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ESMA publishes translations of guidelines on funds' names using ESG or sustainability-related terms

The European Securities and Markets Authority (ESMA) has [published](#) the translations in all official EU languages of its guidelines on funds' names using ESG or sustainability-related terms.

The objective of the guidelines is to ensure that investors are protected against unsubstantiated or exaggerated sustainability claims in fund names, and to provide asset managers with clear and measurable criteria to assess their ability to use ESG or sustainability-related terms in fund names.

National competent authorities (NCAs) must notify ESMA whether they comply; do not comply, but intend to comply; or do not comply and do not intend to comply with the guidelines by 21 October 2024.

The guidelines will start applying from 21 November 2024. The transitional period for funds existing before the application date will be six months after that date, i.e. 21 May 2025. Any new funds created on or after the application date should apply the guidelines immediately.

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CSSF launches DORA readiness survey

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has published a [communiqué](#) on the launch of a DORA readiness survey, which is intended to provide a better view of the readiness of the market towards the end of the implementation timeline for the Digital Operational Resilience Act (DORA), which becomes applicable on 17 January 2025.

The primary aim of the initiative is to assess the readiness level of financial entities regarding DORA, and to capture the main challenges encountered by them. The second goal is once more to raise the awareness of those financial entities that are late in getting ready.

The survey has been launched with the request to provide the readiness status as at 1 September 2024. Answers will be accepted by the CSSF through the dedicated eDesk procedure until 15 September 2024. The survey consists of a limited number of 10 closed questions.

Entities subject to DORA and licensed as financial entities in Luxembourg, even if falling under direct European Central Bank (ECB) supervision, will be invited to participate in the survey via email. Whilst participation in the survey is not mandatory, the CSSF has strongly recommended that the relevant entities complete the survey.

HKEX publishes consultation paper on new phase of paperless listing reforms

The Stock Exchange of Hong Kong Limited (SEHK), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), has launched a [public consultation](#) seeking feedback on proposals to further expand its paperless listing regime and other rule amendments. The proposals are intended to modernise market infrastructure and enhance operational and regulatory efficiency.

The key proposals under the consultation include the following:

- electronic securities holders' instructions – the proposal requires issuers to provide securities holders with an option to send requested communications to issuers electronically,
- real-time electronic payment of corporate action proceeds – the proposal requires issuers to provide securities holders with an option to receive corporate action proceeds, including dividends, on the announced payment date electronically via Clearing House Automated Transfer System;
- electronic subscription monies – the proposal requires issuers to provide securities holders with an option to pay subscription monies via electronic means for offers to existing securities holders;
- hybrid general meetings and e-voting – the proposal requires issuers to ensure their constitutional documents enable them to hold hybrid general meetings and provide e-voting (to the extent permitted by laws and regulations applicable to them); and
- web accessibility of issuers' corporate communications, seeking market feedback on the incorporation of web accessibility guidelines into listing requirements.

The SEHK is seeking market feedback on its proposals and the proposed Main Board and GEM Listing Rules to implement them by 18 October 2024.

HKMA issues circular on climate-related risk governance good practices

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) to share examples of good practices and key observations on authorised institutions' (AIs') governance of climate-related risks, based on the findings and observations from its recent supervisory exercises. The HKMA observed that participating AIs have adopted a range of approaches to develop climate risk governance structures that are both in accordance with its supervisory expectations and commensurate with their climate risk profile and business operations. These good practices and key observations are categorised into the following three main areas:

- fostering and overseeing the effective development and implementation of climate strategy;
- exercising appropriate oversight of climate risk management; and
- cultivating a strong organisational climate risk culture.

Details of the good practices and key observations are set out in the annex to the circular. The HKMA encourages AIs to refer to these good practices as they continue to enhance their climate-related risk governance frameworks and relevant measures.

Recognising the common challenges facing AIs (for example, insufficient data and difficulty in modelling as well as measuring the risks), the HKMA also intends to continue advancing its supervisory approach, including exploring and promoting the effective use of data and technology, with a view to helping the industry to step up its climate risk management practices.

HKMA provides guidance on consumer protection in use of generative artificial intelligence

The HKMA has issued a [circular](#) to provide authorised institutions with a set of guiding principles in respect of the use of generative artificial intelligence (GenAI) in customer-facing applications from the consumer protection perspective.

In order to develop big data analytics and artificial intelligence (BDAI), the HKMA issued a set of guiding principles on consumer protection in the use of BDAI by authorised institutions dated 5 November 2019 (2019 BDAI Guiding Principles). In recent months, the HKMA has observed an increasing interest of the banking sector in adopting GenAI in their operations.

The circular highlights that, as a subfield of BDAI, GenAI shares a set of similar risk dimensions. As such, regarding consumer protection in customer-facing applications, the HKMA expects all authorised institutions to apply and extend the 2019 BDAI Guiding Principles to the use of GenAI and continue to adopt a risk-based approach commensurate with the risks involved. However, the circular warns that since GenAI uses complex models its potential risks could have an even more significant impact on customers.

The HKMA has therefore provided additional principles under each of the four major areas set out in the 2019 BDAI Guiding Principles. Amongst other

things, the additional principles to ensure appropriate safeguard for consumer protection include the following:

- governance and accountability – board and senior management of authorised institutions should remain accountable for all the GenAI-driven decisions and processes, and have thoroughly considered the potential impact of GenAI applications on customers through an appropriate committee under their governance, oversight and accountability framework;
- fairness – the HKMA requires authorised institutions to ensure GenAI models produce objective, consistent, ethical and fair outcomes for customers;
- transparency and disclosure – authorised institutions are required to provide an appropriate level of transparency to customers regarding their GenAI applications through proper, accurate and understandable disclosure; and
- data privacy and protection – authorised institutions are required to implement effective protection measures to safeguard customer data.

SFC consults on proposals to abolish mixed media offers

The Securities and Futures Commission (SFC) has launched a [public consultation](#) on proposals to abolish mixed media offers (MMOs) to facilitate a fully electronic process for public offerings and enhance the efficiency of the regulatory process in Hong Kong. To this end, the SFC proposes amendments to the Companies (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice to remove the exemption permitting MMOs.

The proposed amendments would remove the option for an issuer of equity or debt securities listed or to be listed on the SEHK to issue printed application forms accompanied by electronic prospectuses under the Companies (Winding Up and Miscellaneous Provisions) Ordinance. The SFC also intends to cease granting waivers for the use of MMOs in public offerings of SFC-authorized collective investment schemes listed or to be listed on the SEHK.

This SFC consultation follows the SEHK's consultation, dated 16 August 2024, regarding the further expansion of the paperless listing regime.

Comments on the consultation are due by 18 October 2024.

Exchange and Foreign Trade Act

Japan's Ministry of Finance, Ministry of Economy, Trade and Industry, and Ministry of Land, Infrastructure, Transport and Tourism have published [amendments](#) to the regulatory notices adding the core business sectors of the Foreign Exchange and Foreign Trade Act (FEFTA).

Following the designation of 'specified critical products' in the Economic Security Promotion Act of Japan, which is intended to ensure a stable supply of such specified critical products, amendments have been made to the 'core business sectors' (which are business sectors where foreign investors are required to file a prior notification when they conduct inward direct investment, and where filing requirements are exempted in limited cases) in order to secure stable supply chains and address the risk of technology leakage and

diversion of commercial technologies into military use in relation to such specified critical products.

With respect to sectors related to specified critical products, the following items have been added:

- manufacture of equipment related to the manufacture of semiconductors (machinery, appliances, parts, supplies and materials used mainly for the manufacture of semiconductors);
- manufacture of advanced electronic components (electronic components such as multi-layer ceramic capacitors and their materials);
- manufacture of machine tool components (machine tool components such as ball screws, linear guides and linear scales); and
- manufacture of marine engines (diesel engines for civil marine use that are four-stroke and have a continuous maximum output of 735 kw or more).

With respect to other sectors from the perspective of national security, etc., the following items have been added:

- manufacture of fibre optic cables (quartz-based optical fibres and fibre optic strands); and
- manufacture of multifunctional machines (machines and appliances that have the ability to send and receive data and have multiple functions such as copying and scanning).

As a result of these amendments, 'specified critical products' under the Economic Security Promotion Act will be fully covered as core business sectors.

The amendments will apply to inward direct investment and equivalent actions to be made on or after 15 September 2024.

MAS revises notices on auditors' reports and additional information to be submitted with annual accounts for banks and certain designated financial holding companies

The Monetary Authority of Singapore (MAS) has revised the following notices:

- [Notice 609](#) Auditors' Reports and Additional Information to be Submitted with Annual Accounts – the amendments pertain to a change in the scope of the limited assurance engagement to be performed by auditors in respect of the reporting schedules submitted by a Singapore-incorporated bank under Part XII of MAS Notice 637 on Risk Based Capital Adequacy Requirements for Banks Incorporated in Singapore (MAS Notice 637); and
- [Notice FHC-N609](#) on Auditors' Reports and Additional Information to be Submitted with Annual Accounts – the amendments mainly relate to a change in the scope of the limited assurance engagement to be performed by auditors in respect of the reporting schedules submitted by a designated financial holding company with a Singapore-incorporated bank subsidiary under Part XII of MAS Notice 637, as applied by paragraph 7.1 of the MAS Notice FHC-N637 on Risk Based Capital Adequacy Requirements (MAS Notice FHC-N637).

The amendments to the MAS Notice 609 and the MAS Notice FHC-N609 are effective from 20 August 2024.

MAS revises Notice FSM-N22 on Cyber Hygiene

The MAS has revised its [Notice FSM-N22](#) on Cyber Hygiene, which sets out cyber security requirements for capital markets financial institutions on securing administrative accounts, applying security patching, establishing baseline security standards, deploying network security devices, implementing anti-malware measures and strengthening user authentication.

The MAS Notice FSM-N22 has been revised to provide that the notice no longer applies to registered fund management companies (RFMCs), as defined in regulation 2 of the Securities and Futures (Licensing and Conduct of Business) Regulations, with immediate effect.

The amendments to the MAS Notice FSM-N22 are in consequence to the repeal of the regulatory regime for RFMCs from 1 August 2024, and are effective from 20 August 2024.

RECENT CLIFFORD CHANCE BRIEFINGS

Dormant Assets Act 2022 and client money – does this help?

The Dormant Assets Act 2022 was passed on 24 February 2022 at which date s.34 came into force (relating to application and citation). The Act was brought into force in full on 6 June 2022 by The Dormant Assets Act 2022 (Commencement) Regulations 2022, which were passed on 24 May 2022.

This briefing paper discusses the Act and its application to client money.

<https://www.cliffordchance.com/briefings/2024/08/dormant-assets-act-2022-and-client-money---does-this-help-.html>

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