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INTERNATIONAL REGULATORY UPDATE 11 – 15 NOVEMBER 2024

- **Capital Markets Union: Listing Act package published in Official Journal**
- **MiCA: ITS on public disclosure of inside information published in Official Journal**
- **DORA: ESAs publish decision on timeline to collect information for designation of critical ICT third-party service providers**
- **CRR3: EBA consults on guidelines on proportionate retail diversification methods**
- **CRR3: EBA accepts Commission amendments to supervisory reporting and public disclosures ITS**
- **EBA publishes final guidelines on implementing sanctions**
- **ESMA and EIOPA publish letter on retail investment strategy**
- **FSB publishes annual progress report on climate-related disclosures**
- **FSB reports on AI and financial stability**
- **IOSCO consults on liquidity risk management recommendations for collective investment schemes**
- **IOSCO reports on transition plans disclosures**
- **IOSCO publishes final report on promoting financial integrity and orderly functioning of voluntary carbon markets**
- **NGFS publishes conceptual note and synthesis report**
- **Mansion House speech: Chancellor sets out Government's priorities**
- **Operational resilience: UK supervisory authorities publish final critical third parties oversight regime**
- **HMT publishes response to consultation on near-term ring-fencing reforms and implementing legislation**
- **Draft Short Selling Regulations 2024 laid**
- **Draft Financial Services and Markets Act 2000 (Designated Activities) (Supervision and Enforcement) Regulations 2024 laid**
- **Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2024 made**
- **BoE updates approach to enforcement**
- **Deposit guarantee schemes: Bank of Italy publishes new regulation**

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If you would like to know more about the subjects covered in this publication or our services, please contact:

International Regulatory Group Contacts

Marc Benzler +49 69 7199 3304

Caroline Dawson +44 207006 4355

Steven Gatti +1 202 912 5095

Rocky Mui +852 2826 3481

Lena Ng +65 6410 2215

Gareth Old +1 212 878 8539

Donna Wacker +852 2826 3478

International Regulatory Update Editor

Joachim Richter +44 (0)20 7006 2503

To email one of the above, please use firstname.lastname @cliffordchance.com

Clifford Chance LLP,
10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

- **CSSF updates circular on long form report**
- **Luxembourg Ministry of Finance publishes updated guidelines relating to implementation of financial restrictive measures**
- **FINMA publishes new strategic goals**
- **FINMA publishes new ordinance and fully revised circular on auditing**
- **Stamp Duty Legislation (Miscellaneous Amendments) Bill 2024 gazetted in Hong Kong**
- **HKMA sets out unsecured consumer credit products cooling-off period requirements**
- **SFC issues circular on use of generative AI language models**
- **MAS announces plans to support commercialisation of asset tokenisation**
- **MAS responds to feedback received on proposed framework for single family offices**
- **APRA releases survey results assessing management of risks associated with climate change in financial sector**
- **Recent Clifford Chance briefings: Scaling the global carbon markets; Buy now, pay later – consultation now, regulation soon, and more. Follow this link to the briefings section.**

Capital Markets Union: Listing Act package published in Official Journal

The EU Listing Act has been published in the Official Journal, comprising:

- the Listing Act Regulation (EU) 2024/2809 amending the Prospectus Regulation, Market Abuse Regulation (MAR) and the Markets in Financial Instruments Regulation (MiFIR);
- the Listing Act Directive (EU) 2024/2811 amending MiFID2 and repealing the Listing Directive; and
- Directive (EU) 2024/2810 on multiple-vote share structures, which will allow company owners to list on SME growth markets using multiple-vote share structures.

The Listing Act package is intended to make capital markets in the EU more attractive by alleviating the administration burden for companies of all sizes, in particular SMEs, so that they can better access public funding by listing on stock exchanges.

Regulation (EU) 2024/2809 will enter into force on 4 December 2024. There will be a transitional period for prospectuses and the application of the Regulation will be staggered, with some provisions applying immediately upon entry into force, some applying from 5 March 2026 and the remainder applying from 5 June 2026.

Directive (EU) 2024/2811 will enter into force on 4 December 2024 and Member States will have until 5 June 2026 to transpose it.

Directive (EU) 2024/2810 will enter into force on 4 December 2024 and Member States will have until 5 December 2026 to transpose it.

MiCA: ITS on public disclosure of inside information published in Official Journal

Commission Implementing Regulation (EU) 2024/2861 laying down implementing technical standards (ITS) under the Markets in Cryptoassets Regulation (MICA) with regard to the technical means for the appropriate public disclosure of inside information and for delaying the public disclosure of that information has been published in the Official Journal.

The Implementing Regulation will enter into force on 3 December 2024.

DORA: ESAs publish decision on timeline to collect information for designation of critical ICT third-party service providers

The European Supervisory Authorities (ESAs) have published a decision on the information that competent authorities must report to them for the designation of critical ICT third-party service providers (CTPPs) under the Digital Operational Resilience Act (DORA).

Following DORA's entry into force on 17 January 2025, the ESAs, together with competent authorities, will be responsible for the oversight of CTPPs offering services to financial entities in the EU. The first oversight activity is the designation of CTPPs.

The decision provides a general framework for the annual reporting to the ESA of the information necessary for the CTPP designation, including timelines, frequency and reference dates, general procedures for the submission of information, quality assurance and revisions of submitted data, as well as confidentiality and access to information. The deadline for the first submission of the registers of information is 30 April 2025.

Although the implementing technical standards (ITS) on the registers of information have yet to be adopted by the EU Commission, the ESAs note that the key requirements for registers are publicly available in the ESAs final report, published in January 2024, and that any potential future changes to the registers should be limited. The ESAs encourage financial entities to anticipate as much as possible the preparation of their registers, especially for information which may not be immediately available (e.g. the relevant identifiers of their ICT providers).

CRR3: EBA consults on guidelines on proportionate retail diversification methods

The European Banking Authority (EBA) has launched a consultation on draft guidelines specifying proportionate retail diversification methods to be eligible for the preferential risk weight under the standardised approach for credit risk.

In the draft guidelines, the EBA sets out criteria to assess under which circumstances retail exposures can be considered as diversified under the credit risk standardised approach for determining capital requirements in the Capital Requirements Regulation (CRR). The requirement to have a diversified portfolio is intended to ensure that the risks credit institutions will have to bear for such exposures are reduced. In addition, the requirement to

be diversified is mandatory for retail exposures to be assigned the preferential retail risk weight under the standardised approach for credit risk.

The EBA is considering the 0.2% granularity criterion set out in the Basel framework, according to which no individual exposure in the retail portfolio should exceed 0.2% of the retail portfolio. Under the EBA's proposal, institutions with exposures above the 0.2% granularity criterion will, however, still be considered sufficiently diversified, as long as no more than 10% of their retail portfolio exceeds the 0.2% threshold.

Comments are due by 12 February 2025.

CRR3: EBA accepts Commission amendments to supervisory reporting and public disclosures ITS

The EBA has published an opinion on the EU Commission's proposed amendments to the draft ITS on public disclosures and supervisory reporting under CRR3.

The EBA accepts the Commission's proposal to re-include reporting and disclosure templates as part of the ITS as an intermediate step. The EBA believes its original proposal to include the templates on the EBA website provides more flexibility in the development of IT solutions in accordance with the mandates under CRR3, but it has accepted the proposals on the basis that the Commission will continue to work with the EBA to better articulate and further operationalise the ITS.

EBA publishes final guidelines on implementing sanctions

The EBA has published two sets of final guidelines on internal policies, procedures and controls to ensure the implementation of EU and national restrictive measures.

The guidelines are the first set of common EU standards on the arrangements financial institutions should have in place to comply with financial sanctions and sectoral measures.

The first set of guidelines (EBA/GL/2024/14) are addressed to all EBA-supervised financial institutions and cover governance arrangements and internal policies, procedures and controls.

The second set of guidelines (EBA/GL/2024/15) are specific to payment service providers (PSPs) and cryptoasset service providers (CASPs) when performing transfers of funds and cryptoassets under Regulation (EU) 2023/1113 and cover how transfers should be screened.

The guidelines apply from 30 December 2025.

ESMA and EIOPA publish letter on retail investment strategy

The European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) have published a joint letter on the legislative proposals for the retail investment strategy (RIS).

The legislative package consists of a proposed Omnibus Directive amending MiFID2, IDD, Solvency II, the UCITS Directive and AIFMD, and a proposed Regulation amending the PRIIPs Regulation.

The authorities have suggested that the Commission should consider integrating the EU Council's April 2024 conclusions on the capital markets union (CMU) into the RIS proposals, as well as recommendations made by ESMA and EIOPA in their papers on capital markets and retail investor protection and pan-European pension products.

The letter also sets out the authorities' observations on the proposed texts, specifically concerns relating to:

- the value for money framework being negatively impacted by proposals concerning national benchmarks, companies' peer grouping analysis with the peer group defined by the companies and the modified nature of the benchmarks for identifying outliers in the market;
- the requirement for two Member States to establish supervisory collaboration platforms; and
- the volume of tasks and responsibilities assigned to ESMA and EIOPA and the impact of those mandates on human, operational and consumer testing costs.

FSB publishes annual progress report on climate-related disclosures

The Financial Stability Board (FSB) has published its 2024 progress report on climate-related disclosures. The report summarises the findings from a survey of FSB member jurisdictions and input from standard-setting bodies and international organisations.

Among other things, the report notes that:

- global efforts are currently focused on supporting jurisdictions in adopting, applying, or being informed by the two disclosure standards issued by the International Sustainability Standards Board (ISSB) in 2023;
- the ISSB and other organisations are focusing in particular on providing implementation support and capacity building for small- and medium-sized enterprises (SMEs) and for companies in emerging market and developing economies (EMDEs);
- significant progress has been made in ensuring interoperability between the ISSB standards and other regional and jurisdictional disclosure frameworks, and with financial and prudential reporting requirements;
- 19 out of 24 FSB member jurisdictions have regulations, guidelines or strategic roadmaps in place for climate-related disclosures, with 17 of those including disclosure requirements based on the ISSB standards or the recommendations of the Task Force on Climate-related Disclosures (TCFD); and
- several jurisdictions have also taken steps towards introducing assurance requirements, which are intended to enhance the reliability and usefulness of climate-related disclosures.

The report also summarises the key findings of the International Financial Reporting Standards (IFRS) Foundation's progress report on corporate climate-related disclosures, which has been published alongside the FSB report. The IFRS Foundation's report concludes that companies' progress in disclosing climate-related financial information using the TCFD

recommendations or the ISSB standards is encouraging, but that more progress is required.

FSB reports on AI and financial stability

The FSB has published a report on the financial stability implications of artificial intelligence (AI).

The FSB has revisited its 2017 report on AI and machine learning in financial services in light of widespread adoption and more diverse use cases following the introduction of generative AI (GenAI) and large language models. In the report, the FSB notes the benefits AI offers such as improved operational efficiency, regulatory compliance, personalised financial products and advanced data analytics. It also highlights vulnerabilities with the potential to increase systemic risk including:

- third-party dependencies and service provider concentration;
- market correlations;
- cyber-risks;
- model risk, data quality and governance;
- increased financial fraud and disinformation in financial markets;
- misaligned AI systems not calibrated to operate within legal, regulatory and ethical boundaries engaging in harmful behaviour; and
- long-term uptake driving changes in market structure, macroeconomic conditions and energy use.

The FSB has found that many vulnerabilities are addressed in existing regulatory and supervisory frameworks, but more work may be needed to ensure these frameworks are sufficiently comprehensive. The FSB urges national financial authorities and international bodies to address information gaps and enhance monitoring of AI developments, assess their current financial policy frameworks and enhance their regulatory and supervisory capabilities.

IOSCO consults on liquidity risk management recommendations for collective investment schemes

The International Organization of Securities Commissions (IOSCO) has launched consultations on its revised recommendations for liquidity risk management (LRM) for collective investment schemes (CIS), particularly open-ended funds, and complementary implementation guidance.

The revised LRM recommendations take into consideration the Financial Stability Board (FSB) revised recommendations to address structural vulnerabilities from liquidity mismatch in open-ended funds as well as recent market events such as market volatility induced by the pandemic and the war in Ukraine.

The proposed recommendations have been organised into six sections including CIS design process, liquidity management tools and measures, day-to-day liquidity management practices, stress testing, governance and disclosures to investors and authorities. The revisions introduce changes which:

- categorise open-ended funds based on the liquidity of their assets;
- encourage investment managers to implement a broad set of liquidity management tools (LMTs) and other liquidity management measures;
- emphasise the important of anti-dilution LMTs to mitigate material investor dilution and potential first-mover advantage arising from structural liquidity mismatch in open-ended funds; and
- incorporate new guidance on quantity-based LMTs and other liquidity management measures.

The proposed implementation guidance sets out technical elements focusing on open-ended funds, such as the determination of asset and portfolio liquidity and considerations relating to the calibration and activation of LMTs and other liquidity management measures.

Comments are due by 11 February 2025.

IOSCO reports on transition plans disclosures

IOSCO has published a report on transition plan disclosures.

The report highlights the five most useful components of transition plans disclosures as suggested by market participants, including ambition and targets, decarbonisation levers and action plan, governance and oversight, financial resources and human capital and financial implications. IOSCO has set out coordinated actions for future consideration which relate to:

- encouraging consistency and comparability through guidance on transition plan disclosures, which could clarify disclosure expectations and lead to more standardised information;
- promoting assurance of transition plan disclosures;
- enhancing legal and regulatory clarity and oversight; and
- building capacity.

IOSCO has welcomed the International Financial Reporting Standards (IFRS) Foundation's plan to develop educational material and has encouraged the International Sustainability Standards Board (ISSB) to maintain a high level of interoperability of the IFRS Sustainability Disclosure Standards with key jurisdictional standards as the educational material is developed. IOSCO has also encouraged relevant standard setters to consider providing markers on what would constitute forward-looking information, in accordance with their standards and governance processes.

IOSCO publishes final report on promoting financial integrity and orderly functioning of voluntary carbon markets

IOSCO has published its final report on promoting the financial integrity and orderly functioning of the voluntary carbon markets (VCMs). The report outlines 21 good practices intended to ensure financial integrity in VCMs, which could be applicable across all carbon credit markets. IOSCO's 21 good practices have three overarching objectives:

- supporting the establishment of sound market structures and appropriate architecture for custody, trading, and settlement;

- promoting transparency to foster information symmetry and ensure orderly and fair trading; and
- advocating for adequate market conduct and behaviour to prevent fraud, market abuse, insider dealing and scams.

In addition, IOSCO and the World Bank have published a policy note outlining high-level elements for promoting financial integrity in carbon markets generally and have announced a new partnership in 2025.

NGFS publishes conceptual note and synthesis report

The Network for Greening the Financial System (NGFS) has published a conceptual note on adaptation, which provides insights on the relevance of climate adaptation to central banks and supervisors, and a synthesis report on the greening of the financial system.

The conceptual note builds on the NGFS technical document on scaling up blended finance for climate mitigation and adaptation in emerging market and developing economies (EMDEs), published at COP28, which focuses on the importance of climate adaptation. The note also examines the complex interlinkages and relationships between adaptation finance, insurance protection gaps and the prudential risks that a failure to adapt could pose to the financial sector. Six national case studies are included in the annex to showcase some of the specific actions already being taken by authorities, both individually and in collaboration with other public and private sector groups.

The synthesis report provides a holistic and up to date view on the state of climate finance, by building on knowledge and data from NGFS members, observers and stakeholders. The report assesses three key areas to provide an overview of the financial system's progress towards achieving the Paris objectives. Each area constitutes one of the three foundations necessary to build a greener financial system:

- developing a common understanding of what climate goals mean for finance and the progress made on the provision of finance aligned with those goals;
- scaling up the relevant market instruments and strategies; and
- establishing regulatory and supervisory frameworks that foster and enable an ecosystem for an effective and just green transition.

Mansion House speech: Chancellor sets out Government's priorities

The Chancellor of the Exchequer, Rachel Reeves, has delivered a Mansion House speech setting out the Government's priorities for UK financial services reforms.

The measures forming the Mansion House package include:

- a call for evidence on a financial services growth and competitiveness strategy focusing on fintech, sustainable finance, asset management and wholesale services, insurance and reinsurance, and capital markets. Comments are due by 12 December 2024, with an intention to publish the strategy in Spring 2025;

- an interim report of the Pensions Investment Review setting out proposals such as consolidating the pension system and a consultation on merging defined contribution pension schemes and the Local Government Pension Scheme in England and Wales into megafunds. Comments are due by 16 January 2025, with an intention to publish a Pensions Fund Bill in Spring 2025;
- a consultation on the desirability of a UK Green Taxonomy, with comments due by 6 February 2025;
- a consultation response and draft legislation to make the provision of ESG ratings a regulated activity. Technical comments on the draft legislation are due by 14 January 2025;
- new remit letters to UK regulators recommending a greater focus on growth;
- a joint Financial Conduct Authority (FCA) and Financial Ombudsman Service (FOS) call for input on modernising the redress system. Comments are due 30 January 2025;
- a consultation response and draft legislation, accompanied by a policy note, on introducing the Private Intermittent Securities and Capital Exchange System (PISCES). Comments on the draft legislation are due by 9 January 2025;
- a policy paper on making further technical changes to UK MiFID, including giving the FCA fuller powers in relation to the reporting of OTC positions, streamlining transaction reporting requirements, and replacing the UK MiFID Org Regulation with regulators' rules;
- a consultation on a new approach to captive insurance regulation intended to support the growth and competitiveness of the UK's insurance sector. Comments are due by 7 February 2025;
- a National Payments Vision policy paper addressing findings from the Future of Payments Review 2023 and establishing a Payments Vision Delivery Committee to ensure coordination between regulators with the aim of identifying and minimising overlaps in initiatives;
- letters to the FCA and Prudential Regulation Authority (PRA) requesting a report on the current mutuals landscape; and
- a call for evidence on credit union common bond reform. Comments are due by 6 March 2025.

The Government also intends to:

- launch a pilot to deliver a Digital Gilt Instrument (DIGIT);
- consult separately on streamlined sustainability disclosures for economically significant companies, on integrity principles for voluntary carbon and nature markets, and on taking forward transition plans;
- co-launch a Transition Finance Council;
- publish the results of the Senior Managers and Certification Regime (SM&CR) review, including an intention to consult on replacing the certification regime for staff below the senior management level; and
- consider steps to improve the UK's insurance-linked securities offering.

Operational resilience: UK supervisory authorities publish final critical third parties oversight regime

The Bank of England (BoE), PRA and FCA have published a policy statement setting out their final policy and rules for critical third parties (CTPs) (PRA PS16/24; FCA PS24/16).

PS16/24 comprises the regulators' final rules, a joint supervisory statement (SS6/24) and approach documents setting out the CTP oversight regime, which is intended to manage risks to the stability of, or confidence in, the UK financial system arising due to a failure in, or disruption to, services provided by CTPs to regulated firms and financial market infrastructure entities (FMIs).

SS6/24 is intended as the main source of guidance for CTPs on their duties and the regulators' expectations covering, among other things:

- operational risk and resilience requirements;
- evidence requirements;
- incident reporting and notifications; and
- public references to a CTP's designated status.

The regulators have also published a memorandum of understanding (MoU) setting out how they will co-ordinate their CTP functions, including by establishing a joint CTP Consultation and Coordination Forum (CCF).

The final rules take effect from 1 January 2025. Statutory obligations, and regulatory requirements and expectations, apply to a CTP designated by HM Treasury when the designation order comes into force. Certain regulatory requirements are also subject to a transitional period.

HMT publishes response to consultation on near-term ring-fencing reforms and implementing legislation

HM Treasury (HMT) has published the Government's response to its September 2023 consultation on near-term reforms intended to improve the functionality of the existing ring-fencing regime.

The draft Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and Prohibitions) (Amendment) Order 2024 implementing the reforms has also been laid in Parliament.

The forthcoming changes, which broadly seek to take forward recommendations from the Skeoch Review and are subject to Parliamentary approval, include:

- increasing the core deposits threshold for including banks in the regime from GBP 25 billion to GBP 35 billion;
- a new exemption for retail-focussed banks that undertake minimal investment banking activity;
- removing the requirement to report exposures to relevant financial institutions (RFI) of below GBP 100 thousand to the Prudential Regulation Authority (PRA);
- enabling ring-fenced banks (RFBs) to incur exposures to global systemically important insurers (G-SIIs) and certain types of SME financial institution;

- relaxing restrictions on the geographical operations of RFBs;
- a new four-year transition period for banks that become subject to the regime following an acquisition by an RFB; and
- permitting RFBs to invest in UK SMEs, subject to certain restrictions, and to enter into a wider range of trade finance arrangements.

The draft Order will come into force on the twenty-second day after the day on which the Order is made.

Draft Short Selling Regulations 2024 laid

The draft Short Selling Regulations 2024 have been laid in Parliament according to the affirmative procedure.

The draft Regulations replace the onshored version of the Short Selling Regulation (Regulation (EU) No 236/2012) and establish a new legislative framework for the regulation of short selling, creating designated activities for short selling and giving the FCA rulemaking powers related to these activities and powers to intervene in exceptional circumstances.

The draft Short Selling Regulations rely on the draft Financial Services and Markets Act 2000 (Designated Activities) (Supervision and Enforcement) Regulations 2024, which were also laid before Parliament on 11 November 2024, so HM Treasury will only make the former if Parliament approves the latter.

Draft Financial Services and Markets Act 2000 (Designated Activities) (Supervision and Enforcement) Regulations 2024 laid

The draft Financial Services and Markets Act 2000 (Designated Activities) (Supervision and Enforcement) Regulations 2024 have been laid in Parliament according to the affirmative procedure.

The draft Regulations extend the FCA's supervision and enforcement powers under the Financial Services and Markets Act (FSMA) 2000 so that they can be used in relation to designated activities under Part 5A of FSMA 2000. Specifically, the Regulations:

- allow the FCA to supervise designated activities by gathering information and launching investigations into persons carrying out designated activities;
- allow the FCA to enforce its designated activity rules by publicly censuring or imposing financial penalties on persons that breach them; and
- set out the procedures that will apply to the FCA giving directions concerning designated activities.

HM Treasury did not formally consult on the draft Regulations. They have been laid before Parliament and will come into force on the day after they are made. The draft Regulations rely on the draft Consumer Composite Investments (Designated Activities) Regulations 2024, which were laid before Parliament in October 2024, and the draft Short Selling Regulations, which were laid before Parliament on 11 November 2024. HM Treasury will only make the former if Parliament approves the latter two SIs.

Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2024 made

The Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2024 (SI 2024/1158) have been made.

SI 2024/1158 extends by twelve months the transitional arrangements under the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 (SI 2019/589) enabling specified categories of Gibraltar-based firms to provide financial services in the UK and facilitating access by similar types of UK-based firms to Gibraltar's financial services market.

SI 2024/1158 comes into force on 16 December 2024.

In the explanatory memorandum to SI 2024/1158, HM Treasury notes that it is preparing secondary legislation to implement the new Gibraltar Authorisation Regime (GAR), and that the transitional arrangements will be repealed once the GAR enters into force.

BoE updates approach to enforcement

The BoE has published a policy statement on changes to the statements of policy and procedure relating to its enforcement powers (Enforcement SoPP).

The final policy has been updated following consultation to reflect the BoE's new and expanded enforcement powers under the Financial Services and Markets Act 2023 (FSMA 2023). In particular, updates have been made to the BoE's enforcement policy in relation to:

- the Securitisation Regulations 2024;
- digital settlement assets;
- the wholesale distribution of cash; and
- critical third parties (CTPs).

The updated Enforcement SoPP took effect on 12 November 2024.

The BoE has also updated its Enforcement Decision Making Committee (EDMC) procedures to reflect the expanded powers.

Deposit guarantee schemes: Bank of Italy publishes new regulation

The Bank of Italy has published new supervisory rules governing deposit guarantee schemes (DGS), with a view to ensuring full alignment with the Deposit Guarantee Schemes Directive 2014/49/EU (as amended).

The new regulation is intended to cover essential aspects of DGS operations, including governance, intervention procedures, and the suitability of representatives. In particular, DGS are required to establish robust governance and control structures, to set criteria for intervention actions, and to ensure that representatives meet suitability standards in line with the applicable banking regulations. Enhanced reporting and information flows between DGS and the Bank of Italy are also established, particularly on deposits, financial resources, and major actions, including international cooperation within European DGS networks.

The new regulation came into force immediately after its publication. However, transitional measures have been provided in relation to particular provisions, including certain reporting obligations.

CSSF updates circular on long form report

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has published Circular 24/865 updating Circular CSSF 22/821 on the long form report (as amended by Circular CSSF 23/845).

The circular applies to all Luxembourg credit institutions and Luxembourg branches of non-EU credit institutions.

The circular amends Circular CSSF 22/821 on the long form report with the aim of further aligning the content of the self-assessment questionnaire (SAQ) with supervisory points of focus, by including the following two thematic sections in the revised SAQ:

- Regulation (EU) 2022/2554 of 14 December 2022 on digital operational resilience for the financial sector (DORA) preparedness; and
- Article 23(2) of Commission Delegated Regulation (EU) 2015/61 of 10 October 2014, with regard to liquidity coverage requirement for credit institutions (LCRDA).

In addition, some of the existing sections have been slightly modified to better suit supervisory needs.

Annex I of the Circular provides a mark-up of Circular CSSF 22/821, showing the amendments.

Luxembourg Ministry of Finance publishes updated guidelines relating to implementation of financial restrictive measures

The Luxembourg Ministry of Finance has published updated versions of its guidelines relating to (i) the implementation of financial sanctions (restrictive measures) against certain persons, entities, bodies and groups within the framework of combating terrorism financing, and (ii) the implementation of financial restrictive measures against third countries, entities or individuals.

The main changes to the guidelines include:

- the introduction of illustrative examples describing circumstances that may qualify as indications that a designated person or entity has control over a non-designated entity, such as being the largest shareholder compared to other shareholders, buyback options, transfers of shares around the time of the designation or certain circumstances linked to the use of front persons, trusts, shell companies and limited liability companies;
- the introduction of express guidance on what is to be construed as 'acting on behalf of or at the direction of'; and
- the introduction of a reference to the Security Council resolution 2744 (2024) of 19 July 2024 implementing an amended delisting procedure.

FINMA publishes new strategic goals

The Swiss Financial Market Supervisory Authority (FINMA) has published its strategic goals for the period from 2025 to 2028.

The four goals are:

- preventive supervision and integrity – the goal is for FINMA's supervisory activities to increase confidence in Switzerland as a financial centre and contribute to the long-term stability of the Swiss financial system;
- financial and operational resilience – FINMA will continue to place a strong focus on the financial resilience of supervised institutions as part of its supervision. It will pay particular attention to how supervised institutions deal with market risks, credit risks, liquidity risks and actuarial risks;
- framework conditions – FINMA will seek actively to contribute its experience and expertise to building the basis for financial market regulation. At all levels, it intends to advocate for framework conditions that ensure effective supervision and early intervention at the supervised institutions; and
- organisation – FINMA will seek continuously to increase its effectiveness and efficiency as a supervisory authority.

FINMA publishes new ordinance and fully revised circular on auditing

FINMA has transferred the existing Circular 2013/3 Auditing to a new Regulatory Auditing Ordinance and carried out a complete revision of the circular. In doing so it has fulfilled the requirement for the formal compliance of auditing regulation in accordance with the Financial Market Supervision Act (FINMASA).

A small part of the content remains in the fully revised circular. The previous annexes to the circular, which mainly concern the risk analysis and standard audit strategy of audit firms, will now become templates. This is intended to enable them to be adapted more flexibly and faster. FINMA has indicated that it will ensure that those affected can comment on any amendments to these templates.

Stamp Duty Legislation (Miscellaneous Amendments) Bill 2024 gazetted in Hong Kong

The Hong Kong Government has gazetted the Stamp Duty Legislation (Miscellaneous Amendments) Bill 2024.

The Bill is intended to amend:

- the Stamp Duty Ordinance to give effect to the proposal in the Budget introduced by the Government for the 2024–2025 financial year to waive the stamp duty payable on:
  - the transactions and transfers of shares or units of real estate investment trusts; and
  - the transactions and dealings specified in section 3 of the Stamp Duty (Jobbing Business) (Options Market Makers) Regulation; and

- the Securities and Futures and Companies Legislation (Amendment) Ordinance 2021 to adjust the stamp duty collection arrangement involving approved securities registrars under the uncertificated securities market regime.

The Bill will be introduced into the Legislative Council for its first reading on 20 November 2024.

HKMA sets out unsecured consumer credit products cooling-off period requirements

The Hong Kong Monetary Authority (HKMA) has issued a circular to set out the requirements for retail banks (including digital banks) to put in place arrangements for the provision of a cooling-off period to individual customers of unsecured consumer credit products. The cooling-off period allows individual customers to-reconsider their financial obligations and assess their repayment capacity after entering into a credit agreement. It is intended to minimise, if not totally avoid, the impact of impulsive and excessive borrowing.

The HKMA requires retail banks offering unsecured consumer credit products to individual customers to review and revise their systems and documentation, and comply with the relevant requirements as soon as practicable, and in any case no later than the end of June 2025.

The HKMA has also strongly encouraged authorised institutions to arrange their subsidiaries in Hong Kong which carry on retail banking business and offering unsecured consumer credit products to follow the relevant requirements on cooling-off period set out in the circular. Other authorised institutions are encouraged to adopt similar consumer protection measures if they are offering such products to individual customers.

SFC issues circular on use of generative AI language models

The Securities and Futures Commission (SFC) has issued a circular to set out its expectations of licensed corporations (LCs) regarding the responsible use of generative artificial intelligence (AI) language models. The requirements are applicable to LCs offering services or functionality provided by AI language models or AI language model-based third-party products in relation to their regulated activities. Applicability will be regardless of whether the AI language model is developed or provided by the LC itself, its group company, an external service provider (third-party provider) or comes from an open source.

The SFC has emphasised that LCs may implement the requirements in a risk-based manner, commensurate with the materiality of the impact and the level of risk presented by the specific use case or application of the AI language model. Such requirements include core principles relating to senior management responsibilities, AI model risk management framework, cybersecurity and data risk management, and third-party provider risk management. A list of non-exhaustive risk factors in relation to the use of AI language models is provided in the Appendix.

The SFC has reminded LCs that intend to adopt AI language models in high-risk use cases to comply with the notification requirements under the Securities and Futures (Licensing and Registration) (Information) Rules. These require intermediaries to notify the SFC of any significant changes in the nature of their business and the types of service they provide. LCs are

encouraged to discuss their plans with the SFC as early as possible, preferably at the business planning and development stage, to avoid potential adverse regulatory implications.

As the circular is effective immediately, the SFC requires LCs to critically review their existing policies, procedures and internal controls to ensure proper implementation of, and full compliance with, the requirements. Noting that some LCs may need time to update their policies and procedures to meet the requirements, the SFC has indicated that it will take a pragmatic approach in assessing LCs' compliance with the circular.

MAS announces plans to support commercialisation of asset tokenisation

The Monetary Authority of Singapore (MAS) has announced plans to advance tokenisation in financial services. These include:

- forming commercial networks to deepen liquidity of tokenised assets – under Project Guardian, the MAS engaged financial institutions (FIs), industry associations and international policymakers to carry out industry trials on the use of asset tokenisation in capital markets. Following the industry trials, the MAS is facilitating commercialisation to take place in a coordinated, networked manner. To this end, several FIs have formed the Guardian Wholesale Network industry group, with the aim of establishing a multi-member network to commercialise their respective asset tokenisation trials and scale usage;
- developing an ecosystem of market infrastructures to facilitate seamless cross border transactions – the MAS launched the Global Layer One (GL1) initiative in 2023 to foster the development of foundational digital infrastructures. To build on this, the GL1 initiative is expanding its scope to support the development of an ecosystem of compatible market infrastructure, specifically in the area of control principles specifications and compliance by design. The GL1 will also set up a new market infrastructure working group, comprising global financial market infrastructure providers, that will focus on digital asset securities control principles;
- fostering industry frameworks for tokenised asset implementation – to facilitate broad based acceptance and implementation of tokenised assets by FIs, the following two industry frameworks, developed by Project Guardian industry group members, have been published: (i) Guardian Fixed Income Framework (GFIF) – the GFIF provides an industry guide to implement tokenisation in debt capital markets, strengthen industry capabilities and catalyse adoption of tokenised fixed income solutions. It integrates the International Capital Market Association's Bond Data Taxonomy, Capital Markets and Technology Association's Token Standards, and the Global Financial Markets Association's Design Principles for Tokenised Securities; and (ii) Guardian Funds Framework (GFF) – the GFF provides recommendations for establishing a framework for the tokenisation of the fund lifecycle and activities, including asset servicing, and on-chain share register archetypes and data. It also proposes a Guardian Composable Token Taxonomy, which demonstrates how new tokenised assets (that are a composite of multiple asset classes) can be readily created; and

- enabling access to a common settlement facility for tokenised assets – the MAS will be launching a Singapore Dollar (SGD) Testnet, to enable Fis to access a wholesale SGD central bank digital currency (CBDC) for market testing purposes. The SGD Testnet will offer three features of settlement facility, programmability and interoperability. It will be made available to eligible FIs participating in the MAS' digital asset and digital money initiatives, including Project Guardian and Project Orchid.

MAS responds to feedback received on proposed framework for single family offices

The MAS has published its responses to the feedback it received on its July 2023 consultation on a simplified class exemption regime for Singapore's single family office (SFO) sector.

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

- the proposed class exemption is intended to be structure agnostic. An SFO (which can be held via a trust, foundation or any other structure) will qualify for exemption as long as the assets managed by it originated from members of the same family;
- family trusts and foundations (managed by the SFO) will be allowed to designate charitable organisations as beneficiaries, if these beneficiaries do not have control over the trust or foundation assets and are merely persons designated to receive benefits. These charitable organisations may include those not funded exclusively by the family, as long as the SFO is not appointed to manage the assets of the charitable organisations;
- SFOs can only manage monies on behalf of charitable organisations exclusively funded by the family;
- the definition of key employees will be expanded to include executive directors, the chief executive officer, the chief financial officer and investment professionals, and they will be allowed to own a non-controlling stake of up to 10% in the SFO;
- a limit of 10% will be imposed on the percentage of assets under management that can be attributed to non-family key employees, in order to prevent abuse of the SFO regime;
- a generational limit of five generations will be imposed at the time of commencement of the SFO's business activities in Singapore;
- the definition of family members will be expanded to include parents-in-law and siblings-in-law as family. Legally adopted children and stepchildren of the common ancestor will also be included in the definition of family;
- an SFO and its fund vehicle (FV) will be required to open and maintain an account with a MAS-regulated bank. Where the SFO has a foreign-incorporated FV, the FV must open and maintain an account with a MAS-regulated bank in Singapore or with a regulated bank in a jurisdiction that complies with anti-money laundering and countering the financing of terrorism requirements consistent with the standards set by the Financial Action Task Force (FATF);
- the timeline for initial notification under the class exemption framework will be extended to within 14 days after the date of commencement of business by an SFO. As part of the notification, SFOs will only be allowed to obtain

legal opinions supporting their exemption qualification from law firms based in Singapore;

- the designated point of contact between the SFO and the MAS must be directly employed by the SFO and be resident in Singapore;
- SFOs will be required to submit an annual return within four months from their financial year end;
- SFOs that applied for tax incentive under Section 13O or Section 13U of the Income Tax Act, and previously furnished a legal opinion to the MAS as part of their applications, will need to obtain a new legal opinion with reference to the class exemption; and
- case-by-case exemptions will generally not be granted to SFOs who may not qualify for the class exemption, unless there are exceptional reasons.

Regarding the implementation plan, a transitional period of one year from the effective date of the class exemption framework will be provided for existing SFOs operating in Singapore to comply with the qualifying criteria under framework. The existing licensing exemption that an SFO has been relying on will be withdrawn, either upon the filing of the initial notification to the MAS, or at the end of the one-year transitional period, whichever is earlier. The MAS will provide further details on the effective date of implementation, revised legislation and mode of submission for the initial notification and annual return prior to the implementation of the SFO framework.

APRA releases survey results assessing management of risks associated with climate change in financial sector

The Australian Prudential Regulation Authority (APRA) has published the findings of its second climate risk self-assessment survey. The findings provide deeper insights into how regulated entities identify, manage and disclose the financial risks of climate change and align their practices with the Prudential Practice Guide – Climate Change Financial Risks.

The self-assessed results were broadly aligned with APRA's expectations. Amongst other things, it found that larger entities have continued to improve their climate risk maturity on average, although broad variations remain. APRA noted that there are areas for improvement and a need to see greater convergence towards leading practice over time. On the other hand, smaller entities generally reported lower climate risk maturity.

Other insights from the results include that:

- most large entities have improved their climate risk maturity since 2022. However, around one-quarter have seen their overall climate risk maturity score decline;
- the average level of climate risk maturity for large banks has improved since 2022, while it is broadly unchanged across large insurers and superannuation trustees;
- climate governance and strategy, and climate risk management, are two areas of comparative strength across most industries and the different tier groups. Entities did not perform as well on disclosure, or metrics and targets;

- more mature governance structures are typically in place at entities where climate risk has been integrated into risk management; and
- entities are starting to consider adjacent risks and practices such as nature risk and transition plans.

APRA has urged all regulated entities, not only those who participated in the survey, to consider the findings, reflect on their own preparedness and implement leading practice for managing climate risk.

Based on the survey's insights, APRA has also indicated that it will elevate consideration of climate risk within the regulatory and supervisory landscape, including consulting on amending prudential standards CPS 220 and SPS 220 on risk management to include climate risk in 2025.

RECENT CLIFFORD CHANCE BRIEFINGS

Scaling the global carbon markets – a way forward for the VCM and Paris Mechanisms

At COP29, the global community is meeting in the hope of driving critical progress on climate commitments.

Against this backdrop, our London Environment Group has launched a new report which explores recent developments concerning the Paris mechanisms and the voluntary carbon market (VCM) and makes recommendations for actions that need to be taken if they are to reach their full capabilities.

https://www.cliffordchance.com/briefings/2024/11/scaling-the-global-carbon-markets--a-way-forward-for-the-vcm-and.html

Buy now, pay later – consultation now, regulation soon

On 17 October 2024, HM Treasury launched a six-week consultation on draft legislation to bring buy-now pay later (BNPL) products into the scope of regulation by the Financial Conduct Authority (FCA). The draft legislation builds on draft legislation previously published in February 2023 under the previous government (which itself was proposed by the Woolard Review in February 2021).

The consultation closes on 29 November 2024. The legislation is expected to be made in early 2025 with full implementation of the BNPL regime expected twelve months later, in Q1-Q2 2026. A temporary permissions regime (TPR) will apply to unauthorised BNPL firms pending FCA authorisation.

This briefing paper outlines the key elements of the proposed BNPL regulatory regime, and the potential impacts for affected firms and users of BNPL products.

https://www.cliffordchance.com/briefings/2024/11/buy-now--pay-later--consultation-now--regulation-soon.html

Polish Draft Act on Artificial Intelligence Systems

In recent weeks, the Ministry of Digital Affairs published the Draft Act on Artificial Intelligence Systems of 16 October 2024, which provides for the establishment of specialised bodies for artificial intelligence systems and the

introduction of appropriate procedures to ensure the safety of artificial intelligence systems, while not inhibiting technological development.

The Draft Act aims to implement the EU Artificial Intelligence Act, allowing for the direct application of certain of its provisions. The Draft Act is to apply to a range of entities, including companies and individuals, that use artificial intelligence systems. These include, among others, suppliers, importers, distributors, and authorised representatives of suppliers and manufacturers.

This briefing paper discusses the Draft Act.

https://www.cliffordchance.com/briefings/2024/11/draft-act-on-artificial-intelligence-systems-.html

C L I F F O R D

C H A N C E

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

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