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BRRD: EBA consults on overhaul of resolution planning reporting framework

The European Banking Authority (EBA) has launched a public consultation on draft implementing technical standards (ITS) repealing and replacing Commission Implementing Regulation (EU) 2018/1624 on the provision of information for the purposes of resolution plans in the context of the Bank Recovery and Resolution Directive (BRRD).

The draft ITS are intended to overhaul the EBA resolution planning reporting framework to ensure that resolution authorities have the data they need and enhance consistent monitoring of resolution planning. By harmonising reporting requirements across the EU and avoiding duplication of data requests, the ITS also aim to reduce compliance costs for institutions.

Key proposals in the consultation include moving the reporting submission deadline from 30 April to 31 March, expanding the scope of entities required to report data, and increasing the detail of information requested on various topics such as:

- organisational structure;
- granular liability data;
- critical functions;
- financial markets infrastructures data;
- critical services;
- and critical information systems.

These changes align with the information already collected by resolution authorities, including the Single Resolution Board, to ensure comprehensive and efficient data collection.

Comments are due by 30 October 2024.

EBA consults on ITS for uniform reporting templates under SEPA Regulation

The EBA has launched a consultation on draft ITS for uniform reporting templates in relation to the level of charges for credit transfers and share of rejected transactions under SEPA Regulation.

The templates are intended to standardise reporting from payment service providers (PSPs) to their national competent authorities (NCAs), in order to allow the EU Commission to monitor the effects of changes to the Single Euro

Payments Area (SEPA) Regulation on the fees paid by customers of PSPs for payment accounts, as well as instant and non-instant credit transfers.

In the draft ITS, the EBA is proposing that PSPs report:

- the level of charges for regular credit transfers and instant credit transfers with breakdowns by type of transfer (domestic or cross-border), type of payment service users, type of payment initiation channels, and the party subject to the charge; and
- charges for payment accounts, as well as the share of instant transfers, both domestic and cross-border, that were rejected due to the application of EU-wide restrictive measures.

The EBA is seeking feedback on the proposed approach to standardising the reporting requirements, including the clarity of the draft templates and instructions to complete them. The EBA is also seeking feedback on whether the draft ITS strike the right balance between the need to obtain the data required for a robust analysis of the impact of the changes to the SEPA Regulation and the need to avoid excessive reporting burdens for the industry.

Comments are due by 31 October 2024.

MiCA: ESMA issues opinion on global crypto firms using non-EU execution venues

The European Securities and Markets Authority (ESMA) has issued an opinion to address the risks presented by global crypto firms seeking authorisation under the Markets in Cryptoassets (MiCA) Regulation for brokerage activities, while keeping a substantial part of their group activities outside the EU regulatory scope.

ESMA recognises risks associated with global crypto firms' complex structures where execution venues fall outside of the scope of MiCA. Such structures may include the involvement of an EU-authorised broker effectively routing orders to an intra-group execution venue based outside the EU. In light of these concerns, ESMA considers it necessary to provide some clarifications regarding the application of certain MiCA obligations, particularly in relation to multifunction cryptoasset intermediaries (MCIs) that might attempt to structure their business in a way to maintain access to EU clients while minimising the impact of the MiCA regulatory framework on their activities.

ESMA has encouraged NCAs to be vigilant during the authorisation process and to assess business structures of global firms to ensure that they do not bypass obligations established in MiCA. The opinion calls for a case-by-case assessment, outlining the specific requirements that should be met regarding best execution, conflicts of interest, the obligation to act honestly, fairly and professionally in the best interests of clients and the obligation relating to the custody and administration of cryptoassets on behalf of clients.

BoE publishes discussion paper on its approach to innovation in money and payments

The Bank of England (BoE) has published a discussion paper on its approach to innovation in money and payments.

The discussion paper sets out how rapid innovations in payments can have an impact on the BoE's monetary and financial stability objectives, bringing both

opportunities and risks. The paper goes on to set out the BoE's response to these innovations to date and how its response will evolve going forward.

The discussion paper sets out the BoE's plans in several areas, including:

- the financial stability risks of financial markets moving away from using central bank money. The BoE's approach is to preserve the role of central bank money as an anchor for confidence in the financial system;
- the BoE's technological innovations to the systems it operates, including enhanced functionality for the renewed Real Time Gross Settlement (RTGS) system, and a programme of experiments which would also cover wholesale central bank digital currency (CBDC); and
- its objectives in retail payments and the importance of ensuring households and businesses across the UK can make payments with ease, speed and confidence. The BoE intends to work closely with HM Treasury (HMT), the FCA and the Payment Systems Regulator (PSR) to achieve this.

Comments are due by 31 October 2024.

FCA expands dormant assets scheme for investment assets and client money

The Financial Conduct Authority (FCA) has published a policy statement (PS24/10) expanding the dormant assets scheme (DAS) to include dormant assets from investment assets and client money.

The Dormant Assets Scheme 2022 expanded the DAS to enable the inclusion of dormant assets in new sectors, in two phases. The first phase of the expansion facilitated the inclusion of dormant assets from the insurance, pensions and securities sectors and was implemented in August 2022.

PS24/10 outlines changes to the FCA Handbook which facilitate the second phase and summarises feedback received to the FCA's consultation on the expansion (CP23/12). The new rules primarily affect the Reclaim Fund Ltd (RFL), managers and depositaries of authorised collective investment schemes and firms holding client money.

The Dormant Assets (Collective Investment Schemes and Client Money) Instrument 2024 came into force on 2 August 2024.

PRA consults on policies for UK branches and subsidiaries of non-UK headquartered banks

The Prudential Regulation Authority (PRA) has launched a consultation proposing targeted updates to reflect developments since the publication of its supervisory statement on its approach to branch and subsidiary supervision of international banks (SS5/21), and to provide detail or clarification on certain aspects of the PRA's approach.

The proposed updates to the PRA's approach to international banks include:

- the introduction of additional indicative criteria that the PRA would consider when determining whether it would be appropriate for an international bank to operate in the UK as a branch rather than a subsidiary;
- clarifications to the expectations of firms' booking arrangements and extending their formal application to a subset of UK banks;

- amendments to the PRA branch return designed to improve the collection of whole-firm liquidity data; and
- minor amendments to SS5/21 to clarify some of the PRA's existing expectations and processes.

Changes resulting from the consultation would be implemented during Q2 2025, with changes to branch reporting being implemented on 31 December 2025.

Comments are due by 30 October 2024.

PRA publishes final policy on leverage ratio treatment of omnibus account reserves

The PRA has published a policy statement (PS14/24) providing feedback on responses to its consultation paper (CP28/23) on proposed rules to exclude reserves held on omnibus accounts for the leverage ratio.

The policy statement is relevant to Capital Requirements Regulation (CRR) firms and CRR consolidation entities and includes:

- amendments to the Glossary, Leverage Ratio (CRR), Disclosure (CRR) and Reporting (CRR) Parts of the PRA Rulebook;
- updates to supervisory statement (SS) 45/15;
- amendments to the instructions for leverage ratio disclosures; and
- amendments to the instructions for leverage ratio reporting.

The one respondent to the consultation found the PRA's proposals on applying the exclusion of central bank claims to omnibus account reserves to be sensible. The PRA has made minor changes to the proposals for consistency and clarification.

The policy took effect on 5 August 2024.

Digital assets: Law Commission publishes supplemental report and draft Bill on treating digital assets as a third type of property

The Law Commission has published a supplemental report and draft Bill that, if implemented, would confirm the existence of a third category of personal property into which certain digital and other assets could fall.

The Commission consulted on the draft Bill in February 2024 and the supplemental report summarises the views expressed by consultees. The wording of the draft Bill has been amended in response to points raised by consultees.

The recommendation and draft legislation on treating digital assets as a third type of property are now being considered by the Government, along with the other recommendations made in the Law Commission's June 2023 report on digital assets.

Bank of Italy consults on new AML rules

The Bank of Italy has launched a consultation on a proposed set of amendments to its regulation on the organisation, procedures and internal controls aimed at preventing the use of intermediaries for the purposes of

money laundering and terrorist financing of 26 March 2019, as well as to its manual for periodic AML reporting.

These amendments are intended to provide for a revised set of periodic anti-money laundering reports to the Bank of Italy. The newly introduced manual will also allow operators to complete the required reports.

The consultation will be open within 45 days from the date of publication of the consultation document.

CONSOB proposes amendments to Issuers' Regulation

The Commissione Nazionale per le Società e la Borsa (Consob) has launched a consultation on proposals to amend Resolution No. 11971/1999 (as amended) on issuers in relation to prospectuses governing non-equity instruments.

The new set of provisions is intended to implement Article 95 of the Italian Consolidated Law on Financial Intermediation (Legislative Decree No. 58/1998, as amended), and, amongst other things, seeks to expedite the authorisation process relating to these instruments.

Comments are due by 24 September 2024.

Luxembourg bill implementing amendments to BRRD, SRMR and CRR published

Bill No. 8427 has been lodged with the Luxembourg Parliament.

The purpose of the Bill is threefold:

- first, it is intended to implement Directive (EU) 2024/1174 amending Directive 2014/59/EU (BRRD) and Regulation (EU) No 806/2014 (SRMR) as regards certain aspects of the minimum requirement for own funds and eligible liabilities into Luxembourg law. These amendments adapt the current EU framework for bank resolution, implemented by the Luxembourg law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended (the Resolution Law);
- second, the Bill is intended to implement Regulation (EU) 2024/1623 amending Regulation (EU) No 575/2013 as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor (CRR3). CRR3 implements the reform of the Basel III standards adopted by the Basel Committee on Banking Supervision in 2017 into EU law; and
- third, the Bill proposes targeted adjustments to certain sectoral laws including the Luxembourg law of 5 April 1993 on the financial sector, as amended, the Resolution Law and the Luxembourg law of 8 December 2021 on the issuance of covered bonds. The objective is to perfect the implementation of Directive (EU) 2019/878 and Directive (EU) 2019/2162 into Luxembourg law. Targeted amendments are also being made to the aforementioned laws with a view to clarifying the existing regulatory framework, in particular as regards the extension of maturity of covered bonds, the shareholding structure in case of licensing of professionals of the financial sector, the provisions on the governance of the motor vehicle insurance insolvency fund (fonds d'insolvabilité en assurance automobile) and the Luxembourg intergenerational sovereign fund (fonds souverain intergénérationnel).

The lodging of the Bill with the Luxembourg Parliament constitutes the start of the legislative procedure.

Luxembourg bill introducing new role of control agent facilitating use of distributed ledger technology for securities issuances published

A new bill (No. 8425/00) amending, among others, the law of 6 April 2013 on dematerialised securities has been lodged with the Luxembourg Parliament.

The bill proposes the introduction of the new role of control agent and to expand the scope of dematerialised securities which may be issued using secured electronic recording mechanisms (mécanismes d'enregistrement électroniques sécurisés), including distributed ledgers or databases (DLT).

The new control agent role, which is an alternative to the existing CAK and settlement organisation roles for the issuance of unlisted debt securities, is open, among others, to EU credit institutions and investment firms. The control agent holds the securities issuance account by means of DLT and provides a reconciliation function in respect of the dematerialised securities by monitoring the custody chain of the dematerialised securities held in securities accounts maintained within or by virtue of a DLT system and reconciling the issued securities. One of the innovations is that the control agent will not be required to also hold the first level securities accounts (as is the case for the central account keeper and the settlement organisation under the existing legal framework).

The bill broadens the scope of the 2013 law in order to promote financial sector innovation, and is a continuation of the law of 1 March 2019 modifying the law of 1 August 2001 on the circulation of securities, which already explicitly recognised the possibility of holding and registering securities in securities accounts (comptes-titres) within or by virtue of a DLT system, and the law of 22 January 2021 modifying the 2013 law to explicitly introduce the possibility of using a DLT system for the issuance of dematerialised securities.

The publication of the bill constitutes the start of the legislative procedure.

New government decree establishing inter-ministerial AML/CTF steering committee published

The government decree of 8 May 2024 establishing an inter-ministerial steering committee for the fight against money laundering and terrorism financing (AML/CTF) has been published in the Luxembourg official journal (Mémorial A).

The decree establishes the steering committee under the authority of the Minister responsible for AML/CTF.

The tasks of the steering committee are to:

- propose to the Government broad guidelines and strategic priorities on the national AML/CTF policy;
- propose measures to the Government to mitigate the risks of money laundering and terrorism financing and related data protection issues; and
- report to the Government on the progress made in implementing the national AML/CTF strategy.

The decree entered into force on 4 August 2024.

FINMA publishes guidance on stablecoins

The Swiss Financial Market Supervisory Authority (INMA) has published guidance on the issuance of stablecoins. The guidance provides information on aspects of financial market law that arise in relation to stablecoin projects and the impact of such projects on supervised institutions. In particular, FINMA draws attention to increased risks in the areas of money laundering, terrorist financing and the circumvention of sanctions, as well as resulting reputational risks for the Swiss financial centre as a whole.

FINMA notes that various issuers of stablecoins in Switzerland use default guarantees from banks, which means that they often do not require a licence from FINMA under banking law, and that this creates risks for both the stablecoin holders and the banks providing the guarantee. The guidance also provides information on FINMA's minimum requirements for default guarantees in order to protect depositors. These also apply when dealing with stablecoins.

China amends FX regulations to streamline investments by QFIs

The People's Bank of China (PBoC) and the State Administration of Foreign Exchange (SAFE) have amended the 'Provisions on Cash Management for Domestic Securities and Futures Investment by Foreign Institutional Investors'. In order to facilitate investments by qualified foreign institutional investors and Renminbi qualified foreign institutional investors (collectively referred to as QFIs) from a currency control perspective, the updated provisions include the following amendments compared to the previous provisions released in 2020:

- simplifying the SAFE registration process – QFIs only need to submit two simple documents (i.e. a copy of their QFI licence and an undertaking letter to comply with relevant PRC tax laws) to their main custodian for business registration with SAFE, and the main custodian will process the registration on the SAFE online system;
- combining QFI accounts – the requirement to open separate RMB special deposit accounts for securities trades and derivatives trades respectively has been removed, and QFIs can open one RMB special deposit account for both types of investments;
- loosening restrictions on profit repatriation – for QFIs who inject capital denominated in foreign currencies into China, they can now repatriate the investment principal and profits in either RMB or foreign currencies; and
- facilitating QFI's FX risk management – in addition to transacting with its custodian(s) and other PRC financial institutions (licensed for FX derivatives business), a QFI is now permitted to apply for membership of the China Foreign Exchange Trade System and access the China Interbank FX Market (either directly or via a prime broker) to (a) carry out FX settlement and sales on a spot basis and (b) trade FX derivatives.

The updated provisions will take effect on 26 August 2024.

National Development and Reform Commission finalises circular on fast track review for medium and long-term foreign debt raised by high quality PRC enterprises

The National Development and Reform Commission (NDRC) has released the 'Circular on Supporting High Quality Enterprises to Borrow Medium and Long-Term Foreign Debts to Promote the High Quality Development of the Real Economy', which took effect on 29 July 2024.

The circular provides for a simpler and faster application process for 'high quality' enterprises under the current regulatory regime for medium and long-term foreign debt (although other procedures and conditions that are not 'simplified' will continue to apply).

Compared with the consultation draft issued in March 2024 (for more details, see our April 2024 briefing), the circular further clarifies the conditions to qualify as 'high quality' enterprises and the streamlined application process, amongst which the following aspects are worth noting:

- quantifiable financial indicators – one of the conditions specified by the consultation draft for 'high quality' enterprise was to hold a leading position in the industry or geographical region in which the PRC enterprise operates, benchmarked by its core financial and operational data. The circular further refines this condition by providing a quantifiable indicator, namely that the enterprise shall rank among the top five measured by revenue in the past year and have an above-average asset-liability ratio in its industry;
- refined standard regarding blacklist – one of the conditions specified by the consultation draft was not to be included in any regulatory blacklist relating to dishonest conduct. The circular clarifies that the blacklist should be the list of entities with material dishonest conduct; and
- annual aggregated quota plan – the plan which 'high-quality' enterprises are permitted to submit (a quota under which could be used by the applicant's subsidiaries) should be an annual plan.

The circular is effective for five years, from 29 July 2024 to 29 July 2029.

MAS issues circular clarifying policy intent in respect of persons deemed to be 'supervisors'

The Monetary Authority of Singapore (MAS) has issued a circular providing clarification of its policy intent in respect of persons deemed to be 'supervisors'.

The MAS notes that it has received enquiries regarding the definition of 'supervisor' set out in section 2 of the Financial Advisers Act 2001, following its findings that a few financial advisers (FAs) had failed to comply with the applicable regulatory requirements. In particular, some FAs did not consider certain persons as 'supervisors' even though they were responsible for overseeing the conduct and performance of representatives or another supervisor. Consequently, these persons had not been subject to the requirements under the Balanced Scorecard (BSC) and spreading and capping of commissions frameworks by their FA firms. To address this, the circular sets out the following:

- the definition of 'supervisor' and the MAS' policy intent with regard to the remuneration-related requirements under the BSC framework;
- factors to consider when determining whether a person is a 'supervisor' and non-exhaustive examples of acts of supervision; and
- clarification on the remuneration-related requirements under the BSC framework.

The circular requires FAs and their boards and senior management to institute proper controls and processes to comply with the requirements relating to supervisors and remuneration. The MAS has indicated that it may conduct thematic reviews and engage FAs on a supervisory basis, which may include requesting documentation of compliance with the requirements.

MAS issues circular on establishing sources of wealth of customers

The MAS has issued a circular providing guidance to financial institutions (FIs) in the wealth management sector on the establishment of the sources of wealth (SOW) of their customers before business relations with customers can be established.

Amongst other things, the circular requires FIs to:

- take appropriate and reasonable means to establish the SOW of their customers and independently corroborate information obtained from the customers against documentary evidence or public information sources; and
- ensure that their policies and procedures to establish the SOW of customers are risk-proportionate and reasonable, taking into account the unique circumstances and profile of each customer. They should not apply a one-size-fits-all approach for all customers.

The circular also sets out guidance with regard to the risk principles that FIs should consider in the design of their policies and procedures to establish the SOW of their customers in a risk-proportionate and reasonable manner.

Further, the circular reminds FIs that establishing the SOW of customers is part of a wider set of anti-money laundering/countering the financing of terrorism (AML/CFT) controls to ensure the legitimacy of their customers' wealth and transactions. It therefore requires senior management to exercise close oversight over higher risk accounts and ensure that ongoing monitoring controls take into account the customer's risk profile.

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

MAS publishes revised guidelines on licensing for payment service providers

The MAS has revised its guidelines on licensing for payment service providers, which set out the eligibility criteria, ongoing requirements and application procedures for payment service providers under the Payment Services Act 2019 (PS Act).

Amongst other things, the guidelines have been revised to:

- expand the scope of 'cross-border money transfer service' and 'digital payment token service' in 'Table 1 – Payment Services under the PS Act' in line with the expanded scope of regulated payment services under the PS Act;
- clarify the fit and proper criteria by providing that the onus is on the applicant to ensure that its sole-proprietor, partners, or directors and CEO, shareholders and employees, as well as the applicant itself, are fit and proper to the satisfaction of the MAS, rather than for the MAS to show otherwise;
- clarify the base capital requirement by providing that the base capital of the entity should generally cover at least 6 to 12 months of the standard payment institution or major payment institution applicant's operating expenses. The applicant should also have an effective monitoring process in place to ensure that it is able to meet the base capital requirement at all times e.g. putting in place regular reporting or a specified capital buffer above the minimum requirement;
- introduce a new section on licence application requirements, which, amongst other things, provides that: (a) new applicants or existing licensees are to submit a legal opinion (issued by a Singapore law firm) together with the application for a licence or to vary their licence; and (b) new applicants intending to provide, or existing licensees intending to vary their licence to add, digital payment token (DPT) services, are to appoint an external auditor to perform an independent assessment of their policies, procedures and controls and submit such report together with the application for a licence or to vary their licence;
- provide that licensees providing DPT services must comply with the Notice on Technology Risk Management [FSM-N13] with effect from 6 November 2024, and all other licensees should refer to the Guidelines on Risk Management Practices – Technology Risk for guidance on technology risk management requirements;
- modify minimum compliance arrangements under Appendix 2 by providing that: (a) entities conducting DPT services are expected to have in place an in-house local compliance officer; (b) an applicant should put in place a proper governance structure to oversee compliance and anti-money laundering/countering the financing of terrorism issues; and (c) the senior management and compliance officer of the applicant are expected to be able to demonstrate their sufficient understanding of the compliance and AML/CTF risks which the applicant faces in relation to its business activities and the measures which they have put in place to effectively manage the risks;
- add consumer protection requirements under Appendix 3 (Guidance on Information required for Licence Applications) by providing that applicants intending to provide DPT services should provide information on their policies and procedures setting out how the applicant would comply with consumer protection requirements prescribed by the Payment Services (Amendment) Regulations 2024;
- add shareholding chart requirements under Appendix 3 by requiring that an applicant should provide the complete shareholding chart (up to the

ultimate controller(s)) who are natural person(s) – if the applicant does not have any 20% controller, the applicant will have to provide a written confirmation; and

- introduce a new Appendix 5 that explains the rules of engagement for the application review process, and a new Appendix 6 that provides guidance regarding the external auditor independent assessment.

MAS responds to consultation on proposals to refine tier structure requirements and introduce new requirements relating to remuneration

The MAS has published its responses to the feedback it received on its July 2021 public consultation on proposals to refine the tier structure requirements under the Financial Advisers Act (FAA) and introduce new requirements relating to remuneration.

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

- regarding tier structure requirements, the MAS has clarified that: the tier structure will be limited to three tiers, financial advisory (FA) firms can only pay overriding benefits to a maximum of two supervisors for each First Tier representative, and supervisors can only accept overriding benefits from the FA firm in which they are a supervisor;
- breakaway payments will be excluded from the tier structure requirements subject to certain conditions;
- business allowances computed based on the sales of the representatives will be excluded from the tier structure requirements subject to certain conditions;
- business allowances which are administered on a reimbursement basis would not fall within the definition of 'overriding benefits' as they are reimbursed based on expenses incurred, and hence not subject to the tier structure requirements;
- vested commissions paid to former representatives will be excluded from the tier structure requirements subject to certain conditions;
- overriding benefits arising from joint sales will be excluded from the tier structure requirements subject to certain conditions;
- introducer fees are not captured within the scope of overriding benefits as introducers are not part of the tier structure;
- the MAS will consolidate the tier structure requirements under the FAA and extend the requirements to all financial advisers for consistency across the FA industry – the MAS is of the view that there should be no impact on financial advisers such as banks, capital markets services licensees and insurance brokers to the extent that they do not operate tier structures and pay overriding benefits;
- the MAS will not apply the tier structure requirements to exempt FA firms who serve only accredited, institutional and/or expert investors and will make the relevant legislative changes to reflect this position;
- on whether persons who have managerial responsibility or perform oversight functions at an FA firm are considered as supervisors based on the current definition of 'supervisor' in the FAA, the MAS has issued a

circular (Circular No. FAS 08/2024) to clarify who might be considered persons deemed as 'supervisors' under the FAA;

- the tier structure requirements will not be applied to individuals who are not representatives and who are remunerated under the same remuneration framework as other corporate staff (e.g. staff in finance function) in FA firms; and
- the MAS will prohibit representatives and supervisors from accepting remuneration from any persons other than their principal FA firms. Representatives will also be prohibited from receiving volume-based incentives for the sale of any investment products directly from product manufacturers who are not their principal FA firms. The MAS has indicated that it does not see the need to legislate the prohibition with respect to other product manufacturers at this time.

Regarding implementation timeline, the MAS has indicated that it does not intend to grandfather existing remuneration contracts or arrangements which may not be in line with the proposed tier structure requirements. Instead, it will provide a transitional period for changes to be made to comply with the proposed tier structure requirements. Moreover, the MAS will seek feedback on the length of the transitional period in the subsequent consultation on legislative amendments. In the interim period before the legislative amendments come into effect, the MAS encourages FA firms to implement the tier structure requirements and adjust their remuneration frameworks and practices to be consistent with the requirements.

MAS consults on proposed amendments to leverage requirements for REITs

The MAS has launched a consultation on its proposal to simplify the leverage requirements for the real estate investment trusts (REITs) sector by subjecting all REITs to a minimum interest coverage ratio (ICR) threshold of 1.5 times and an aggregate leverage limit of 50%.

Currently, the ICR requirement of 2.5 times is to be met only by REITs which intend to increase their aggregate leverage from 45% to 50%. Under the proposal, the ICR requirement of 1.5 times and the single aggregate leverage limit of 50% would apply to all REITs.

Further, the MAS also proposes requiring REITs to perform and disclose sensitivity analyses on the impact of changes in earnings before interest, tax, depreciation and amortisation (EBITDA) and interest rates on REITs' ICRs in their interim financial results and annual reports, which should include at least one scenario assuming a 10% decrease in EBITDA and a 100 basis points increase in interest rates.

Comments on the consultation are due by 23 August 2024.

RECENT CLIFFORD CHANCE BRIEFINGS

The Privy Council has rejected the English approach toward insolvency petitions where there is an arbitration agreement

The Privy Council in *Sian Participation Corp (In Liquidation) v Halimeda International Ltd* [2024] UKPC 16 has held that the proper test when the court

is deciding whether to make an order for the liquidation of a company is whether the debt on which the application is based is genuinely disputed on substantial grounds. In so deciding, the Court held that the English case of *Salford Estates*, on which the English position is premised, was wrongly decided, and that the courts of the British Virgin Islands and England should therefore not follow it.

This briefing paper examines the repercussions of the decision and comparing the position in other major common law jurisdictions.

https://www.cliffordchance.com/briefings/2024/07/privy-council-rejects-the-english-position-regarding-the-test-fo.html

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C H A N C E

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