for financial promotion regime

The FCA has published a [letter](#) setting out a final warning for cryptoasset firms marketing to UK consumers and those supporting them to get ready for the financial promotion regime.

The UK Government has legislated to bring certain cryptoassets within scope of the financial promotion regime. All firms marketing cryptoassets to UK consumers, including firms based overseas, must comply with this regime from 8 October 2023.

The FCA notes that it has previously warned firms promoting cryptoassets to UK consumers that they must get ready for the regime, but it is concerned by the poor engagement from and lack of readiness of many unregistered overseas cryptoasset firms who have UK customers.

The letter urges firms urgently to consider their position if they believe that they are going to be in breach after the regime comes into force, and warns them that the FCA is likely to issue an alert against any such firms on its website and seek to remove or block any of their illegal financial promotions. The FCA also strongly recommends firms seek legal advice to avoid committing a criminal offence and exposing themselves to potential enforcement action.

German Federal Ministry of Finance publishes ministerial draft of Combatting Financial Crimes Act

The German Federal Ministry of Finance (BMF) has published a [ministerial draft act](#) on the improvement of combatting financial crime (Entwurf eines Gesetzes zur Verbesserung der Bekämpfung von Finanzkriminalität - FKBG). Among other things, the draft act seeks to implement the recommendations made by the Financial Action Task Force (FATF) in its mutual evaluation report on Germany's measures to combat money laundering and terrorist financing, published on 25 August 2022.

The draft law contains several measures to curb financial crime in Germany. A central element is to bundle analysis, criminal and administrative investigations and supervision under the umbrella of a single new federal authority, the Higher Federal Authority for Combating Financial Crime (Bundesoberbehörde zur Bekämpfung von Finanzkriminalität, BBF), and thereby establish a holistic and networked approach to combating money laundering in Germany.

Within the BBF, a Money Laundering Investigation Centre (Ermittlungszentrum Geldwäsche - EZG) is to be established, which will carry out criminal investigations and have the original competency for police tasks in the area of prosecuting significant cases of international money laundering connected to Germany.

Another innovation is the planned establishment of a real estate transaction register to increase transparency in the real estate sector. The register is to be set up at the BBF and thus complements the approach of bundling all relevant functions under one roof.

The main part of the law is intended to enter into force on 1 January 2024. This is also the date envisaged for the establishment of the BBF.

CSSF issues circular on MiFID2 product governance requirements

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued [Circular letter 23/840](#) on the application of the European Securities and Markets Authority (ESMA) [guidelines](#) on the MiFID2 product governance requirements.

The circular is addressed to all investment firms and credit institutions providing investment services or performing investment activities; investment firms and credit institutions selling or advising clients in relation to structured deposits; UCITS management companies providing the investment services of portfolio management (in accordance with mandates given by investors on a discretionary, client-by-client basis) or investment advice; and external alternative investment fund managers providing the investment services of portfolio management (in accordance with mandates given by investors on a discretionary, client-by-client basis), investment advice or reception and transmission of orders.

The circular informs these addressees that the CSSF will apply the guidelines from 3 October 2023 onwards and integrate them into its administrative practice and regulatory approach.

Further details on the application of the guidelines are provided in the circular.

Ministry of Economic Affairs and Digital Transformation consults on draft Royal Decrees under Spanish Securities and Investment Services Act

The Ministry of Economic Affairs and Digital Transformation has issued a public consultation on four draft Royal Decrees for the development and implementation of certain sections of the Spanish Securities and Investment Services Act.

The draft Royal Decrees relate to:

- the [registration and admission to trading of negotiable securities](#), as well as the applicable regime for central counterparties (CCPs) and securities depositories;
- the [activity framework](#) of the Spanish Securities National Commission (CNMV) regarding administrative registries and cooperation and coordination faculties with other supervisory authorities;
- the [authorisation, organisation measures, financial and solvency requirements and conduct rules of Spanish investment firms and investment advice firms](#); and
- the [new regime](#) for collective investment schemes contained in the Business Creation and Growth Act and the Securities and Investment Services Act.

Comments are due by 28 September 2023.

SFC to commence cybersecurity review of selected licensed corporations

The Securities and Futures Commission (SFC) has issued a [circular](#) announcing its plan to commence a cybersecurity review of selected licensed corporations (LCs) with a focus on assessing their cybersecurity management and compliance as well as the resilience of their information systems against cybersecurity threats.

The cybersecurity review is scheduled to commence in September 2023. As part of the review:

- the SFC will conduct a survey of selected LCs of different sizes and business types, including securities and futures brokers, leveraged foreign exchange traders, global financial institutions and firms which provide online product distribution platforms;
- the SFC will meet with selected LCs to better understand their cybersecurity governance and controls; and
- the SFC will perform on-site inspections of some of the selected LCs for a deep dive review of their information technology and related management controls and an assessment of their compliance with the Cybersecurity Guidelines and other expected standards.

The SFC intends to take note of the findings of the review to issue further guidance to the industry.

SGX RegCo consults on proposed changes to futures, securities trading, and derivatives clearing rules

The Singapore Exchange Regulation (SGX RegCo) has launched a public [consultation](#) on proposed amendments to the Futures Trading Rules (FTR), the Singapore Exchange Securities Trading (SGX-ST) rules, and the Singapore Exchange Derivatives Clearing (SGX-DC) rules.

The proposed amendments to the FTR focus on updating policies and rules, including those related to:

- admission and registration of SGX-DT members' representatives;
- requirements pertaining to customer margining where members will have more flexibility in managing margin cycles, customer funds and collateral; and
- requirements for automated trading to formalise key aspects of the Algorithmic Trading Regulatory Guide.

Additional amendments have been proposed to align the SGX-ST rules with the FTR, including, but not limited to, changes relating to rules governing: automated trading; the registration of trading representatives; notifications in the case of a change in member circumstances; activities that may lead to suspension or restrictions the calculation of financial resources; direct market access; business continuity; risk management and financial controls; and the exercise of emergency powers and inspections by the SGX-ST.

Amendments to the SGX-DC clearing rules have also been proposed to reflect corresponding FTR changes governing customer collateral and final settlement price.

Comments on the consultation are due by 11 October 2023.

MAS publishes Enforcement Report 2022-2023

The Monetary Authority of Singapore (MAS) has published its latest [enforcement report](#), which details enforcement actions taken against financial institutions (FIs) and individuals for market abuse, financial services misconduct, and money laundering (ML) related offences for the period covering 1 January 2022 to 30 June 2023. The report also provides an update on the progress of the MAS' enforcement priorities for 2022-2023 and outlines its key enforcement priorities for 2023-2024.

With respect to breaches of the MAS's regulatory requirements, the MAS enumerates the following key enforcement actions undertaken during the period, namely:

- high-profile actions against four financial institutions;
- SGD 7.10 million in composition penalties for anti-ML related breaches and SGD 12.96 million in civil penalties for market abuse cases;
- 18 prohibition orders issued against unfit representatives; and
- 39 criminal convictions of individuals involved in market misconduct and related offences, a result of joint investigations with the Singapore Police Force's Commercial Affairs Department (CAD).

The MAS has stated that its key areas of focus are:

- market abuse (including insider trading, false trading and disclosure-related breaches);
- financial services misconduct (including mis-selling of financial products, breaches of business conduct rules and serious unfitness and impropriety);
- ML-related control breaches; and
- leveraging technology.

The MAS's key enforcement priorities for 2023-2024 will be to:

- enhance capabilities to tackle misconduct in the digital asset ecosystem, including by working with foreign regulators and law enforcement agencies to obtain and share information on errant entities and individuals; and
- ensure a continued focus on asset and wealth managers' compliance with the applicable laws and regulations, particularly business conduct and anti-ML and countering the financing of terrorism requirements and hold senior management accountable for their FI's lapses where appropriate.

The MAS intends to continually refine and enhance its processes to ensure that it remains well equipped to deliver effective enforcement outcomes.

Contributed by Clifford Chance Asia, a Formal Law Alliance in Singapore between Clifford Chance Pte Ltd and Cavenagh Law LLP.

MAS responds to consultations and publishes revised Notice 637 on Risk Based Capital Adequacy Requirements for Banks Incorporated in Singapore towards implementing final Basel III reforms

The MAS has issued a [circular](#) to inform all Singapore-incorporated banks of the publication of the revised [MAS Notice 637](#) on Risk Based Capital Adequacy Requirements for Banks Incorporated in Singapore.

The revised MAS Notice 637 will be effective from 1 July 2024, with the requirements coming 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 requirements, to commence at 50% from 1 July 2024 and reach full phase-in at 72.5% on 1 Jan 2029.

The MAS has also published its [response](#) to feedback received on the following consultation papers related to the revisions incorporated into the MAS Notice 637:

- the December 2020 consultation on draft standards for operational risk capital and leverage ratio requirements, in which the MAS sought comments on: (i) the draft provisions for Part III (Scope of Application) and draft provisions relating to the operational risk capital requirement in Part II (Definitions), Part IX (Operational Risk) and Part XII (Reporting Schedules) of MAS Notice 637; and (ii) the draft provisions relating to the leverage ratio requirement in Part II (Definitions), Part IV (Capital Adequacy Ratios and Leverage Ratio), Part VII (Credit Risk), and Part XII (Reporting Schedules) of MAS Notice 637;
- the March 2021 consultation on draft standards for credit risk capital and output floor requirements, in which the MAS sought comments on: (i) the draft provisions relating to credit risk capital requirements in Part II (Definitions), Part VI (Definition of Capital), Part VII (Credit Risk), and Part XII (Reporting Schedules) of the MAS Notice 637; and (ii) the draft provisions relating to the output floor requirements in Part II (Definitions), Part IV (Capital Adequacy Ratios and Leverage Ratio), Part V (Output Floor), and Part XII (Reporting Schedules) of the MAS Notice 637;
- the September 2021 consultation on draft standards for market risk capital and capital reporting requirements, in which the MAS sought comments on the draft provisions relating to market risk capital requirements in Part II (Definitions), Part V (Output Floor), Part VI (Definition of Capital), Part VIII (Market Risk), and Part XII (Reporting Schedules) of MAS Notice 637; and
- the March 2022 consultation on draft public disclosure requirements for regulatory capital, in which the MAS sought comments on the draft provisions relating to public disclosure requirements for regulatory capital in Part XI (Public Disclosure Requirements) of MAS Notice 637.

When seeking regulatory approval for certain rules in line with the requirements of the revised MAS Notice 637, the MAS has advised banks to engage the MAS on their intended applications as soon as possible to facilitate the review process.

RECENT CLIFFORD CHANCE BRIEFINGS

Restructuring Sovereign Domestic Debt and the International Financial Architecture

Sovereign domestic debt restructurings are now likely to occur more frequently.

This briefing paper reviews aspects of the international financial architecture which has evolved with sovereign external debt restructurings as the main focus and considers specific issues arising in the domestic debt restructuring context.

<https://www.cliffordchance.com/briefings/2023/09/restructuring-sovereign-domestic-debt-and-the-international-fina.html>

Responsible AI in Practice – Public Expectations of Approaches to Developing and Deploying AI

Public awareness of AI is increasing and, with it, questions on how AI will be used and the impact it will have on our lives. To help identify the pressures faced by policymakers and demands from stakeholders, our latest report, developed in partnership with Milltown Partners, analyses the results of focus groups of policy-informed individuals conducted in the US, the UK and Germany. Groups were asked about issues such as bias, consent, copyright, transparency, content moderation and AI governance. While participants were optimistic about the potential of AI, it is clear that there is still work to do to demonstrate that it will be used responsibly and safely.

Our report covers our findings across eight key areas, including AI policy and regulation, responsible AI governance and accountability, AI-generated content and related intellectual property and plagiarism challenges and illegal or harmful content and moderation.

<https://www.cliffordchance.com/responsible-ai>

Draft 7th edition of the SIAC rules embracing the next generation of disputes

The Singapore International Arbitration Centre (SIAC) has released a public consultation draft of the 7th Edition of the SIAC Rules. Drawing on the SIAC's experience of administering more than 3,000 international cases under the SIAC Rules 2016 (6th Edition), the draft 7th Edition incorporates features designed to improve the arbitral process for the next generation of international disputes.

This briefing paper discusses the draft.

<https://www.cliffordchance.com/briefings/2023/09/draft-7-edition-of-the-siac-rules-embracing-the-next-generation-of-disputes.html>

Bills of exchange – The new law

The Electronic Trade Documents Act 2023 (ETDA) makes it possible to create electronic bills of exchange, to transform existing bills of exchange from paper

to electronic form (and *vice versa*), and to replicate the entire legal structure of obligations on a bill of exchange – including transfer by delivery and the status of holder in due course – within an electronic system.

The ETDA received royal assent on the 20 July 2023, and will come into force on the 20 September 2023. Its primary purpose is to facilitate the electronification of trade and trade finance documentation in general, but it also effects a revolution in the law of bills of exchange.

This briefing paper discusses this new law.

<https://www.cliffordchance.com/briefings/2023/09/bills-of-exchange---the-new-law.html>

Amendments to the Commercial Companies Code concerning domestic and cross-border reorganisation processes

On 15 September 2023, significant changes came into force relating to the process of carrying out domestic and cross-border corporate reorganisations. These apply to Polish companies and limited joint-stock partnerships. In order to implement certain European directives, an amendment to the Commercial Companies Code introduces rules governing cross-border conversions and cross-border demergers of companies. Furthermore, they introduce new solutions to domestic reorganisations such as demerger by separation and a new simplified merger procedure. This may, in practice, streamline corporate reorganisations - both domestic and cross-border.

This briefing paper discusses the amendments.

<https://www.cliffordchance.com/briefings/2023/09/amendments-to-the-commercial-companies-code-concerning-domestic-.html>

Scope of restrictions on certain foreign land ownership under the Florida Senate Bill remains uncertain 5 months after law is enacted

On 26 August 2023, plaintiffs in the closely watched *Shen v Simpson* case filed an emergency motion for an injunction pending appeal in the Eleventh Circuit Court after a Florida district judge refused to grant a preliminary injunction of a Florida law ‘Interests of Foreign Countries’ (codified Fla. Stat. Ann. §§ 692.201-205) (SB 264) that bans those from certain countries from purchasing property.

The legal challenge to SB 264, brought on behalf of four Chinese citizens living in Florida and a real estate firm, argues that the SB 264 law violates the Equal Protection Clause, the Due Process Clause, the Fair Housing Act and Supremacy Clause of the US Constitution, citing that federal regulatory frameworks, such as the Committee on Foreign Investment in the United States, preempt state law in this area.

Signed by Governor Ron DeSantis in May, SB 264 took effect on 1 July 2023, imposing restrictions on individuals and entities—who are not US citizens or permanent residents and whose ‘domicile’ is in China, or other so-called ‘foreign countries of concern’ and certain foreign principals — from owning or purchasing interest in certain Florida real estate. As enacted, foreign countries of concern include China, Cuba, Iran, North Korea, Russia, Syria, and Venezuela.

While five months have passed since SB 264 was enacted, there have been no significant developments in terms of regulatory guidance on SB 264 or its enforcement. Uncertainties remain concerning the statute's broad sweeping restrictions, such as applicability to indirect ownership by foreign principals (e.g. investment funds), certain groups under the statute language (e.g. leaseholds and Hong Kong individuals and entities), as well as ambiguity on who is subject to its reporting requirements.

This briefing paper discusses the key issues.

<https://www.cliffordchance.com/briefings/2023/09/scope-of-restrictions-on-certain-foreign-land-ownership-under-th.html>

In the name of transparency – SEC votes to significantly expand Rule 35d-1

On 20 September 2023, in a 4-to-1 vote, the US Securities and Exchange Commission (SEC) adopted amendments to Rule 35d-1 under the Investment Company Act of 1940. According to the SEC, the amendments are designed to increase investor protection by, among other things, improving and clarifying the requirement for certain funds to adopt a policy to invest at least 80% of their assets in accordance with the investment focus that the fund's name suggests.

We believe these amendments are likely to result in increased compliance costs and oversight, and as a result, fund companies should begin to review their existing fund line-up to determine the impact that the Amended Rule 35d-1 will have on their funds.

This briefing paper discusses the amendments.

<https://www.cliffordchance.com/briefings/2023/09/in-the-name-of-transparency--sec-votes-to-significantly-expand-r.html>

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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