INTERNATIONAL REGULATORY UPDATE 23 – 27 SEPTEMBER 2024

- **MiCA: EU Commission adopts RTS on template document for cooperation arrangements between competent authorities and supervisory authorities of third countries**
- **MiCA: ITS on cooperation and exchange of information between competent authorities and EBA and ESMA published in Official Journal**
- **FCA consults on changes to safeguarding regime for payments and e-money firms**
- **FCA extends pause on deadline for motor finance complaints**
- **FCA publishes Primary Market Bulletin 51**
- **PSR publishes final guidance to support identification of APP scams and civil disputes**
- **BaFin updates FAQs on non-performing loans under Act on Secondary Credit Markets**
- **BaFin updates minimum contractual content requirements in DORA implementation note**
- **HKMA issues circular on severe weather trading implementation**
- **SFC and HKMA conclude further consultation on enhancing OTC derivatives reporting regime**
- **MAS consults on new guidelines on Notice 134 on recovery and resolution planning**
- **MAS consults on proposed amendments to Business Trusts Regulations and Securities and Futures (Licensing and Conduct of Business) Regulations**
- **MAS responds to feedback received on proposed measures regarding provision of cross-border money transfer services to People's Republic of China**
- **MAS revises Guidelines on Consumer Protection Measures by DPT Service Providers**
- **SGX to start incorporating IFRS sustainability disclosure standards into climate reporting rules**
- **RBA and Treasury release report on central bank digital currency and future of digital money in Australia**

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- **Recent Clifford Chance briefing: Addressing the difficulties – ISDA approves an online Notices Hub for delivering notices. Follow this link to the briefings section.**

MiCA: EU Commission adopts RTS on template document for cooperation arrangements between competent authorities and supervisory authorities of third countries

The EU Commission has adopted a Delegated Regulation under the Markets in Cryptoassets Regulation (MiCA) setting out regulatory technical standards (RTS) establishing a template document for cooperation arrangements between competent authorities and supervisory authorities of third countries.

Article 107 of MiCA requires the competent authorities of Member States, where necessary, to conclude cooperation arrangements with supervisory authorities of third countries concerning the exchange of information and the enforcement of obligations arising under MiCA in third countries. The RTS provide a template document setting out the structure of these cooperation arrangements.

MiCA: ITS on cooperation and exchange of information between competent authorities and EBA and ESMA published in Official Journal

Commission Implementing Regulation (EU) 2024/2494 laying down implementing technical standards (ITS) for the application of the Markets in Cryptoassets Regulation (MiCA) with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) has been published in the Official Journal.

The Implementing Regulation will enter into force on 15 October 2024.

FCA consults on changes to safeguarding regime for payments and e-money firms

The Financial Conduct Authority (FCA) has published a consultation paper (CP24/20) on changes to the safeguarding regime for payments and e-money firms.

The FCA is consulting on rules and guidance for both the interim and end state stages of the proposed safeguarding regime. The interim rules are intended to improve compliance with the existing safeguarding requirements set out in the Electronic Money Regulations (EMRs) and Payment Services Regulations (PSRs). The end state will replace the safeguarding requirements of the EMRs and PSRs with a 'CASS' style regime where relevant funds and assets are held on trust for consumers.

The FCA is seeking to improve the safeguarding regime to ensure that:

- funds received in exchange for issued e-money or received for the execution of a payment transaction are held safely and securely by payments firms at all times or are covered by an appropriate insurance policy or comparable guarantee;

- the right amount of funds are segregated from the firm's own funds;
- it is clear that the funds are held on behalf of consumers;
- the claims of e-money holders or payment service users can be met from the asset pool and that these claims take priority over other creditors; and
- safeguarded funds can be returned to consumers as quickly, and as whole, as possible in the event that a payments firm fails.

The FCA's cost benefit analysis (CBA) of its proposals has also been subject to review by the new independent CBA Panel.

Comments are due by 17 December 2024.

FCA extends pause on deadline for motor finance complaints

The FCA has published a policy statement (PS24/11) extending the pause on the deadline for motor finance firms to provide final responses to customer complaints about discretionary commission arrangements (DCAs) until 4 December 2025.

This decision follows a review announced in January 2024 to investigate potential overcharging of motor finance customers due to DCAs. The pause was initially introduced to ensure orderly and consistent outcomes for consumers and firms while the FCA assessed the issue. Delays in obtaining necessary data and a judicial review have contributed to the need for this extension.

In July 2024, the FCA consulted (CP24/15) on extending the DCA complaint handling pause and received mixed feedback from stakeholders. Despite concerns about resourcing and potential delays in compensation, the FCA is proceeding with the proposed extensions. These include:

- maintaining the pause on the 8-week deadline for final responses;
- keeping consumers informed; and
- extending the timeframe for referring complaints to the Financial Ombudsman.

The FCA plans to outline the next steps in its review by May 2025, considering the outcomes of the judicial review and other relevant cases.

FCA publishes Primary Market Bulletin 51

The FCA has published the latest edition of its Primary Market Bulletin (No. 51).

The 51st edition covers changes to the Knowledge Base on the listing regime, including:

- finalising 12 updated technical notes on the sponsor regime;
- finalising one new technical note on the sponsor regime;
- finalising nine updated technical notes on the non-sponsor related topics; and
- deleting nine technical notes on non-sponsor related topics.

In Primary Bulletin 48, the FCA consulted on proposed changes to the FCA Knowledge Base in relation to the listing regime, including changes to 11

technical notes and deleting 9 technical notes. The proposed changes were in conjunction with the FCA's December 2023 consultation (CP23/31) which detailed proposals for listing rules reforms and changes to the sponsor competence requirements. Some of the technical notes have now been amended to reflect feedback and changes from the draft UK Listing Rules (UKLR) to the final UKLR. There are two notes that have not been finalised as they are likely to require substantive changes.

PSR publishes final guidance to support identification of APP scams and civil disputes

The Payment Systems Regulator (PSR) has published a policy statement (PS24/6) and finalised guidance to support payment service providers (PSPs) in distinguishing between authorised push payment (APP) scams and civil disputes.

In July 2024, the PSR published a consultation paper (CP24/10) on supporting the identification of APP scams and civil disputes. The policy statement summarises responses to the consultation and the PSR's view on the points raised by respondents.

Alongside the policy statement, the PSR has also published its final guidance to support PSPs in assessing whether an APP scam claim raised by a consumer is not reimbursable under the FPS and CHAPS reimbursement rules because it is a private civil dispute.

The PSR intends to continue to review the guidance as part of its commitment to reviewing the APP reimbursement policy.

BaFin updates FAQs on non-performing loans under Act on Secondary Credit Markets

The German Federal Financial Supervisory Authority (BaFin) is the designated competent supervisory authority under the Act on Secondary Credit Markets (Kreditzweitmarktgesetz – KrZwMG), which transposes the Non-Performing Loans (NPL) Directive (EU) 2021/2167 framework on NPL-selling credit institutions, credit purchasers and credit servicers. BaFin acts in cooperation with Deutsche Bundesbank.

BaFin has amended its interpretation of non-performing loans for the purposes of the KrZwMG and published a revised answer to its FAQ entitled 'Was ist ein notleidender Kreditvertrag? (What is a non-performing loan?)'.

Amongst other things, BaFin has deleted the reference to the credit being 90 days overdue and having been terminated (gekündigt). In its non-official translation into English for convenience purposes, the new answer reads as follows: pursuant to Article 3 no. 13 Directive (EU) 2021/2167, a non-performing credit agreement is 'a credit agreement that is classified as a non-performing exposure pursuant to Article 47a Regulation (EU) 575/2013. This also covers receivables for which a final invoice has been issued, receivables for which an enforceable title has been issued, receivables that have been re-evaluated and receivables that have been written-off, as well as receivables that have never been reported as risk exposures'.

BaFin updates minimum contractual content requirements in DORA implementation note

BaFin has updated the minimum contractual content requirements in its supervisory statement entitled 'Guidance notes on the implementation of DORA for ICT risk management and ICT third-party risk management'.

The update was occasioned by the publication of the final report on the draft regulatory technical standards (RTS) on the subcontracting of ICT services supporting critical or important functions under Article 30(5) of the Digital Operational Resilience Act (DORA). BaFin has translated its supervisory statement and all pertinent information into English to reach a maximum number of market participants.

DORA is intended to help strengthen the European financial market against cyber risks and ICT incidents. BaFin will play an important role in the implementation of DORA in Germany, e.g. it will become the central German hub for ICT-related incident reporting.

HKMA issues circular on severe weather trading implementation

Further to its circular dated 18 June 2024 on the banking sector's support for the implementation of the Severe Weather Trading (SWT) arrangements, the Hong Kong Monetary Authority (HKMA) has issued a circular to remind authorised institutions (AIs) to complete any final preparation work ahead of the launch of SWT on 23 September 2024 in a timely manner.

Whilst AIs have confirmed their preparedness to support SWT through the provision of continuous banking and payment services, the HKMA acknowledges that there may still be operational challenges during the initial stage of SWT implementation. In this regard, the HKMA reminds AIs to maintain comprehensive contingency plans and effective customer communication under different plausible scenarios, including communicating clearly with customers about any disruption of services, and providing timely updates on the status of impacted transactions. In relation to securities brokers' settlement accounts maintained with respective banks, AIs are reminded to work with their broker customers to ensure the accounts' operability and put in place appropriate protocols for handling exceptions on a severe weather day.

As part of the post-implementation journey, AIs are encouraged to review the requests and enquiries from their personnel and customers with a view to assessing the effectiveness of their SWT arrangements regularly, including upon the first instance of a severe weather day after 23 September 2024.

SFC and HKMA conclude further consultation on enhancing OTC derivatives reporting regime

The Securities and Futures Commission (SFC) and the HKMA have jointly published the conclusions to their March 2024 further consultation on enhancements to the over-the-counter (OTC) derivatives reporting regime for Hong Kong, to mandate the use of a unique transaction identifier (UTI) and a unique product identifier (UPI), and the reporting of critical data elements (CDE). Amongst other things, the key points from the consultation conclusions include the following:

- the regulators will mandate the requirement to report standardised UTI according to the steps as proposed in the consultation paper. To provide flexibility, the regulators will adopt the UTI Technical Guidance principle to allow the delegation of UTI generation from one party to another for the later steps as long as a bilateral agreement between the counterparties is in place. The UTI implementation will be from 29 September 2025;
- the regulators will mandate the use of UPI as proposed. Given that the Digital Token Identifier (DTI) has been proposed as an allowable reportable value in the upcoming consultation of version 4 of the CDE Technical Guidance, the regulators will accommodate the use of DTI in the reporting requirements. The regulators intend to implement mandatory reporting of UPI from 29 September 2025;
- the regulators have decided not to mandate a number of proposed data fields which provide information that can be derived from other data fields, or may serve a similar purpose to other data fields. The regulators will also turn a number of proposed data fields into optional data fields to the extent that doing so will not compromise the efficient monitoring of markets. The regulators will require reporting entities to report all new transactions and their lifecycle events based on the data fields and supportable value set out in Appendix B starting from 29 September 2025; and
- reporting entities will be required to adopt the ISO 20022 XML message standard for OTC derivatives reporting to the trade repository of the HKMA starting from 29 September 2025.

The SFC has issued a circular on the updated technical specifications for reporting to the OTC derivatives trade repository of the HKMA. The SFC has reminded reporting entities to review the updated reporting standards and technical specifications and make preparations as soon as possible to ensure that they will be ready to meet the relevant reporting requirements.

MAS consults on new guidelines on Notice 134 on recovery and resolution planning

The Monetary Authority of Singapore (MAS) has launched a consultation seeking comments on the new guidelines on its Notice 134 on Recovery and Resolution Planning.

The MAS Notice 134 sets out the recovery and resolution planning requirements applicable to 'notified insurers' and 'notified DFHCs (Licensed Insurer)'. The proposed guidelines are intended to provide further guidance and elaboration on the requirements set out in the MAS Notice 134.

In particular, the MAS is seeking comments on:

- the expectations on the governance of the recovery planning process, as well as factors to be considered in the drafting of a recovery plan;
- the proposal to include guidance for notified insurers and notified DFHCs (Licensed Insurer) to identify and develop criteria and procedures to trigger timely activation and implementation of recovery options within the recovery plan;
- the need to consider potential effectiveness and feasibility when establishing recovery options, as well as the level of detail to be included on each recovery option within the recovery plan;

- the expectations on the communication plan to address communications with relevant stakeholders and provide guidance on how communications can be tailored for different stress scenarios and recovery options;
- the information requirements for resolution planning that should be maintained by a notified insurer and notified DFHC (Licensed Insurer);
- the expectations with regard to the management information systems that a notified insurer and notified DFHC (Licensed Insurer) should maintain; and
- the expectations on the operational continuity plan and arrangements that a notified insurer and notified DFHC (Licensed Insurer) should put in place.

The proposed guidelines on the MAS Notice 134 are intended to take effect, together with the MAS Notice 134, on 1 January 2025.

Comments on the consultation are due by 25 October 2024.

MAS consults on proposed amendments to Business Trusts Regulations and Securities and Futures (Licensing and Conduct of Business) Regulations

The MAS has launched a consultation on proposed amendments to the Business Trusts (BTs) Regulations and the Securities and Futures (Licensing and Conduct of Business) Regulations 2018 (SF(LCB)R).

In November 2021, the MAS consulted on proposed amendments to the Business Trusts Act 2004 (BTA) and it responded to the consultation feedback received in September 2022. The Business Trusts (Amendment) Act 2022 was subsequently introduced and passed in Parliament on 12 September 2022 and 3 October 2022 respectively.

The Amendment Act is being implemented in two phases. Phase 1, which commenced on 12 March 2024, implemented provisions that did not require supporting subsidiary legislation to commence. These provisions related to written resolutions and meetings of unitholders of a BT, CEOs' disclosure of interests in transactions undertaken by the BT and the court's power to order a buy-out remedy in lieu of liquidation. Phase 2 will implement provisions that will be brought into effect concurrently with supporting subsidiary legislation. The MAS is now consulting on:

- proposed amendments to the Business Trusts Regulations 2005 (BTR) and new regulations, to support Phase 2 of the implementation of the Amendment Act; and
- amendments to the BTR and the SF(LCB)R to align certain governance-related provisions for registered BTs with those imposed on real estate investment trusts (REITs), given that they are structurally similar.

In particular, the MAS seeks comments on the:

- proposed prescriptions in relation to the new Part 8A (relating to register of controllers of registered BTs) of the BTA in the proposed Business Trusts (Register of Controllers) Regulations;
- proposed amendments to the BTR to introduce safeguards for the use of electronic transmission of documents;
- proposed prescribed modes by which public notifications of distributions must be made for listed as well as unlisted registered BTs;

- proposed amendments to the BTR to prescribe circumstances to which the MAS may have regard in determining whether there is reasonable ground to believe that a trustee-manager (TM) of a registered BT is not managing or operating the business of this registered BT;
- proposal to align the board composition and directors' independence requirements for TMs with those imposed on REIT managers;
- proposal to modify the tenure requirements for independent directors of REIT managers and TMs to allow them sufficient time to adjust their board composition as necessary;
- proposal to require a TM of registered BT to disclose its distributions declared for the financial year as well as the total operating expenses in both absolute terms and as a percentage of its net asset value in the registered BT's financial statements; and
- proposal to amend the BTR to codify exemptions that are typically granted to stapled BTs from certain requirements.

Comments on the consultation are due by 18 October 2024.

MAS responds to feedback received on proposed measures regarding provision of cross-border money transfer services to People's Republic of China

The MAS has published its responses to the feedback it received on its August 2024 public consultation on proposed amendments to the Notice on Temporary Restrictions in Relation to the Provision of Cross-Border Money Transfer Services to the People's Republic of China (PRC) (Notice PSN11).

The MAS issued 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 People's Republic of China (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.

In its August 2024 consultation, the MAS proposed to: (a) continue to suspend the use of non-specified channels set out in Notice PSN11 until further notice; and (b) expand the scope to all customers of remittance companies, including corporates and legal persons.

Based on the feedback received, the MAS will proceed with the proposed amendment to suspend the use of non-specified channels set out in 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.

Regarding the proposal to expand the scope of the restriction to all customers sending monies to the PRC, the MAS has clarified that it will for now continue to limit the restriction to individual remitters (including sole proprietorships) sending monies to the PRC, and keep the proposal to extend the suspension to corporates and non-individuals under review.

Some respondents highlighted that there are operational challenges as transactions with specified channels are subject to transaction amount limits set by specified channels and these limits might not be sufficient for the scale

of businesses, particularly SMEs, that trade with China. In consideration of the operational challenges highlighted, the MAS has indicated that it will further engage relevant industry participants.

Following the consultation feedback, the MAS has also published the revised Notice PSN11, which is effective from 1 October 2024.

MAS revises Guidelines on Consumer Protection Measures by DPT Service Providers

The MAS has revised its Guidelines on Consumer Protection Measures by Digital Payment Token (DPT) Service Providers (Guidelines PS-G03), which set out the MAS' expectations on the measures that a DPT service provider should have in place to address consumer protection risks.

Amongst other things, the Guidelines PS-G03 have been revised to:

- change their title to 'Guidelines on the Provision of Consumer Protection Safeguards by Digital Payment Token Service Providers';
- introduce definitions of 'leveraged DPT transaction', and 'related corporation';
- expand the scope of the definition of 'retail customer';
- clarify that, for determining the value of net assets of a corporation or entity (as the case may be) to ascertain eligibility as an accredited investor, a DPT service provider should refer to the latest audited financial statements of the corporation/entity, which should be prepared based on generally accepted financial reporting standards. However, if no audited financial statement is available, then the DPT service provider will be required to adopt the same approach for valuing the customer's holding of DPTs as described in paragraph 2.2.3 of the guidelines;
- set out transitional provisions for the accredited investor opt-in regime;
- clarify that, with regard to safeguarding customers' assets, the senior managers of a DPT service provider in Singapore are ultimately responsible and accountable for the operations of the DPT service provider in Singapore;
- introduce the following new chapters: (i) chapter 4 on consumer access measures - the chapter provides guidance on consumer access measures that a DPT service provider should implement in relation to its dealings with all retail customers. Amongst other things, the measures include conducting a risk awareness assessment on individual retail customers, prohibiting the offering of incentives to any retail customer or any person to promote/refer DPT services to any retail customer and restrictions on extending credit and leverage for DPT transactions with retail customers; (ii) chapter 5 on conflicts of interest - the chapter provides guidance on how a DPT service provider should identify and mitigate conflicts of interest, as well as the specific mitigating measures based on the DPT services or DPT trading activities it conducts. Amongst other things, a DPT service provider is required to disclose clearly to each customer in its terms and conditions all potential and actual conflicts of interest; and (iii) chapter 6 on other business conduct measures - the chapter provides guidance on how a DPT service provider should conduct their business in other key areas of concern such as DPT listing and governance policies, complaints handling and dispute resolution;

- amend Annex 1 to the guidelines to, amongst other things, add new illustrations relating to restrictions on offering incentives, and types of DPT trading activities; and
- amend provisions relating to the effective date of the guidelines by providing that chapters 1, 2 (other than paragraphs 2.3.1 to 2.3.7), 3 and paragraph 5.3 of the guidelines take effect on 4 October 2024. Paragraphs 2.3.1 to 2.3.7, and chapters 4, 5 (other than paragraph 5.3) and 6 of the guidelines take effect on 19 June 2025.

SGX to start incorporating IFRS sustainability disclosure standards into climate reporting rules

The Singapore Exchange Regulation (SGX RegCo) has published its responses to the feedback it received on its March 2024 public consultation on enhancing consistency and comparability in sustainability reporting.

In light of the feedback received, SGX RegCo will require all issuers to start reporting Scope 1 and Scope 2 greenhouse gas (GHG) emissions from the financial year (FY) commencing on or after 1 January 2025. Their climate-related disclosures must also start incorporating the climate-related requirements in the IFRS Sustainability Disclosure Standards issued by the International Sustainability Standards Board. The baseline requirement is to disclose information on climate-related risks and opportunities that apply all the requirements in IFRS S2 (other than the disclosure of Scope 3 GHG emissions), and consequently apply the climate-relevant provisions in IFRS S1.

According to SGX RegCo, most respondents to the March 2024 consultation supported the move for all issuers to carry out mandatory climate-related reporting versus the current requirement for only issuers in certain sectors to do so, but they also highlighted challenges, particularly for smaller issuers, in relation to the evolving measurement and reporting methodologies for Scope 3 GHG emissions. Following the feedback, SGX RegCo intends to carry out an in-depth review of issuers' experience and readiness before setting out the implementation roadmap for disclosure of Scope 3 GHG emissions. The current plan is to prioritise larger issuers by market capitalisation with the intention that they report Scope 3 GHG emissions from FY 2026.

To provide time for issuers to focus on reporting their climate-related disclosures in FY 2025, the other primary components of the sustainability report (other than climate-related disclosures) will be mandated from FY 2026. These include: (a) material ESG factors; (b) policies, practices and performance; (c) targets; (d) sustainability reporting framework; and (e) board statement and associated governance structure for sustainability practices. SGX RegCo has also clarified that issuers that do not conduct external assurance on their sustainability reports must issue their sustainability reports together with their annual reports from FY 2026. Those issuers that do conduct external assurance on their sustainability reports will continue to have up to five months after the end of their financial year to issue their sustainability reports.

SGX RegCo has highlighted that its March 2024 consultation only covered specific recommendations of the Sustainability Reporting Advisory Committee (SRAC) to advance climate reporting in Singapore. Therefore, it intends to launch a separate public consultation to implement other recommendations of the SRAC such as requiring: (a) external limited assurance on Scope 1 and

Scope 2 GHG emissions from the financial year commencing on or after 1 January 2027and (b) digital filing of climate-related disclosures. SGX RegCo will also incorporate a timeline for newly listed issuers (other than an issuer that has an obligation to prepare a sustainability report under local legislation prior to listing) to issue their first sustainability report for the first full financial year after listing. It has also clarified that newly listed issuers will be able to avail themselves of the transition period in the sustainability disclosure standards.

RBA and Treasury release report on central bank digital currency and future of digital money in Australia

The Reserve Bank of Australia (RBA) and the Treasury have released a report summarising their research to date on central bank digital currency (CBDC) and explaining how it has shaped their current assessment of CBDC issues in Australia. The report also sets out a three-year roadmap for future work on digital money in Australia.

The report concludes that a clear public interest case to issue a retail CBDC has yet to emerge in Australia. This assessment is partly informed by the observation that Australians are generally well served by the capabilities and resilience of the current retail payments system. It also concludes that in jurisdictions that have issued a retail CBDC or indicated that it is quite possible in coming years, the main motivations have less resonance in Australia. Nonetheless, the RBA and Treasury remain open to the possibility that this assessment could change over time as potential benefits and costs are better understood, both internationally and in a domestic context.

The report also highlights the role that a wholesale CBDC, alongside other forms of digital money and infrastructure upgrades, could play in enhancing the functioning of wholesale markets in Australia.

RECENT CLIFFORD CHANCE BRIEFINGS

Clifford Chance Comment: Addressing the difficulties – ISDA approves an online Notices Hub for delivering notices

ISDA's Board has recently approved the construction of a Notices Hub. This initiative will establish an online platform for the sending and receiving of termination and close-out related notices under the ISDA Master Agreement and (potentially) other Master Agreements.

The proposal to develop a Notices Hub arose in response to the difficulties experienced in delivering notices during the financial crisis, the Covid pandemic and the imposition of sanctions, where parties were dealing with a mix of issues including differing time zones, difficulties with notice details not being up to date, disruptions to courier or postal services, limited or no access to particular locations and the closure of offices or only limited hours for delivery. The Notices Hub takes advantage of latest technology to provide an alternative method of serving notice via a secure and confidential online platform.

This briefing considers how the Notices Hub will operate and some of the key issues that market participants should be aware of.

https://www.cliffordchance.com/briefings/2024/09/addressing-the-difficulties--isda-approves-an-online-notices-hub.html