INTERNATIONAL REGULATORY UPDATE 5 – 9 AUGUST 2024

- **CRD4: EBA publishes final draft ITS on data collection for 2025 benchmarking exercise**
- **FCA consults on requirements for submissions to National Storage Mechanism**
- **FCA consults on value for money framework for pension schemes**
- **FCA sets out good practices in cryptoasset financial promotion**
- **CSSF publishes communiqué on new COREP/FINREP procedures**
- **CSSF publishes circular on replacement of secure exchange channel for notification and enforcement of court orders**
- **HKMA publishes consultation conclusions on review of three-tier banking system**
- **HKMA publishes report on review of virtual banks and proposes renaming of virtual banks as digital banks**
- **Phase 2B of Financial Services and Markets Act 2022 comes into effect**
- **MAS consults on proposed measures in relation to provision of cross-border money transfer services to People's Republic of China**
- **MAS sets up review group to strengthen equities market development**
- **Subsidiary legislation and revisions to FAQs, guidelines, compliance toolkit and form consequential to repeal of regulatory regime for RFMCs published**
- **Recent Clifford Chance briefing: US bankruptcy court issues ruling relating to Cape Town Convention. Follow this link to the briefings section.**

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CRD4: EBA publishes final draft ITS on data collection for 2025 benchmarking exercise

The European Banking Authority (EBA) has published a report setting out its final draft implementing technical standards (ITS) amending Commission Implementing Regulation (EU) 2016/2070 with regard to benchmarking of internal models under Article 78(8) of the Capital Requirements Directive (CRD4).

The draft ITS include all benchmarking portfolios and metrics for use in the 2025 benchmarking exercise, which covers approved internal approaches used for own funds requirements calculation of credit and market risk, as well

as internal models used for the International Financial Reporting Standard for Financial Instruments (IFRS9).

Key changes to the draft ITS from the versions consulted on include:

- removing the Fundamental Review of the Trading Book (FRTB)-alternative internal model approach (AIMA) templates, due to the EU Commission's announcement that it intends to delay the implementation of the FRTB by one year;
- reverting to the previous scope of the portfolio submission as the need to reduce the data collection (i.e. due to the new AIMA data collection requirements) is no longer relevant;
- postponing the timeline to allow banks that were not supposed to take part in the FRTB AIMA benchmarking exercise to prepare for the internal model approach exercise; and
- clarifying various aspects in response to feedback, including the mandatory nature of reporting the probability of default and loss given default risk parameters in relation to the margin of conservatism, regulatory add-ons, and downturn components, and, on the other hand, the use of internal model identities used by the competent authorities.

The draft ITS will be submitted to the EU Commission for endorsement and would apply twenty days after publication in the Official Journal.

FCA consults on requirements for submissions to National Storage Mechanism

The Financial Conduct Authority (FCA) has launched a consultation (CP24/17) on proposals to change the requirements for submitting regulated information to the National Storage Mechanism (NSM).

The NSM is a free-to-use online archive of company information. The FCA proposes to change the NSM's data requirements for information disclosed by regulated market issuers in accordance with the Disclosure Guidance and Transparency Rules (DTRs), Listing Rules, and parts of the Market Abuse Regulation (MAR). The FCA also proposes a requirement for primary information providers to use a standard method for submitting information to the NSM.

The FCA plans to publish the final rules by the end of 2024, with the data transmission requirements for primary information providers and the metadata requirements for issuers coming into force in the second half of 2025.

FCA consults on value for money framework for pension schemes

The FCA has launched a consultation (CP24/16) on proposed rules and guidance for a new value for money framework for savers invested in default arrangements of workplace defined contribution pension schemes.

The proposed framework introduces four elements, including:

- requiring the consistent measurement and public disclosure of investment performance, costs and service quality by firms for all such arrangements against metrics the FCA believes will allow value for money to be assessed effectively;

- enabling those overseeing and challenging an arrangement's value to assess performance against other arrangements and requiring them to do so on a consistent and objective basis;
- requiring public disclosure of assessment outcomes including a 'red, amber, green' value for money rating for each arrangement; and
- requiring firms to take specified actions where an arrangement has been assessed as not value for money (red or amber).

Under the measurement and disclosure element of the framework, the FCA has proposed that firms be required to produce a machine readable 'flat file' that contains the raw data they will be publishing arranged and presented to a specific template.

While CP24/16 relates to rules for FCA-regulated firms operating contract-based pensions, they are designed to be suitable for application across the defined contribution workplace pensions market. The Government recently announced its intention to legislate so that the framework can also apply to schemes regulated by the Pensions Regulator.

Comments are due by 17 October 2024.

The FCA intends to publish a final policy statement including Handbook rules and guidance setting out the value for money framework to be implemented in due course.

FCA sets out good practices in cryptoasset financial promotion

The FCA has published a document setting out good and poor practices in cryptoasset financial promotion.

The FCA has reviewed crypto firms' compliance with the financial promotion rules introduced in October 2023, examining how firms are implementing, among other things, personalised risk warnings, the 24-hour cooling off period, client categorisation and appropriateness assessments. The FCA has set out examples of good and poor practices, which are aimed at helping firms meet their obligations and support consumers in making informed decisions.

The FCA has advised firms against relying on industry comparisons to benchmark acceptable practice and instead encourages all firms to read the good and poor practices document, as well as its June 2023 guidance on cryptoasset financial promotions.

CSSF publishes communiqué on new COREP/FINREP procedures

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a communiqué to inform the public that, as part of the new transmission method for monthly COREP/FINREP reports (AML, LCRDA) which will be applicable to Luxembourg reporting institutions from 1 September 2024, the CSSF has made the new 'Bank Prudential Reporting' eDesk procedure available from 6 August 2024, including the new 'Bank Prudential Reporting Responsible' role. This role allows for the management of the list of users who will receive various notifications, including reminders.

The CSSF advises institutions to assign this new role as well as to identify/inform the persons to be notified by 1 September 2024 at the latest. From this date, the AML (Reporting on additional monitoring metrics for liquidity) and LCRDA (Liquidity Coverage requirements) reports will have to be submitted solely via eDesk/S3.

For more information about this role and details on the use of the eDesk tool related to the role, the CSSF invites supervised entities to refer to the dedicated user guide.

In case of any further questions, supervised entities should contact edes@cssf.lu.

CSSF publishes circular on replacement of secure exchange channel for notification and enforcement of court orders

The CSSF has published its Circular 24/859 on the replacement of the secure exchange channel for the notification and enforcement of court orders and repeal of Circular CSSF 13/566.

The purpose of the circular is to inform credit institutions under CSSF supervision that the secure electronic exchange channel 'e-file' for court orders, as per Circular 13/566, will be replaced by the 'MyGuichet' system. This change affects judicial orders from the District Courts of Luxembourg and Diekirch under Articles 66-2 to 66-5 of the Code of Criminal Procedure Code de procédure pénale (CPP) and the Law of 1 August 2018, which transposes Directive 2014/41/EU on the European Investigation Order in criminal matters.

As part of the judicial administration's digitisation and data security programme, the new project will expand the scope of prescriptions processed through the JUPER application to include orders under Article 66-4 of the CPP, initially for international mutual assistance cases.

The technical sheet attached in the circular's appendix outlines the steps for enrolling in the new secure 'MyGuichet' information transmission system, operational from 6 October 2024.

The circular notes that under Article 66-2(1) of the CPP, the investigating judge may, exceptionally, if the criminal prosecution concerns an act punishable by a criminal penalty or a correctional penalty with a maximum of two years' imprisonment or more, order the designated credit institutions to inform him/her if the person under investigation holds, controls, or has power of attorney over one or more accounts of any kind, or has held, controlled, or had power of attorney over such an account.

Reference is also made to Articles 66-3 to 66-5 of the CPP which govern the request for monitoring of banking transactions, the request for information on the execution of banking transactions, and the procedural questions relating to the various requests.

In accordance with these provisions, and more particularly paragraph 2 of Article 66-5 of the CPP, it is necessary to comply with the procedure as described in the technical sheet in the appendix, to ensure the proper execution of the orders.

In the event of an internal change in the credit institution that may impact the transmission of the required information, the CSSF asks the public to immediately inform the competent authorities and update the concerned data.

The circular also indicates contact person details of the International Mutual Legal Assistance Section of the Judicial Police and the Luxembourg investigation office in case of questions.

The circular repeals CSSF Circular 13/566 of 6 June 2013 and applies with immediate effect.

HKMA publishes consultation conclusions on review of three-tier banking system

The Hong Kong Monetary Authority (HKMA) has published the conclusions to the June 2023 consultation on its proposal to simplify the current three-tier banking system.

In its three-month consultation, the HKMA proposed to merge deposit-taking companies (DTCs) into the second-tier institutions, i.e. restricted licence banks (RLBs), with a transition period of five years, with the current requirements on RLBs in respect of minimum capital (i.e. HKD 100 million) and minimum deposit size (i.e. HKD 500,000) applied.

Having considered the feedback, the HKMA has introduced new parameters to the proposal with a view to streamlining the transition and minimising the impact on existing customers of DTCs as follows:

- the HKMA intends to adopt an arrangement whereby existing DTCs will be converted to be an RLB, without the need to submit fresh licence applications, upon demonstrating to the satisfaction of the HKMA that they have met the minimum capital requirement of an RLB before the end of the 5-year transition period; and
- converted RLBs may continue to hold and renew or roll over outstanding deposits taken before the upgrade, up to the end of the 5-year transition period, subject to the pre-existing deposit size and maturity requirements of DTCs of HKD 100,000 and 3 months respectively.

The HKMA has indicated that it will provide guidance to DTCs in their transition to the new framework, and work with the relevant parties to prepare the proposed legislative amendments to implement the proposal.

HKMA publishes report on review of virtual banks and proposes renaming of virtual banks as digital banks

The HKMA has published a report setting out the results of its review of virtual banks (VBs). The review was intended to:

- assess how well the three policy objectives of introducing VBs to Hong Kong have been delivered so far;
- review the level of market acceptance, business and financial performance, and user response to VBs since their inception;
- discuss the challenges facing VBs and the HKMA's policy initiatives to support their development; and
- recommend the next steps for further development of the VB industry.

Amongst other things, the HKMA found that:

- the development of VBs in Hong Kong has so far achieved the three policy objectives of introducing virtual banking;

- virtual banking is gaining wide market acceptance in Hong Kong, with a total number of 2.2 million depositors as at the end of 2023; and
- in terms of business and financial performance, VBs faced challenges in launching their business at the beginning mainly due to the outbreak of the COVID-19 pandemic and none of them had achieved profitability as at the end of 2023. Nevertheless, they recorded moderate business growth over the past three years, and their operating performance continued to improve, with aggregate operating income increasing seven-fold and net losses narrowing by 15% from FY2021 to FY2023.

In the meantime, the HKMA has launched a public consultation on a proposal to rename 'virtual banks' as 'digital banks'. The HKMA believes that the proposed new name better reflects the banking model of VBs in present day circumstances. Subject to the result of the consultation, the HKMA intends to make amendments to the Guideline on Authorisation of Virtual Banks, which was issued in 2000, to effect the proposed change.

Comments on the consultation are due by 5 September 2024.

Phase 2B of Financial Services and Markets Act 2022 comes into effect

Phase 2B of the Financial Services and Markets Act 2022 (FSMA), a piece of omnibus legislation intended to enhance the MAS's agility and effectiveness in addressing financial sector-wide risks, has come into effect from 31 July 2024.

In particular, the Financial Services and Markets Act 2022 (Commencement) (No. 2) Notification 2024 announces 31 July 2024 as the effective date for Part 3 and sections 193(6) and (8), 196(2), 199(3), 200(1)(b), (2), (3), (4), (5), (6) and (7), 201(2), 204(1) to (4), 207(1) and (3), 209(1)(a), (c) and (d), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (17) and (18), 212(1)(b) and (2), 217, 218 and 220(2) to (5) of the FSMA.

The FSMA was passed by the Singapore Parliament on 5 April 2022, with its first phase commencing on 28 April 2023. Phase 1 migrated the following provisions from the MAS Act 1970:

- general powers over financial institutions, including inspection powers, offences, and other miscellaneous provisions (Parts 2, 10, 11 and 12 (except its Section 183) of the FSMA);
- provisions on Anti-Money Laundering/Countering the Financing of Terrorism (Part 4 of the FSMA); and
- provisions on Financial Dispute Resolution Schemes (Part 6 of the FSMA).

Phase 2A of the FSMA came into effect on 10 May 2024 and introduced:

- new provisions on technology and risk management (Part 5 of the FSMA); and
- provisions relating to the control and resolution of financial institutions (Parts 7 and 8 of the FSMA) and certain miscellaneous provisions (section 183(a) and (d) within Part 12 of the FSMA), which are migrated from the MAS Act.

Phase 2B introduces and implements the MAS' harmonised and expanded power to issue prohibition orders (POs) under Part 3 of the FSMA. Part 3 of the FSMA provides the MAS with broader powers to issue a PO if the MAS is

satisfied that a person is not a fit and proper person to carry out any one or more of the roles, activities and functions in the financial industry as mentioned in section 7(2) of the FSMA. The PO power should be exercised in a risk-proportionate manner that considers the nature and severity of the misconduct, and its potential and actual impact on the financial sector. It will also continue to be subject to existing checks and balances, including the following:

- persons are informed of the MAS' intention to issue POs against them and are given the opportunity to make representations to the MAS before the POs may be issued; and
- persons have the right to appeal to the Minister against the MAS' decision to issue POs against them.

In connection with the commencement of Phase 2B of the FSMA, the Singapore Government has gazetted the following:

- Financial Services and Markets (Appeals under Part 3) Regulations 2024;
- Financial Services and Markets (Opportunity to be Heard) Regulations 2024;
- Financial Advisers (Amendment) Regulations 2024; and
- Securities and Futures (Licensing and Conduct of Business) (Amendment No. 2) Regulations 2024.

The Financial Services and Markets (Appeals under Part 3) Regulations 2024, the Financial Services and Markets (Opportunity to be Heard) Regulations 2024, and the Financial Advisers (Amendment) Regulations 2024 are effective from 31 July 2024.

The Securities and Futures (Licensing and Conduct of Business) (Amendment No. 2) Regulations 2024 and, except for regulation 3, are effective from 31 July 2024. Regulation 3 is deemed to have come into operation on 31 December 2021.

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

MAS consults on proposed measures in relation to provision of cross-border money transfer services to People's Republic of China

The Monetary Authority of Singapore (MAS) has launched a consultation on proposed measures in relation to the provision of cross-border money transfer services to the People's Republic of China (PRC).

The MAS issued the Notice on Temporary Restrictions in Relation to the Provision of Cross-Border Money Transfer Services to the PRC (Notice PSN11) on 18 December 2023, requiring licensed payment service providers providing cross-border money transfer services (remittance companies) to suspend the use of channels that are not specifically permitted (non-specified channels) when transmitting money to persons in the PRC. The suspension was initially for a three-month period from 1 January 2024 to 31 March 2024. The suspension was later extended to 30 September 2024.

The MAS has reviewed the suspension and proposes to continue to suspend the use of non-specified channels set out in the Notice PSN11 until further

notice, with a view to minimising risks to consumers remitting monies to the PRC through non-specified channels until there is greater clarity on the situation. It also proposes to expand the scope to all customers of the remittance companies, including corporates and legal persons.

Comments on the consultation are due by 6 September 2024.

MAS sets up review group to strengthen equities market development

The MAS has announced that a review group has been set up to recommend measures to strengthen equities market development in Singapore.

The Singapore Government has introduced various initiatives to support enterprise financing and enhance Singapore's equities markets. These include the set-up of cornerstone funds to support initial public offerings of high-growth companies, the introduction of corporate structures and share classes to facilitate such listings, and measures to improve research coverage. The review group is intended to build on these efforts to position Singapore's equities market for growth.

The review group will assess the current state of the equities market and examine measures to address identified challenges. In particular, it will look into the following areas:

- proposing measures to promote SGX-listed companies' development by supporting and encouraging them to build capabilities and expand internationally;
- reviewing the key elements of Singapore's regulatory approach to support an enabling ecosystem, including the listing regime;
- recommending measures to attract primary and secondary listings to Singapore;
- recommending targeted measures to facilitate products offerings and improve liquidity in Singapore's equity market to broaden the pool of potential initial public offerings; and
- proposing outreach and communication strategies to support enhancing the attractiveness of Singapore's equity market, promoting it to issuers and investors.

The review group will be supported by two workstreams:

- the Enterprise and Markets workstream, which will aim to address market challenges, foster listings, and facilitate market revitalisation; and
- the Regulatory workstream, which will focus on enhancing the regulatory regime to facilitate market growth and foster investor confidence.

The terms of reference and composition of the review group are set out in Annex A to the press release. The MAS has indicated that the review group will recommend a set of measures to strengthen the Singapore equities market and complete its report within 12 months.

Subsidiary legislation and revisions to FAQs, guidelines, compliance toolkit and form consequential to repeal of regulatory regime for RFMCs published

The MAS has revised the following frequently asked questions (FAQs), guidelines, compliance toolkit and form in consequence to the repeal of the regulatory regime for registered fund management companies (RFMCs) from 1 August 2024:

- FAQs on Licensing of Fund Management Companies;
- Guidelines on Licensing and Conduct of Business for Fund Management Companies [SFA 04-G05];
- Guidelines on Liquidity Risk Management Practices for Fund Management Companies [SFA 04-G08];
- Compliance Toolkit for Approvals, Notifications and Other Regulatory Submissions to MAS for Fund Managers; and
- Form 23A - Notice of Change of Particulars for a Venture Capital Fund Manager.

The MAS has repealed the regulatory regime for RFMCs as part of continual enhancements to the regulatory regime for fund management companies in Singapore. Under the RFMC regime, RFMCs are restricted to carrying out fund management for not more than 30 accredited or institutional investor, and managing not more than SGD 250 million of assets.

The MAS issued a set of FAQs on the repeal of the regulatory regime for RFMCs on 25 April 2024. These FAQs followed the MAS's October 2023 public consultation and its subsequent responses to the feedback it had received, which were published in March 2024. Amongst other things, they provide that RFMC reporting requirements will still apply, and any changes while the entity is still an RFMC will need to be notified by submitting Form 23A even if the submission is done after the repeal date.

The following subsidiary legislation has also been revised mainly in consequence to the repeal of the regulatory regime for RFMCs:

- Securities and Futures (Licensing and Conduct of Business) (Amendment No. 3) Regulations 2024;
- Securities and Futures (Offers of Investments) (Collective Investment Schemes) (Amendment) Regulations 2024;
- Insolvency, Restructuring and Dissolution (Prescribed Companies and Entities) (Amendment) Order 2024;
- Financial Advisers (Amendment No. 2) Regulations 2024;
- Moneylenders (Prevention of Money Laundering, Terrorism Financing and Proliferation Financing) (Amendment No. 2) Rules 2024; and
- Legal Profession (Prevention of Money Laundering and Financing of Terrorism) (Amendment No. 2) Rules 2024.

The Securities and Futures (Licensing and Conduct of Business) (Amendment No. 3) Regulations 2024, the Insolvency, Restructuring and Dissolution (Prescribed Companies and Entities) (Amendment) Order 2024, the Financial Advisers (Amendment No. 2) Regulations 2024, and the Moneylenders

(Prevention of Money Laundering, Terrorism Financing and Proliferation Financing) (Amendment No. 2) Rules 2024 are effective from 1 August 2024.

The Securities and Futures (Offers of Investments) (Collective Investment Schemes) (Amendment) Regulations 2024, except for regulation 3, are effective from 1 August 2024. Regulation 3 is deemed to have come into operation on 31 December 2021.

The Legal Profession (Prevention of Money Laundering and Financing of Terrorism) (Amendment No. 2) Rules 2024, except for rule 3, are effective from 1 August 2024. Rule 3 is deemed to have come into operation on 31 December 2021.

RECENT CLIFFORD CHANCE BRIEFINGS

US bankruptcy court issues ruling relating to Cape Town Convention

Since its adoption in the US, practitioners and commentators have questioned whether and how a US court would apply the Cape Town Convention in a Chapter 11 case of a non-US airline. The significant number of non-US airlines that have commenced Chapter 11 cases since the onset of the COVID-19 pandemic has intensified that discussion. Although it stops short of definitively answering the question, a recent decision from the Southern District of New York suggests that Alternative A of the Cape Town Convention should be enforceable in a US bankruptcy case so long as the debtor's primary insolvency jurisdiction has made the necessary declaration to give international effect to Alternative A.

This briefing paper discusses the ruling.

https://www.cliffordchance.com/briefings/2024/08/us-bankruptcy-court-issues-ruling-relating-to-cape-town-conventi.html