

INTERNATIONAL REGULATORY UPDATE 5 – 9 FEBRUARY 2024

- **Capital Markets Union: EU Parliament adopts AIFMD2**
- **Capital Markets Union: EU Parliament adopts regulation on instant payments in euros**
- **CCP recovery and resolution: Delegated Regulation on business reorganisation plans published in the Official Journal**
- **EU Council and Parliament reach provisional agreement on ESG ratings**
- **EU Council and Parliament agree to delay sustainability reporting for certain sectors and certain third-country undertakings by two years**
- **EMIR 3.0: EU Council and Parliament reach provisional agreement on EU clearing services**
- **CCPRRR: ESMA publishes guidelines on functioning of resolution colleges and cooperation arrangements**
- **ESMA issues warning on making investment recommendations on social media**
- **AMF calls on market players to prepare for entry into force of DORA**
- **CNMV adopts ESMA guidelines for reporting under EMIR**
- **China publishes interim administrative regulations on carbon emission trading**
- **HKMA consults on proposals to implement new regulations on prudential treatment of cryptoasset exposures**
- **HKMA issues circular on effective execution of risk-based approach for customer due diligence**
- **Hong Kong Deposit Protection Board concludes consultation on proposed enhancements to deposit protection scheme**
- **Hong Kong Government consults on legislative proposals to regulate over-the-counter trading of virtual assets**

Capital Markets Union: EU Parliament adopts AIFMD2

The EU Parliament plenary session has [adopted](#) the directive to improve the regulatory framework applicable to EU investment funds (AIFMD2). This follows a provisional agreement between the Parliament and the Council on 20 July 2023.

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The EU Commission adopted AIFMD2 as part of the Capital Markets Union (CMU) legislative package in November 2021. The directive would amend the Directive on Undertaking for Collective Investment in Transferable Securities (UCITS) and the Alternative Investment Fund Managers Directive (AIFMD).

Among other things, AIFMD2 aims to:

- enhance the integration of asset management markets in Europe and modernise the framework for key regulatory aspects;
- enhance the availability of liquidity management tools, with new requirements for managers to provide for the activation of these instruments;
- increase transparency on delegation rules, by ensuring that supervisors are well-informed about the extent to which fund managers rely on expertise from third parties; and
- establish an EU framework for funds originating loans, i.e. funds that provide credit to companies, supplemented with several requirements to alleviate risks to financial stability and to ensure an appropriate level of investor protection.

The directive still needs to be formally adopted by the EU Council before it can be published in the Official Journal.

Capital Markets Union: EU Parliament adopts regulation on instant payments in euros

The EU Parliament has [adopted](#) the proposed regulation on instant credit transfers in euro, originally put forward by the EU Commission in October 2022 as part of the CMU. The regulation amends and modernises the Single Euro Payments Area (SEPA) Regulation on standard credit transfers in euro by adding to it specific provisions for instant credit transfers in euro.

The adopted regulation aims to:

- improve the strategic autonomy of the European economic and financial sector by reducing any excessive reliance on third-country financial institutions and infrastructures;
- allow people to transfer money within ten seconds at any time of the day, including outside business hours, not only within the same country but also to another EU Member State;
- require payment service providers such as banks, which provide standard credit transfers in euro, to offer the service of sending and receiving instant payments in euro;
- grant access for payment and e-money institutions (PIEMIs) to payment systems, by changing the Settlement Finality Directive (SFD); and
- require instant payment providers to verify that the beneficiary's IBAN and name match in order to alert the payer to possible mistakes or fraud before a transaction is made.

CCP recovery and resolution: Delegated Regulation on business reorganisation plans published in the Official Journal

[Commission Delegated Regulation \(EU\) 2024/450](#) containing regulatory technical standards (RTS) on business reorganisation plans under the Regulation on central counterparty (CCP) recovery and resolution (CCPRRR) has been published in the Official Journal.

The RTS set out the expected descriptions and timetable in the business reorganisation plan to be submitted by the CCP within one month after the resolution authority has applied the writedown and conversion tool, in accordance with Article 32 of the CCPRRR. It also sets out the criteria that are considered and the approval procedure of the business reorganisation plan by the resolution authority.

The Delegated Regulation will enter into force on 28 February 2024.

EU Council and Parliament reach provisional agreement on ESG ratings

The EU Council and Parliament have [reached](#) a provisional agreement on the proposed regulation on environmental, social and governance (ESG) rating activities.

The new rules are intended to strengthen the reliability and comparability of ESG ratings by improving the transparency and integrity of the operations of ESG ratings providers and preventing potential conflicts of interest. Under the new rules, ESG rating providers will need to be authorised and supervised by the ESMA and comply with transparency requirements, in particular with regard to their methodology and sources of information.

The regulation still needs to be formally approved by both the Parliament and the Council before it can be published in the Official Journal. It will be applicable 18 months after its entry into force.

EU Council and Parliament agree to delay sustainability reporting for certain sectors and certain third-country undertakings by two years

The EU Council and Parliament have [reached](#) a provisional agreement on a directive amending the Accounting Directive as regards the time limits for the adoption of sustainability reporting standards for certain sectors and for certain third-country undertakings. The agreement is intended to give more time for companies to prepare for the sectorial European Sustainability Reporting Standards (ESRS) and for specific standards for large non-EU companies.

The agreed directive postpones the adoption of the new standards by two years from 30 June 2024 to 30 June 2026. The date of application for third country companies will remain the financial year 2028, as set out in the Corporate Sustainability Reporting Directive (CSRD). The agreement proposes that the Commission publishes eight sector-specific reporting standards as soon as they are ready before the new deadline. Member States will not need to transpose this directive since the targeted amendments concern the empowerment to adopt delegated acts granted to the Commission.

The provisional agreement still needs to be endorsed and formally adopted by both the Parliament and the Council.

EMIR 3.0: EU Council and Parliament reach provisional agreement on EU clearing services

The EU Council and Parliament have [reached](#) a provisional agreement on the proposed review of the European Market Infrastructure Regulation (EMIR 3.0) and Directive on the treatment of concentration risk towards CCPs and the counterparty risk on centrally cleared derivative transactions.

The agreement aims to provide an adequate supervisory framework where it is feasible for supervisory authorities to apply streamlined supervisory processes, such as authorisation and validation procedures. The proposals, among other things:

- seek to strengthen cooperation, coordination and information sharing among supervisors and ESMA;
- provide ESMA with a coordination role in emergency situations, while ultimate decision-making powers are the responsibility of the national competent authorities (NCAs);
- grant ESMA the role of co-chair of supervisory colleges together with the relevant NCAs, who will keep ultimate decision-making powers, and implement mandatory annual on-site inspections by NCAs, which ESMA will be able to participate in; and
- set an active account requirement (AAR) requiring certain financial and non-financial counterparties to have an account at an EU CCP and create a joint monitoring mechanism (JMM) to keep track of the AAR.

The provisional agreement now needs to be formally adopted by both the Parliament and the Council before it can be published in the Official Journal.

CCPRRR: ESMA publishes guidelines on functioning of resolution colleges and cooperation arrangements

The European Securities and Markets Authority (ESMA) has published two sets of guidelines under the Central Counterparties Recovery and Resolution Regulation (CCPRRR) on:

- written arrangements and procedures for the functioning of resolution colleges; and
- the types and content of the provisions of cooperation arrangements.

The [guidelines](#) on written arrangements and procedures for the functioning of resolution colleges aim to ensure the common, uniform and consistent application of Article 4 of CCPRRR and of the Resolution College Delegated Regulation. In particular, they aim to clarify the key elements referred to in Article 4 of CCPRRR and of the Resolution College Delegated Regulation.

The [guidelines](#) on the types and content of the provisions of cooperation arrangements aim to ensure the common, uniform and consistent application of Article 79(3) and (4) of CCPRRR.

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

ESMA issues warning on making investment recommendations on social media

ESMA has issued a [warning](#) directed at people who post investment recommendations on social media. The warning sets out the applicable requirements under the Market Abuse Regulation (MAR) and the consequences of non-compliance. In particular, ESMA reminds individuals to:

- take care when sharing an opinion on social media in relation to financial instruments or investment strategies, particularly when referring to present or future price or value, as these could constitute an investment recommendation;
- ensure compliance with the applicable requirements under the MAR framework when posting an investment recommendation on social media;
- keep in mind that the obligations they are subject to when issuing recommendations may vary depending on who they are and what their activity is; and
- be aware that some forms of communication can carry greater risks of market manipulation, insider dealing and unlawful disclosure of inside information and to avoid, in particular, invitations to take part in strategies aimed at creating trends.

AMF calls on market players to prepare for entry into force of DORA

The Digital Operational Resilience Act (DORA) will enter into force on 17 January 2025. DORA provides for cybersecurity and IT risk management rules for a large number of financial entities (including banks, investment firms, trading platforms, asset managers, crowdfunding service providers and cryptoasset service providers).

In order to assist market players with the application of the legislation, the Autorité des marchés financiers (AMF) has published a [reminder](#) of the main provisions, one year before they come into force. The AMF has also encouraged market participants to prepare for the entry into force of the legislation.

CNMV adopts ESMA guidelines for reporting under EMIR

The Spanish National Securities Market Commission (CNMV) has [announced](#) the adoption of the ESMA guidelines for reporting under the EMIR. The CNMV will take the guidelines into account and pay attention to their implementation by entities that are required to report their derivatives contracts to trade repositories in accordance with the EMIR regime.

China publishes interim administrative regulations on carbon emission trading

The State Council of the People's Republic of China has published the [Interim Administrative Regulations on Carbon Emission Trading](#), which will take effect on 1 May 2024. While there is still no statute to govern carbon emission trading, the Regulations are the first State Council level legislation in respect of the PRC compliance carbon market.

Eligible trading entities under the Regulations include key emitters as determined by provincial authorities on annual basis, and other compliant

entities. The detailed qualification will be formulated through secondary rules, and the annual list of key emitters will be issued accordingly.

Eligible trading products include carbon emission allowances (CEA), i.e., the quota granted to key emitters that permits a specific amount of carbon emission within a specified period of time; and other spot trading products approved by the Government. The Regulations do not cover the trading of China Certified Emission Reduction under the voluntary carbon market regime, which key emitters can still purchase for their annual settlement of CEA.

The Regulations set out a cross-department regulatory cooperative system, with:

- the Ministry of Ecology and Environment (MEE) leading the management and supervision of carbon emission trading;
- the State Administration for Market Regulation, the People's Bank of China, and the National Financial Regulatory Administration providing support in respect of supervision, information and enforcement; and
- MEE and the National Development and Reform Commission formulating the greenhouse gases and industries covered by CEA trading for the State Council's approval.

The Regulations maintain the separate set-up of the registration institution and the trading venue for CEA. Further, the Regulations specify that the service fee for registration and trading should be fair and transparent, and that the trading venue for CEA shall be gradually combined into a unified trading platform for public resources.

HKMA consults on proposals to implement new regulations on prudential treatment of cryptoasset exposures

The Hong Kong Monetary Authority (HKMA) has launched a [consultation](#) on proposals to implement new regulations on the prudential treatment of cryptoasset exposures.

In December 2022 the Basel Committee on Banking Supervision (BCBS) published its new standard 'Prudential treatment of cryptoasset exposures'. Subsequently the BCBS published two consultative documents on 'Disclosure of cryptoasset exposures' and 'Cryptoasset standard amendments' in October 2023 and December 2023 respectively. The HKMA notes that not all of the additional requirements proposed in the two consultative documents have been incorporated in the consultation paper. The HKMA intends to further update the local implementation proposal after the conclusion of the BCBS' consultation process.

Under the new standard, cryptoassets will be categorised into two broad groups. Group 1 cryptoassets consist of qualifying tokenised assets and stablecoins. They will generally be subject to the risk-based capital requirements of the existing Basel capital framework. Group 2 cryptoassets are cryptoassets that fail to meet all of the Group 1 classification conditions. These cryptoassets will be subject to a more conservative capital treatment.

In terms of the implementation arrangements, the BCBS presents the prudential treatment of cryptoasset exposures as a comprehensive document while its various components will likely be integrated into relevant sections of

the Basel framework at a later stage. For Hong Kong, the HKMA will check the need for potential legislative amendments to various sets of rules, including the Banking (Capital) Rules, Banking (Disclosure) Rules, Banking (Liquidity) Rules and Banking (Exposures Limits) Rules. Where appropriate, technical provisions and supervisory guidance will also be set out in Code of Practices, Supervisory Policy Manuals amongst others.

The HKMA intends to put new standards into effect no earlier than 1 July 2025. Comments on the consultation are due by 6 May 2024.

HKMA issues circular on effective execution of risk-based approach for customer due diligence

The HKMA has issued a [circular](#) to share recent observations from its ongoing supervisory engagement with authorised institutions (AIs) regarding the execution of the risk-based approach (RBA) for customer due diligence (CDD). The circular reiterates the key principles of the RBA and the importance of effective execution, especially for areas where customer feedback or complaints are received from time to time.

The HKMA notes that while the CDD measures of most AIs for customer onboarding and reviews are appropriate and in line with the identified money laundering and terrorist financing (ML/TF) risks, it continues to see cases where there is room for improvement in both the design and execution of CDD. The HKMA expects AIs to review existing HKMA guidance to ensure their CDD policies and procedures accurately reflect the legal and regulatory requirements, and that the execution of the RBA is aligned with the regulatory framework and customer-centric practices. Further, the HKMA has reminded AIs that CDD measures which are disproportionate to ML/TF risks are not consistent with the legal and regulatory requirements and should not be communicated to customers as such.

The HKMA intends to continue to maintain close engagement with the industry and provide further guidance where appropriate. Specifically, following the latest amendment to the Anti Money Laundering Ordinance, the HKMA is preparing new practical guidance on politically exposed persons (PEP)-related anti-money laundering and counter-financing of terrorism controls, focusing on how to apply the RBA on former PEPs.

Hong Kong Deposit Protection Board concludes consultation on proposed enhancements to deposit protection scheme

The Hong Kong Deposit Protection Board (HKDPB) has published the [conclusions](#) to its July 2023 consultation relating to enhancements to the Deposit Protection Scheme (DPS) in Hong Kong.

In its consultation paper, the HKDPB had set out a number of policy recommendations such as raising the protection limit, refining the levy system, enhancing the deposit protection arrangements in the event of a bank merger, expanding the requirement on the display of the DPS membership sign to digital channels, and streamlining the negative disclosure requirements on non-protected deposits for private banking customers.

The HKDPB has decided to raise the protection limit to HKD 800,000 to enhance protection for depositors. The HKDPB notes that this level represents a 60% increase in the protection limit, which is intended to do more

than compensate for the cumulative inflation over time and translate into around 20% increase in the real value of deposit protection. In addition, the majority of depositors (more than 92%) will enjoy full deposit coverage, in line with international standards. The HKDPB intends to work closely with the Government on a bill to amend the DPS Ordinance and the Representation Rules. The HKDPB intends to introduce the amendment bill into the Legislative Council in the next few months, and implement the enhancements in phases between the fourth quarter of 2024 and early 2025.

In parallel, the HKDPB has indicated that it will continue to closely monitor international developments and engage with the banking industry along the way and conduct the next review of the protection limit three years after the enhanced limit is put into effect, with the aim of completing the review exercise in the following year to ensure the DPS can keep up with international best practice.

Hong Kong Government consults on legislative proposals to regulate over-the-counter trading of virtual assets

The Hong Kong Government has launched a [public consultation](#) to seek views on its legislative proposals to regulate over-the-counter (OTC) trading of virtual assets (VA) through the introduction of a licensing regime for providers of VA OTC services under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO).

In October 2022, the Government issued a Policy Statement on the development of VA in Hong Kong, setting out its vision and policy direction for the VA sector. In particular, the Policy Statement set out the Government's commitment to developing a comprehensive framework for the regulation of VA activities under the 'same activity, same risks, same regulation' principle.

Following a number of fraud cases involving VA OTC operators, the Government believes that there is a need to regulate OTC services under the AMLO, in an effort to mitigate the ML/TF risks and protect investors. The key highlights of the proposed regime include the following:

- requiring any person who conducts a business in providing services of spot trade of any VA for money in Hong Kong to be licensed by the Commissioner of Customs and Excise (CCE);
- covering all VA OTC services irrespective of whether the services are provided through a physical outlet and/or other platforms;
- providing powers for the CCE to supervise the anti-money laundering and counter-terrorist financing conduct of licensees, and enforce the statutory and regulatory requirements under the new regime; and
- providing transitional arrangement to facilitate the effective implementation of the regulatory regime.

Comments on the consultation are due by 12 April 2024.

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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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