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EU Council and Parliament reach provisional agreement on Artificial Intelligence Act

The EU Council and Parliament have reached a provisional political agreement on the proposed Artificial Intelligence (AI) Act. The proposed regulation is intended to introduce harmonised rules to promote investment and innovation in AI, and to ensure that AI developed and used within the EU is trustworthy and subject to an appropriate legal framework.

The provisional agreement differs from the EU Commission's initial proposal in several areas, including:

- the definition of AI systems now aligns with that proposed by the Organisation for Economic Co-operation and Development (OECD).

Systems that are used exclusively for military, defence, research and innovation or non-professional purposes are excluded from the regulation;

- AI systems are classified as posing minimal risk, high risk or unacceptable risk, with each classification subject to different obligations and transparency requirements. Unacceptable uses of AI, including cognitive behavioural manipulation, social scoring, emotion recognition in the workplace and educational institutions, and biometric categorisations that use sensitive characteristics, are prohibited within the EU;
- certain adjustments have been made relating to the use of AI systems for law enforcement purposes, including clarifying the circumstances under which law enforcement can use real-time remote biometric identification systems in publicly accessible spaces;
- new provisions have been added to address 'general purpose AI' (GPAI) (i.e. AI systems that are used for many different purposes) and 'foundation models' (i.e. large systems capable of performing a wide range of distinctive tasks);
- an AI Office will be set up within the EU Commission, responsible for overseeing advanced models, such as GPAIs;
- penalties for violations of the Act have been adjusted to make them more proportionate for SMEs and start-ups;
- high-risk AI systems will be subject to increased transparency requirements and must undergo a fundamental rights impact assessment before being put on the market; and
- AI regulatory sandboxes will allow for testing of innovative AI systems in real world conditions.

The political agreement is now subject to formal approval by the EU Council and Parliament, and will enter into force 20 days after its publication in the Official Journal. The AI Act would then become applicable two years after its entry into force, with some exceptions for specific provisions.

EU Council and Parliament reach provisional agreement on corporate sustainability due diligence directive

The EU Parliament and Council have reached a provisional political agreement on the corporate sustainability due diligence directive (CSDDD / CS3D), which aims to enhance the protection of the environment and human rights in the EU and globally. The CSDDD will set obligations for large companies regarding actual and potential adverse impacts on human rights and the environment, with respect to their own operations, those of their subsidiaries, and those carried out by their business partners.

The agreement between the Parliament and Council negotiators fixes the scope of the directive to cover large companies that have more than 500 employees and a net worldwide turnover of EUR 150 million. For non-EU companies it will apply if they have a EUR 300 million net turnover generated in the EU, three years from entry into force of the directive. The Commission will have to publish a list of non-EU companies that fall within the scope of the directive. The financial sector will be temporarily excluded from the scope of the directive, but there will be a review clause for a possible future inclusion of this sector based on a sufficient impact assessment.

The directive still needs to be formally approved by both the Parliament and Council before it can be published in the Official Journal.

EU Council and Parliament reach provisional agreement on Anti-Money Laundering Authority

The EU Council and Parliament have reached a provisional political agreement on the proposed regulation establishing a new Anti-Money Laundering Authority (AMLA), which forms part of the Commission's July 2021 anti-money laundering and countering the financing of terrorism (AML/CTF) legislative package.

AMLA is intended to improve the efficiency of the AML/CFT framework and will have supervisory powers over high-risk credit and financial institutions, including cryptoasset service providers.

The agreement does not include the location of AMLA's seat, which will be agreed between the Council and Parliament next year.

Once the text of the establishing regulation is finalised and formally approved, it will be published in the Official Journal.

EU Commission updates list of high-risk third countries to remove Cayman Islands and Jordan

The EU Commission has adopted a Delegated Regulation to remove the Cayman Islands and Jordan from table I of the Annex to Delegated Regulation (EU) 2016/1675, which identifies third countries that have strategic deficiencies in their AML/CFT regimes that pose significant threats to the financial system of the EU.

The update reflects the removal of the countries by the Financial Action Task Force (FATF) in October 2023 from its 'grey' list of 'Jurisdictions under Increased Monitoring'. While the FATF also removed Albania and Panama, the Commission:

- has not adopted measures in respect of Albania considering the mitigating measures included in the accession negotiations; and
- has not yet been able to conclude whether Panama has addressed its strategic deficiencies, notably with regard to transparency of beneficial ownership.

The Regulation will enter into force 20 days following publication in the Official Journal.

BRRD: EU Commission adopts Delegated Regulation on ex ante contributions to resolution financing arrangements

The EU Commission has adopted a Delegation Regulation amending Delegated Regulation (EU) 2015/63 on ex ante contributions to resolution financing arrangements under the Bank Recovery and Resolution Directive (BRRD).

The changes introduced through the amending Regulation include:

- amending provisions relating to the calculation and definition of eligible liabilities to reflect amendments to the BRRD made by the BRRD2;

- extending the period during which smaller institutions can contribute with a lump-sum to national resolution funds until 31 December 2024; and
- updating the process for raising annual contributions so that, in the 2024 contribution period, institutions must provide information to resolution authorities by 29 February 2024 and resolution authorities must notify institutions of their decisions determining the annual contribution by 31 May 2024.

The Delegated Regulation will enter into force on the twentieth day following that of its publication in the Official Journal. The amendments relating to the transitional regime and the process for raising annual contributions apply from 1 December 2023.

CRR: RTS on identification of shadow banking entities published in OJ

Commission Delegated Regulation (EU) 2023/2779, which sets out regulatory technical standards (RTS) specifying the criteria for the identification of shadow banking entities under Article 394(2) of the Capital Requirements Regulation (CRR), has been published in the Official Journal.

The RTS outline:

- the criteria for identifying both shadow banking and non-shadow banking entities; and
- the definition of banking activities and services.

Under the Regulation, entities that carry out banking activities or services that have been authorised and are supervised in line with the regulatory framework must not be considered as shadow banking entities. The RTS also set out the circumstances under which institutions and other entities established in a third country should not be identified as shadow banking entities. All other entities that provide banking activities and services and fall under the scope of the relevant regulatory framework must be considered as shadow banking entities, with specific rules applying to certain collective investment undertakings.

The RTS will enter into force on 1 January 2024.

CRR3/CRD6: EBA publishes roadmap and consultation papers on EU banking package

The European Banking Authority (EBA) has published a roadmap setting out its approach and timetable for delivering technical standards, guidelines, opinions and reports mandated under the Capital Requirements Regulation (CRR3) and the Capital Requirements Directive (CRD6).

In line with the roadmap, the EBA has also published a series of documents including:

- a consultation paper on draft implementing technical standards (ITS) on Pillar 3 disclosure;
- a consultation paper on draft ITS amending Commission Implementing Regulation (EU) 2021/451 on supervisory reporting;
- a consultation paper on draft RTS on the standardised approach for counterparty credit risk (SA-CCR);

- a consultation paper on draft RTS on profit and loss attribution requirements, risk factor modellability assessment and the treatment of FX and commodity risk in the banking book; and
- a discussion paper on the centralisation of EEA banks Pillar 3 disclosure in the EBA Pillar 3 data hub

Comments on all consultations are due by 14 March 2024. Comments on the discussion paper are due by 29 March 2024, and a public hearing will be held on 23 January 2024.

DORA: ESAs consult on second set of technical standards and guidance

The European Supervisory Authorities (ESAs) have launched a public consultation on the second batch of policy products under the Digital Operational Resilience Act (DORA). This includes the following four draft RTS, one ITS and two sets of joint guidance, which are intended to ensure a consistent and harmonised legal framework:

- RTS specifying the elements which a financial entity needs to determine and assess when sub-contracting ICT services which support critical or important functions;
- RTS on the conditions enabling the conduct of certain oversight activities;
- RTS on the content and timing of the notification and reports for major incidents and significant cyber threats, and ITS on the standard forms, templates and procedures to be used by financial entities for reporting on such events;
- RTS on certain elements relating to threat-led penetration tests;
- joint guidelines on the estimation of aggregated annual costs and losses caused by major ICT-related incidents; and
- joint guidelines on the oversight cooperation and information exchange between the ESAs and competent authorities in relation to their work under DORA.

Comments are due by 4 March 2024. The policy will be finalised and submitted to the EU Commission for adoption by 17 July 2024.

ESAs report on innovation facilitators

The ESAs have published a report on innovation facilitators, encompassing innovation hubs and regulatory sandboxes.

The report acknowledges improvements in the operations of innovation hubs and the positive role of regulatory sandboxes in the fintech sector within the European Economic Area (EEA). Recommendations for national competent authorities (NCAs), ESAs, and the EU Commission include enhancing collaboration, broadening the scope of innovations, and continuous evaluation of innovation facilitators.

The ESAs suggest re-evaluating the procedural framework for cross-border testing and formalising processes within the European Forum for Innovation Facilitators (EFIF) framework. They also propose a comprehensive reflection by the EU Commission on the EU-wide strategy for supporting financial innovation and the operation of innovation facilitators. The EFIF serves as a

platform for cooperation and coordination among supervisors in the EEA to support the scaling up of fintech across the EU single market.

MiFID2: ESMA publishes discussion paper on investor protection topics linked to digitalisation

The European Securities and Markets Authority (ESMA) has published a discussion paper on the digitalisation of retail investment services and related investor protection considerations.

The paper explores the evolving landscape of retail investments, including the increasing adoption of digital tools and social media by firms and retail investors following the COVID-19 pandemic, and how technology affects retail investor behaviour and decision-making. It also sets out a number of recommendations regarding online disclosures, digital tools, and marketing practices. These recommendations cover layering and accessibility of information, digital marketing communications and practices, the use of influencers, social features of investment apps, gamification, nudging techniques, and dark patterns.

Comments are due by 14 March 2024.

ESMA consults on draft guidelines for supervision of corporate sustainability information

ESMA has launched a consultation on a set of draft guidelines on the enforcement of sustainability information. The main goals of the draft guidelines are to:

- ensure that NCAs carry out their supervision of listed companies' sustainability information under the Corporate Sustainability Reporting Directive (CSRD), the European Sustainability Reporting Standards and Article 8 of the Taxonomy Regulation in a converged manner; and
- establish consistency in, and equally robust approaches to, the supervision of listed companies' sustainability and financial information.

Comments are due by 15 March 2024.

ESMA provides update on timeline for adopting guidelines on funds' names using ESG or sustainability-related terms

ESMA has provided an update on the status of its guidelines on ESG and sustainability-related terms in fund names, including details on the timing of their publication.

ESMA has postponed the adoption of the guidelines to ensure that the outcome of the AIFMD and UCITS Directive reviews may be fully considered. In particular, the text of the provisional agreement resulting from the interinstitutional trilogue negotiations contains two new mandates for ESMA to develop guidelines specifying the circumstances where the name of an AIF or UCITS is unclear, unfair, or misleading.

ESMA plans to adopt the guidelines shortly after the date of entry into force of those amended legal texts. The guidelines are expected to be approved and published in Q2 2024, subject to the timing of the publication of the AIFMD and UCITS Directive revised texts.

Platform on Sustainable Finance invites feedback on draft report on EU taxonomy-aligning benchmarks

The Platform on Sustainable Finance has published a draft report setting out proposals for EU taxonomy-aligning benchmarks (TABs). The report puts forward two proposals for voluntary benchmarks (TABex and TAB), with an aim to initiate discourse on the role the taxonomy could assume in shaping climate and environmental benchmarks. The suggested benchmarks do not exclude alternative approaches to leveraging the taxonomy in the development of benchmarks.

Comments on the draft report are due by 13 March 2024.

SRB consults on future of MREL policy

The Single Resolution Board (SRB) has launched a public consultation on the future of the minimum requirements for own funds and eligible liabilities (MREL). The consultation is part of the SRB's strategic review to ensure it remains equipped for the future, building on lessons learned from recent crises in the US and Switzerland, together with past SRB resolution cases.

In particular, the consultation focuses on:

- MREL adjustments for preferred resolution strategies relying on a combination of resolution tools;
- the Market Confidence Charge buffer;
- the monitoring of MREL eligibility;
- discretionary exclusions; and
- long-term policy considerations.

Comments are due by 13 February 2024.

FSB publishes 2023 Resolution Report

The Financial Stability Board (FSB) has published its 2023 Resolution Report 'Applying lessons learnt'. The report takes stock of the FSB resolution-related work of the past year as well as of the progress made by FSB members in implementing resolution reforms and enhancing resolvability across the banking, financial market infrastructure, and insurance sectors. It also sets out the FSB's 2024 priorities in the resolution area.

The FSB's review of the 2023 bank failures highlighted the strengths of the international resolution framework and the work carried out by banks and authorities to increase resilience and crisis preparedness. The report identified several areas for further work, related to improving the operationalisation and implementation of the G-SIB resolution framework.

In September, the FSB published a consultation report on a proposed toolbox approach as a global standard for financial resources and tools for CCP resolution. The FSB intends to publish the final report in 2024, following analysis of the consultation feedback. It also intends to review members' experiences in applying the 2020 FSB guidance on financial resources to support CCP resolution.

The FSB has postponed the publication of the first list of insurers subject to the resolution planning standards consistent with the Key Attributes, and it has indicated that publication of the list will be a priority for 2024.

BCBS consults on targeted adjustments to its standard on interest rate risk in the banking book

The Basel Committee on Banking Supervision (BCBS) has published a consultation proposing targeted adjustments to its 2016 standard on interest rate risk in the banking book (IRRBB).

The adjustments are intended to fulfil the Committee's commitment periodically to update the calibration of interest rate shock factors in the standard. The proposed changes are separate from the Committee's ongoing analytical work on interest rate risk following the banking turmoil in March 2023.

The IRRBB standard requires banks to calculate measures of interest rate risk for their banking book exposures, based on a specified set of interest rate shocks for each currency for which they have material positions.

Comments are due by 28 March 2024.

BCBS consults on targeted adjustments to its standard on banks' exposures to cryptoassets

The BCBS has published a consultative document to propose targeted adjustments to its standard on banks' exposures to cryptoassets.

The proposals are intended to flesh out the criteria on the composition of the reserve assets that back stablecoins, covering issues such as the credit quality, maturity and liquidity of the reserve assets. The requirements determine whether the stablecoins to which banks' may be exposed will be eligible for inclusion in the Group 1b category of cryptoassets, and thus benefit from a preferential regulatory treatment.

Under the proposals banks would also be required to perform due diligence to ensure that they have an adequate understanding of the stabilisation mechanisms of stablecoins to which they are exposed and how effective they are. As part of this due diligence, banks would be required to conduct statistical or other tests demonstrating that the stablecoin maintains a stable relationship in comparison to the reference asset.

Finally, the consultative document includes various proposed technical amendments and a set of answers to frequently asked questions to help promote a consistent understanding of the cryptoasset standard.

Comments are due by 28 March 2024.

IOSCO consults on market outages

The International Organisation for Securities Commissions (IOSCO) has published a consultation report on market outages.

The report proposes the following good practices for trading venues to consider in order to improve market-wide operational resilience during an outage:

- establishing and publishing an outage plan with clearly defined roles and responsibilities;
- implementing a communication plan;
- communicating information relevant to the reopening of trading in a timely and simultaneous manner to all market participants;

- ensuring that the processes and procedures that trading venues will follow to operate a closing auction and/or to establish alternative closing prices are published in the outage plan and communicated to all market participants during an outage; and
- conducting and sharing with the relevant regulators a lessons-learnt exercise of the market outage and adopting a post-outage plan.

Comments are due by 15 March 2024.

IOSCO publishes recommendations on accounting for goodwill

IOSCO has published a set of recommendations on accounting for goodwill for issuers, audit committees (or those charged with governance), and external auditors aimed at enhancing the reliability, faithful representation and transparency of goodwill recorded and disclosed in the financial statements.

The report is a result of the work of IOSCO's Committee on Issuer Accounting, Audit and Disclosure, in recognition that the risk of unrecognised impairment on accumulated goodwill and related disclosures, including 'close call' situations, is an area of concern, particularly in times of increasing economic uncertainty.

IOSCO issues statement on online harm

IOSCO has issued a warning on the risk of online harm to retail investors from investment scams and frauds.

The statement notes that online harm can take many forms, encompassing, for example, the inappropriate online promotion of risky investments, misleading statements made in advertisements or social media content, and fraudulent and illegal online activity or other investment scams, including those involving digital assets.

IOSCO intends the statement to serve as:

- a warning to retail investors about the serious perils of online harm;
- a call to action to regulators to respond holistically and innovatively to online harm, including by working with players in the broader online harm ecosystem; and
- an invitation to other relevant stakeholders, including legislators, law enforcement agencies, search engine operators, social media platforms and other intermediaries and facilitators to support global efforts to reduce online harm.

Retained EU Law (Revocation and Reform) Act 2023 (Commencement No. 1) Regulations 2023 made

The Retained EU Law (Revocation and Reform) Act 2023 (Commencement No. 1) Regulations 2023 (SI 2023/1363) have been made.

The Regulations bring into force the revocation of the retained EU legislation listed in Schedule 1 of the Retained EU Law (Revocation and Reform) Act 2023. The revocation comes into force immediately before the end of 2023.

The Regulations also bring into force on 1 January 2024 the following provisions of the Act:

- section 3 (abolition of supremacy of EU law);
- section 4 (abolition of general principles of EU law);
- section 5(3) (assimilated law);
- section 8 (incompatibility orders); and
- Schedule 2 (assimilated law, consequential amendments).

FSMA 2023 (Commencement No. 4 and Transitional and Saving Provisions) (Amendment) Regulations made

The Financial Services and Markets Act 2023 (Commencement No. 4 and Transitional and Saving Provisions) (Amendment) Regulations (SI 2023/1382) have been made.

SI 2023/1382 brings into force various provisions of the Financial Services and Markets Act 2023 (FSMA 2023) revoking certain pieces of retained EU law on various dates.

It brings into force the revocation of:

- specific provisions in retained EU law, including Article 46 of the UK Securitisation Regulation and Article 26 of the UK Taxonomy Regulation, along with 24 SIs, that contain obligations for HM Treasury (HMT) to review legislation that is revoked by FSMA 2023 (effective on 14 December 2023);
- various retained EU regulations (both level 1 and level 2) and SIs that amend, correct or repeal other EU regulations or SIs (effective on 1 January 2024);
- retained EU law relating to data reporting services and insurance distribution, including sections of UK MiFIR, the Data Reporting Services Regulations 2017 and various pieces of legislation supplementing the Insurance Distribution Directive (effective 5 April 2024); and
- retained EU law relating to the Solvency II framework (effective on 30 June 2024).

The Regulations also bring into force a transitional amendment to UK MiFIR relating to the suspension of waivers (effective on 14 December 2023) and FSMA 2023 provisions relating to:

- the remuneration of statutory panels for the UK financial regulators (effective on 26 December 2023);
- the new resolution regime for central counterparties (CCPs) (effective on 31 December 2023);
- sustainability disclosure requirements, international trade obligations and the Bank of England (BoE) levy (effective on 1 January 2024);
- the BoE's regulation of CCPs and central securities depositories (effective at 1am on 1 January 2024);
- the Cost Benefit Analysis (CBA) panels of certain UK financial regulators (effective on 1 August 2024);

- the requirement that certain UK financial regulators must contribute towards achieving compliance with section 5 of the Environment Act 2021 (effective on 1 January 2025); and
- HMT's obligation to send written recommendations to the BoE Financial Market Infrastructure Committee at least once in each Parliament.

The Regulations also make transitional and saving provisions relating to CCP resolution, international trade obligations, compliance with obligations under the Environment Act 2021, the composition of panels under FSMA 2000, and the implementation of Basel 3.1.

Money Laundering and Terrorist Financing (Amendment) Regulations 2023 made

The Money Laundering and Terrorist Financing (Amendment) Regulations 2023 (SI 2023/1371) have been made and laid before Parliament.

The Regulations amend The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs) to make explicit the difference between domestic and non-domestic politically exposed persons (PEPs). The amendment is intended to clarify that, for the purposes of applying the MLRs, domestic PEPs pose a lower risk of money laundering and terrorist financing than non-domestic PEPs and are therefore subject to a lower form of enhanced due diligence (EDD) by firms regulated under the MLRs, provided there are no other relevant risk factors unrelated to their position as a domestic PEP.

The Regulations come into force on 10 January 2024.

PRA publishes near-final policy statement on Basel 3.1 implementation

The Prudential Regulation Authority (PRA) has published a near-final policy statement providing feedback to responses to certain chapters of its consultation on the implementation of the Basel 3.1 standards (CP16/22).

The statement covers responses to:

- Chapter 1;
- Chapter 2 on scope and levels of application;
- Chapter 6 on market risk;
- Chapter 7 on credit valuation adjustment (CVA) and counterparty credit risk;
- Chapter 8 on operational risk;
- Chapter 10 on interactions with the PRA's Pillar 2 framework; and
- Chapter 13 on currency redenomination.

The statement also contains near-final policy material including:

- PRA Rulebook: CRR Firms: (CRR) Instrument [2024];
- a statement of policy titled 'Interpretation of EU Guidelines and Recommendations: Bank of England and PRA approach after the UK's withdrawal from the EU';
- amendments to supervisory statement 13/13 on market risk;

- amendments to supervisory statement 12/13 on counterparty credit risk;
- PRA Rulebook: CRR Firms: SDDT Regime (Interim Capital Regime) Instrument [2024]; and
- a statement of policy titled 'Operating the Interim Capital Regime criteria'.

The PRA expects to publish a second near-final policy statement relating to the remaining chapters of CP16/22 in Q2 2024.

The PRA intends to make all the final policy materials, rules, and technical standards in a single, final policy statement once HMT has revoked the relevant parts of the CRR by way of statutory instrument.

Investment Firm Notification Ordinance and Investment Institutions Audit Report Ordinance enter into force

The Investment Firm Notification Ordinance (WpI-AnzV) and the Investment Institutions Audit Report Ordinance (WpIPrüfbV) were published in the German Federal Law Gazette of 11 December 2023 and entered into force on the following day. The Investment Firm Notification Ordinance specifies details on, amongst other things, notification obligations relating to members of the management board or ownership control procedures, while the Investment Institutions Audit Report Ordinance sets out, amongst other things, requirements for the contents of the annual financial statements of investment institutions.

German Act on the Promotion of Secondary Credit Markets passed

The upper chamber of the German Parliament (Bundesrat) has given its consent to the Act on the Promotion of Secondary Credit Markets (Kreditzweitmarktförderungsgesetz), concluding parliamentary proceedings.

Article 1 of the Act on the Promotion of Secondary Credit Markets contains the new Act on Secondary Credit Markets (KrZwMG). The KrZwMG transposes Directive (EU) 2021/2167 (NPL Directive) with respect to the framework for credit servicers and credit purchasers and will enter into force one day after the publication of the Act on the Promotion of Secondary Credit Markets (Kreditzweitmarktförderungsgesetz) in the Federal Gazette.

As stipulated by the NPL Directive, the KrZwMG establishes regulatory obligations for credit institutions selling non-performing loans, purchasers of non-performing loans and credit servicers (as defined therein), acting on behalf of purchasers of non-performing loans. Moreover, the KrZwMG introduces 'credit services institutions' (Kreditdienstleistungsinstitute) as newly supervised entities. Compliance with the KrZwMG is to be supervised by the German Federal Financial Supervisory Authority (BaFin).

Other elements of the Act on the Promotion of Secondary Credit Markets are the implementation of certain instruments under Regulation (EU) 2022/2036 (Daisy Chain Regulation) which serve as loss buffers within groups of institutions in a resolution scenario and amendments to certain taxation legislation relating, amongst others, to interest barrier rules (Zinsschranke).

BaFin applies EBA guidelines on overall recovery capacity

The BaFin has announced that it will apply the EBA guidelines on overall recovery capacity (ORC) in recovery plans from 11 January 2024. It expects institutions to take the guidelines into account and fully implement the requirements in their recovery plans.

The ORC describes the extent to which an entity may use different recovery options to recover in a range of stress scenarios. The EBA guidelines are intended to achieve a harmonised approach to the determination and assessment of the ORC.

The guidelines are composed of two parts:

- the first is addressed to institutions, providing them with guidance on setting the framework for the determination of the ORC; and
- the second complements the framework by supporting competent authorities in their assessment of institutions' ORC as part of the overall assessment of the recovery plans.

BaFin publishes new AML/CFT circular on high-risk third countries

The BaFin has published its Circular 12/2023 (GW) on third-country jurisdictions which have strategic deficiencies in their regimes for AML/CFT that pose significant threats to the international financial system (high-risk third countries).

The circular is addressed to all obliged entities under the German Money Laundering Act (GWG) which are subject to BaFin's supervision and supersedes BaFin's previous circulars in this area.

Circular 12/2023 (GW) reflects:

- Delegated Regulation (EU) 2016/1675 of 14 July 2016 identifying high-risk third countries with strategic deficiencies as last updated by the Delegated Regulation (EU) 2023/2070 of 18 August 2023;
- the FATF statement of 27 October 2023 reaffirming the 'high-risk jurisdictions subject to a call for action' declaration of 21 February 2020 relating to the Democratic People's Republic of Korea and the Islamic Republic of Iran, and its declaration of 21 October 2022 calling on its members and other jurisdictions to apply enhanced due diligence measures proportionate to the risk arising from Myanmar; and
- the FATF report of 27 October 2023 on jurisdictions under increased monitoring, where Bulgaria has been added to the list.

The circular also specifies the legal consequences and due diligence requirements under the GWG resulting from the respective classifications. BaFin further makes reference to the financial sanctions published on the website of Deutsche Bundesbank and the assessments set out in annex 4 of the National Risk Analysis (Nationale Risikoanalyse) on cross-border threats.

CSSF publishes communiqué on professional obligations related to accounts central electronic data retrieval system

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has published a communiqué reminding AML/CTF professionals, including in particular banks and other payment services providers, of their obligations under the Luxembourg law of 25 March 2020 establishing a central electronic data retrieval system related to payment accounts and bank accounts identified by IBAN and safe-deposit boxes held by credit institutions in Luxembourg, as amended.

The communiqué reiterates that, in accordance with Article 2 of the Law, professionals must set up a data file allowing the identification of any natural or legal person who holds or controls, with such professionals, payment accounts or bank accounts identified by an IBAN, within the meaning of Article 2(15) of Regulation (EU) No 260/2012 establishing technical and business requirements for credit transfers and direct debits in euro, or safes. The CSSF has emphasised that in order for the objectives pursued by the law and the establishment of the central register to be fulfilled, it is essential that professionals respect, when making available the data file, the structure of the file and the details of the data that must be included in it, in accordance with Article 2(4) of the law and CSSF Circular 20/747. To this end, the CSSF draws the attention of professionals in particular to Annexes 1 and 2 of the circular, which describe the technical arrangements to be strictly followed and the structure of the file to be submitted to the CSSF. Compliance with the mandatory structure and information is intended to ensure proper transmission of the data contained in the file within the central register.

The CSSF, as manager of the central register, has provided professionals with continuous monitoring during its implementation, in particular by providing technical and legal assistance and publishing information in the form of questions and answers, communications via MFT and other specific publications aimed at clarifying and improving the structure of the file and its availability in the central register.

In addition to such reminders, the communiqué draws the attention of professionals to some examples of deficiencies detected by the CSSF and other users accessing data of the central register, and which will have to be taken into account by professionals when reviewing compliance with their obligations in this area.

CSSF sets out approach to execution of write-down and conversion of capital instruments and bail-inable liabilities in resolution

The CSSF, has published a document on its approach to the execution of the write-down and conversion of capital instruments and bail-inable liabilities in resolution.

The document has been published by the CSSF in its role as Luxembourg resolution authority in compliance 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).

It applies in accordance with the scope of application set out in the Luxembourg law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended.

The purpose of the document is to provide a high-level description of the CSSF's approach to the operational steps necessary to execute the write-down and conversion of relevant capital instruments or the use of the bail-in tool (the exchange mechanic) from the preliminary steps to the final execution of the exchange mechanic, including any ex-post definitive valuation adjustments, where applicable. The description set out in the document takes as starting point the resolution planning phase, where institutions earmarked for resolution (i.e., where normal insolvency proceedings would not be in the public interest), and for which the use of the bail-in tool is envisaged (either as preferred or as variant resolution strategy), shall prepare bail-in playbooks and demonstrate their capabilities to provide the data requested in the bail-in data list.

The CSSF notes that the actual execution of write-down and conversion processes might differ to the ones set out in the document if the resolution objectives or the circumstances of the case so require. Further, processes are subject to change, and the document is to be considered an evergreen document susceptible to updates, which will be published on the CSSF's website.

Polish Financial Supervision Authority sets out position on dividend policies in 2024

The Polish Financial Supervision Authority (KNF) has adopted its position on the dividend policies of commercial banks, cooperative and affiliating banks, insurance companies, reinsurance companies, insurance and reinsurance companies, investment fund management companies, pension fund management companies and brokerage houses in 2024.

With respect to commercial banks, the KNF states, amongst other things, that the maximum possible level of a dividend payable from the profit generated in 2023 is limited to 75% in light of the expected strengthening of the capital base in order to absorb any materialisation of risks accumulated in the Polish banking sector.

Insurance companies that meet the KNF's criteria and relevant capital requirements will be able to allocate up to 100% of the profit generated in 2022 and up to 100% of the profit generated in 2023 for the payment of dividends.

The KNF's position also sets out the criteria cooperative banks, investment fund management companies and pension fund management companies must meet to pay out dividends.

MAS consults on regulations relating to information sharing on COSMIC platform

The Monetary Authority of Singapore (MAS) has launched a consultation seeking comments on the proposed Financial Services and Markets (Information Sharing Scheme for Prescribed Financial Institutions) Regulations, which set out the scope of relevant parties whose information may be shared via the Collaborative Sharing of Money Laundering/Terrorism Financing (ML/TF) Information & Cases (COSMIC) platform.

The COSMIC platform will allow prescribed financial institutions (FIs) to securely share risk information on a 'relevant party' who exhibits multiple red flags that may indicate potential financial crime concerns, where the stipulated thresholds in the Financial Services and Markets Act are met.

The MAS is seeking feedback on whether the proposed scope of 'relevant party' adequately captures all AML/CFT-relevant activities that a person may have with a bank in Singapore.

In particular, the MAS proposes to prescribe the following persons as a relevant party in relation to a prescribed FI that is a bank in Singapore:

- any person that the bank in Singapore opens or has previously opened a relevant account for, or a person who has requested to open a relevant account (whether or not the bank in Singapore in fact opens the relevant account), maintains or has maintained a relevant account for, advises or has previously advised on corporate finance as defined in Section 2(1) of the Securities and Futures Act 2001, or any person that has requested the bank in Singapore to do so (whether or not the bank in Singapore in fact provides the advice);
- any person to whom the bank in Singapore provides or has previously provided any financial advisory advice as defined in Section 2(1) of the Financial Advisers Act 2001, or any person that requests the bank in Singapore to do so (whether or not the bank in Singapore in fact provides the service);
- any person on whose behalf the bank in Singapore is carrying out a transaction, for whom the bank in Singapore has not opened a relevant account, previously carried out a transaction, for whom the bank in Singapore did not open a relevant account;
- any person who requests the bank in Singapore to carry out a transaction, for whom the bank in Singapore does not open a relevant account, whether or not the bank in Singapore in fact carries out the transaction.

Comments on the consultation are due by 5 January 2024.

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

MAS launches multi-sector transition taxonomy

The MAS has launched the Singapore-Asia Taxonomy for Sustainable Finance (Singapore-Asia Taxonomy), which sets out detailed thresholds and criteria for defining green and transition activities that contribute to climate change mitigation across eight focus sectors: energy, real estate, transportation, agriculture, and forestry/land use, industrial, information and communication technology, waste/circular economy, carbon capture and sequestration.

The Singapore-Asia Taxonomy builds on the feedback received from the previous four rounds of public consultation. The key features of the Singapore-Asia Taxonomy include the following:

- a concept of a 'transition' category to contextualise 'transition' for the Asian region. 'Transition' in the Singapore-Asia Taxonomy refers to activities that do not meet the green thresholds now but are on a pathway to net zero or contributing to net zero outcomes;

- defining transition activities through two approaches a traffic light system that defines green, transition and ineligible activities across the eight focus sectors, and a 'measures-based approach' that seeks to encourage capital investments into decarbonisation measures or processes that will help reduce the emissions intensity of activities and enable the activities to meet the green criteria over time;
- to assist in early phase-out of coal-fired power plants, the Singapore-Asia Taxonomy sets out both entity and facility-level criteria that are aligned to a 1.5°C scenario. Such criteria include that the electricity generated from the phased-out CFPP has to be fully replaced with clean energy within the same electricity grid and the coal plant needs to have a just transition plan; and
- to ensure interoperability with global taxonomies, the MAS has commenced an exercise to map the Singapore-Asia Taxonomy to the International Platform for Sustainable Finance's Common Ground Taxonomy (CGT), which currently covers the EU Taxonomy and People Bank of China's (PBOC) Green Bond Endorsed Project Catalogue.

Through the Singapore-China Green Finance Taskforce, the MAS is also working with the PBOC to promote the uptake of financial products that reference the China Green Bond Catalogue and the Singapore-Asia Taxonomy, and eventually the CGT when the mapping is completed.

The MAS has indicated that the Singapore-Asia Taxonomy will be reviewed periodically to keep pace with emerging science and technology improvements.

MAS launches coalition and announces pilots to develop transition credits for early retirement of Asia's coal plants

The MAS has announced the launch of the Transition Credits Coalition (TRACTION), and two pilot projects to test the use of high-integrity transition credits in transactions for the early retirement of coal-fired power plants (CFPPs).

TRACTION comprises members and knowledge partners from carbon credit services, energy financing, project development, risk management and non-governmental organisations, and is intended to identify system-wide barriers and develop solutions for transition credits to be utilised as a credible financing instrument. These include identifying robust crediting approaches that can be applied to regulated and deregulated electricity markets, mitigating risks of non-delivery of credits, and exploring avenues to build buyers' confidence in transition credits. TRACTION will conduct its work over a two-year period.

The two pilot projects announced are in collaboration with:

- ACEN Corporation and Coal-to-Clean Credit Initiative, to accelerate the retirement of the South Luzon Thermal Energy Corporation coal plant in Philippines. Climate Smart Ventures, an advisory firm focused on energy transition, will be coordinating the project; and
- the Asian Development Bank, which is advising the Government of Philippines over the retirement of a coal plant in Mindanao under its Energy Transition Mechanism.

The MAS has indicated that TRACTION and the pilot projects will build on the concepts laid out in the working paper jointly published by the MAS and McKinsey & Company in September 2023. Further, TRACTION members and partners will not be directly involved in any pilot transactions. However, the MAS has highlighted that insights from these pilots will be helpful in TRACTION's work.

In consultation with the Integrity Council of Voluntary Carbon Market, the MAS also plans to explore ways for transition credits to align with the Core Carbon Principles.

MAS responds to consultation and publishes notices on management of outsourced relevant services for banks

The MAS has published its response to the feedback received to its December 2020 consultation on a set of proposed notices to banks and merchant banks (collectively referred to as banks) on the management of outsourced relevant services.

Amongst other things, the MAS has indicated that:

- the MAS will consider the need for additional regulations or guidelines to address the risk arising from financial institutions' (FIs') use of third-party services, including non-outsourced relevant services;
- regarding the outsourcing register, the MAS will include non-material services and one-off services that involve the disclosure of customer information within the scope of the outsourcing register, and require the submission of outsourcing registers on a semi-annual basis, and upon request, to allow a timely update of banks' use of relevant services while balancing the reporting obligation placed on banks;
- regarding due diligence requirements, the MAS will allow banks to determine when to perform the post-commencement due diligence, but it should not be later than 24 months from the engagement of the service provider – this approach will apply to both intragroup and non-intragroup Material Ongoing Outsourced Relevant Services (MOORS);
- the MAS will include in the Guidelines for Banks requirements for banks to use outsourcing agreements to cascade requirements to sub-contractors;
- the MAS will introduce requirements in the notices for banks to obtain customer consent for the disclosure of customer information to sub-contractors, unless the customer is another bank or other FIs designated by MAS, include a term in outsourcing agreements for MOORS conferring a right on the MAS to audit service providers of the banks, and include a term in the outsourcing agreements for MOORS that the service provider, on a request by a bank, provides to the bank or the MAS, or any person appointed by the bank or the MAS, any record, document, report or information relating to the provision of a MOORS;
- the MAS will require banks to ensure that independent audits of intragroup MOORS are conducted at frequencies approved by their boards; and
- for MOORS that involve disclosure of customer information and where the service provider or subcontractor is an overseas regulated FI, banks will be required to provide a written undertaking to notify the MAS of any disclosure of customer information to the overseas regulator within 14 working days of such disclosure.

Following the feedback received, the MAS has published the final notices, both effective from 11 December 2024:

- Notice 658 on Management of Outsourced Relevant Services for Banks (MAS Notice 658); and
- Notice 1121 on Management of Outsourced Relevant Services for Merchant Banks (MAS Notice 1121).

For requirements in the notices relating to outsourcing agreements, the MAS will allow a longer timeline for banks to bring their outsourcing agreements into compliance, as specified in the notices. Otherwise, the requirements in the notices take effect from 11 December 2024.

The MAS has also issued a new set of Guidelines on Outsourcing (Banks). Banks should refer to the new guidelines from 11 December 2024, and the existing Guidelines on Outsourcing in the interim. The existing guidelines will be amended and renamed as 'Guidelines on Outsourcing (Financial Institutions other than Banks)' with effect from 11 December 2024.

The MAS updated the FAQs on the Guidelines on Outsourcing on 11 December 2023.

The MAS has also published a template of the outsourcing register that banks and merchant banks should adopt for outsourcing register submissions to the MAS from 11 December 2024.

MAS responds to proposals on mandatory reference checks

The MAS has published its responses to the feedback it received on its May 2021 consultation on proposals concerning mandatory reference checks.

In particular, the consultation sought views on the MAS' proposal to require financial institutions (FIs) to conduct reference checks and respond to reference check requests on employees, based on a set of minimum mandatory information within a specified period of time.

Amongst other things, the MAS has clarified the following in its response:

- the MAS will proceed with the proposal to require certain FIs to conduct and respond to reference checks;
- the MAS expects FIs to also seek references from out-of-scope employers as part of its due diligence checks on prospective employees, be able to demonstrate efforts in following up on requests when there is no response or insufficient information, and use the information in the records (including the set of mandatory information set out in the response paper) in its assessment of the fitness and propriety of the prospective employee;
- regarding the scope of employee positions, the MAS will proceed with 'Option 1' to cover positions aligned with the scope of relevant functions under the harmonised and expanded power to issue Prohibition Orders (POs) under section 6 of the Financial Services and Markets Act (FSMA). These include individuals who perform functions relating to the handling of funds, risk-taking, risk management and control, or critical system administration functions. However, the MAS will adopt a risk-based approach, to require reference checks only on senior managers (SMs) and material risk personnels (MRPs) performing relevant functions under section 6 of the FSMA;

- while reference checks will not apply to employees who move or are promoted within the same FI, the MAS expects FIs to conduct proper due diligence before appointing SMs and MRPs;
- the MAS will require insurers to apply reference check requirements when appointing individual agents and nominee agents;
- the MAS will proceed with the proposal for FIs to cover a lookback period of five years;
- the MAS will proceed with the proposed list of mandatory information in Annex B to the response paper, except that specified disciplinary actions that would have been taken will be excluded, and specified ongoing investigations will be required only if the individual is the subject of the investigation and is aware that he/she is being investigated;
- the MAS will proceed to require FIs to respond to reference check requests no later than 21 calendar days from their receipt; and
- for the purpose of reference checks, the MAS will require FIs to keep records of adverse information of all employees, regardless of employment terms, in Option 1 functions, for a minimum period of five years.

The MAS will proceed to impose the requirements via Notices to ensure FIs conduct and respond to reference checks on a minimum set of standardised information. The MAS will be consulting on the draft Notices in due course.

In view of the feedback calling for a longer time to implement the proposed requirements given the need to update internal processes and systems, the MAS will provide a transitional period of one year from the issuance of the Notices.

SGX Group prepares for listing of active exchange traded funds

Singapore Exchange Regulation has released a new Practice Note on the listing requirements for active exchange traded funds (ETFs), in order to develop the Singapore Exchange (SGX Group)'s ETF market. The new Practice Note provides requirements applicable to active ETFs, which include disclosing net asset value daily, disclosing indicative net asset value throughout the trading day, and publishing fund performance and portfolio holdings on a monthly basis.

According to the SGX Group, ETF investing in Singapore has been keenly adopted in recent years, with assets under management (AUM) doubling since the end of 2019 to over SGD 10 billion to date.