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Insurance: IRRD and Solvency II amendments published in Official Journal

Directive (EU) 2025/1 establishing an insurance recovery and resolution framework (IRRD) and Directive (EU) 2025/2 amending Solvency II have been published in the Official Journal.

IRRD introduces a harmonised minimum European framework for the recovery and resolution of insurance undertakings, including:

- harmonised resolution tools and procedures for national authorities; and
- requiring Member States to set up insurance resolution authorities.
- The amendments to Solvency II are intended to:
- provide incentives for insurers to contribute to the long-term sustainable financing of the economy;
- improve risk-sensitivity;
- mitigate excessive short-term volatility in insurers' solvency positions;
- enhance the quality, consistency and coordination of insurance supervision across the EU, and improve the protection of policyholders and beneficiaries; and
- better address the potential build-up of systemic risk in the insurance sector.

Both Directives will enter into force on 28 January 2025, and Member States' transposition measures are to apply from 30 January 2027.

CRR3: EBA consults on prudential treatment of crypto exposures

The European Banking Authority (EBA) has launched a consultation on draft regulatory technical standards (RTS) on the calculation and aggregation of crypto exposure values under Article 501d(5) of the Capital Requirements Regulation (CRR3), which mandates the EBA to develop draft RTS to specify the technical elements necessary for institutions to calculate their own funds requirements.

The draft RTS:

- aim to further specify the relevant capital treatment under the credit risk, including counterparty credit risk (CCR), market risk (MR) and credit valuation adjustment risk framework for exposures under CRR3 while achieving, to the extent possible, consistency with the Basel Committee on Banking Supervision standard on prudential treatment of cryptoasset exposures;
- include the relevant technical elements on the use of netting, aggregating of long and short positions, criteria to allow hedge recognition for other cryptoassets, and the underlying formulas relevant for calculating the exposure value of cryptoassets for the CCR and MR treatment; and
- aim to ensure that institutions have reliable valuation processes of their cryptoasset exposures to ensure that they correctly calculate the own funds' requirements for exposures to cryptoassets within the scope of the Markets in Cryptoassets Regulation (MiCA) and which are not financial instruments or commodities and require institutions to include them within the scope of prudent valuation rules.

Following the feedback received from the consultation, the EBA will revise, where appropriate, the draft RTS proposed for consultation and send them in their final form to the EU Commission for adoption. Following the adoption by

the EU Commission, the RTS will be subject to scrutiny by the EU Parliament and the EU Council before being published in the Official Journal.

Comments are due by 8 April 2025.

EBA publishes final ESG risk management guidelines

The EBA has published a final report setting out its guidelines on the management of environmental, social and governance (ESG) risks (EBA/GL/2025/01) under the Capital Requirements Directive (CRD6).

The guidelines set out requirements for institutions' internal processes and ESG risk management arrangements, including the content of specific plans to address the risks arising from the transition to a more sustainable economy, and the process of adjustment to relevant sustainability legal and regulatory objectives.

The guidelines apply from 11 January 2026, except for small and non-complex institutions for which the guidelines will apply at the latest from 11 January 2027.

FSMA 2000 (Collective Investment Schemes) (Amendment) Order 2025 made

The Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2025 (SI 2025/17) has been made and laid before Parliament according to the negative procedure.

SI 2025/17 is intended to ensure that arrangements for qualifying cryptoasset staking do not amount to a collective investment scheme under section 235 of the Financial Services and Markets Act 2000 (FSMA).

It amends the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (SI 2001/1062) by adding qualifying cryptoasset staking to the list of arrangements that are not considered collective investment schemes.

SI 2025/17 comes into force 31 January 2025.

HMT publishes response to call for evidence on pension fund clearing exemption

HM Treasury (HMT) has published the Government's response to its November 2023 call for evidence on the future of the pension fund exemption from the obligation to clear certain derivative contracts at a central counterparty (CCP).

First introduced under the EU European Market Infrastructure Regulation (EU EMIR) and retained as part of EU assimilated law in the UK (UK EMIR), the Government has decided to maintain the clearing obligation exemption for pension funds for the longer-term. It intends to take forward legislation to remove the current 18 June 2025 expiry date for, and any further time limit on, the exemption.

The Government notes that the policy decision will be kept under review in coordination with UK regulatory authorities and may be reassessed if there are changes to market dynamics or structure, or wider Government reforms.

PRA publishes final amendments to resolution assessment reporting and disclosure dates

The Prudential Regulation Authority (PRA) has published a policy statement (PS1/25) setting out amendments to its rules and expectations in relation to the timing of resolution assessment report submissions and disclosures.

Reporting and disclosure dates will no longer be fixed to a two-year cycle but determined on a periodic basis.

The PRA has published a new webpage for communicating the next expected reporting and disclosure dates.

Firms are expected to next submit a report by the first Friday in October 2026 and to publish a disclosure by the second Friday in June 2027.

In PS1/25, the PRA also notes an intention to undertake a review of the threshold at which firms come into scope of the resolution assessment rules.

DORA: Bank of Italy issues communications on ICT security and ESA guidelines

The Bank of Italy has published communications relating to the requirements under the Digital Operational Resilience Act (DORA), which applies from the 17 January 2025. DORA is intended to establish harmonised rules across the EU to enhance information technology (ICT) risk management in the financial sector.

The documents published include:

- a communication highlighting the requirements for ICT security obligations which is addressed to intermediaries directly supervised as regards their digital operational resilience and ICT risk profiles, including non-significant banks, investment firms, managers, payment institutions, electronic money institutions, issuers of asset-linked tokens, cryptoasset service providers, and crowdfunding service providers. These intermediaries are to carefully evaluate their compliance with DORA and to conduct a self-assessment of their ICT risk management frameworks, the results of which must be submitted to the supervisory body by 30 April 2025;
- operating instructions for financial entities to report serious ICT incidents and significant cyber threats through the INFOSTAT platform;
- a communication setting out additional guidance on responsibilities of the ICT risk control function, mandatory reporting of ICT service contracts supporting key functions, obligations for reporting severe ICT incidents and cyber threats, and requirements for threat-led penetration tests; and
- a communication indicating the Bank of Italy's intention to comply with the European Supervisory Authorities (ESAs)' joint guidelines (JC/GL/2024/36) on the oversight cooperation and information exchange between the ESAs and the competent authorities under Article 32 of DORA, which regulates the oversight framework, stresses the importance of cooperation between the ESAs and the competent authorities, with particular attention to be paid to the procedures, conditions for splitting and performing tasks, and the exchange of information.

Travel rule: Italy publishes implementing decree

Legislative Decree No. 204 of 27 December 2024, which adapts Italian legislation to the provisions of Regulation (EU) 2023/1113 on information accompanying transfers of funds and certain cryptoassets, has been published in Official Journal No. 303.

The main rules introduced concern, amongst other things, the information on the payer and payee (such as name and account number) required for transfers of funds in any currency and information data of the originator and transferee for transfers of cryptoassets, essential for preventing, detecting and investigating cases of money laundering and terrorist financing.

The new legislation has been applicable from 30 December 2024.

CSSF publishes communiqué regarding amendments to CSSF Circular 24/853 on revised long form report for investment firms

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has published a communiqué on the publication of CSSF Circular 25/870 amending CSSF Circular 24/853 on the revised long form report (RLFR) for investment firms.

The circular is addressed to Luxembourg investment firms and Luxembourg branches of non-EU investment firms.

Whereas for the financial year ending 31 December 2023, the revised LFR was applicable only to a sample of investment firms, namely all non-SNI IFR investment firms incorporated under Luxembourg law, including their branches and certain SNI IFR investment firms incorporated under Luxembourg law, including their branches, the requirements with regard to the revised LFR now apply to all investment firms for the financial year ending 31 December 2024.

The reporting framework implemented by CSSF Circular 24/853 comprises four dedicated reports. With reference to the principle of proportionality, the CSSF has introduced a more proportionate approach for investment firms who are subjected to the RLFR for the first time as from the year ending 31 December 2024 and who, in consideration of their risk attributes, represent a comparably lesser risk (Partial Scope IF). Partial Scope IF are subject to a lighter RLFR framework and are required for the time being to submit three dedicated reports only.

CSSF Circular 24/853 reconfirms that Partial Scope IF must assess their compliance and the effectiveness of their internal organisational arrangements via the RLFR self-assessment questionnaire. Partial Scope IF must also mandate their réviseur d'entreprises agréé (REA) to prepare the report on the protection of financial instruments and funds belonging to clients and the report concerning anti-money laundering and countering the financing of terrorism. Given their comparably lesser risk, the CSSF has decided, for the time being, to exempt Partial Scope IF from the requirement to have Agreed Upon Procedure (AUP) reports prepared by their REA.

The communiqué reminds investment firms that the RLFR must be documented and uploaded via the CSSF eDesk platform. The RLFR can be submitted to the CSSF via the following channels:

- an online solution via eDesk procedure for manual input; or

- an API solution based on the use of a structured exchange file (json format) to be transmitted to the CSSF via the S3 (simple storage service) protocol.

The CSSF has indicated that the portal of the RFLR for the financial year ending 31 December 2024 should be accessible in the following weeks.

Questions relating to the communiqué, CSSF Circular 24/853 or the RLFR should be addressed to lfrei@cssf.lu by copying the investment firm's usual CSSF point of contact. Technical questions regarding the communication channels should be addressed to eDesk@cssf.lu.

CSSF updates technical FAQs on Regulation CSSF No 20-08 on borrower-based measures for residential real estate credit

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has published an updated version of its technical FAQs on Regulation CSSF No 20-08 on borrower-based measures for residential real estate credit as temporarily amended by Regulation CSSF No 24-10.

The FAQs are intended to clarify the implementation aspects associated with the loan-to-value (LTV) measure in place.

Following their update, the FAQs state that until 30 June 2025, cash collateral and the State Guarantee on mortgage loans can be considered as own funds for the purpose of the LTV requirement but should only be permitted for loans that had an initial LTV requirement strictly below 100% in accordance with the maximum limits set out in the Regulation. For the cases where the borrower provides own funds for the compliance with the LTV requirement that consist of cash collateral and/or the amount corresponding to the State Guarantee, these should be deducted from the value of 'L', i.e., the sum of all loan tranches secured by the borrower on the immovable property at the moment of loan origination, for the purpose of the LTV computation calculated in accordance with the Regulation.

In addition, as per the amendment introduced by Regulation CSSF No 24-10, until 30 June 2025 banks granting loans for buy-to-let residential property may respect an LTV ratio of > 80 % up to 95 % (thereby derogating from the up to 80% LTV ratio limit), provided the total loans benefitting from this derogation is no higher than 10% of the total of such type of loans.

Hong Kong Deposit Protection Board implements second phase of deposit protection scheme enhancements

The Hong Kong Deposit Protection Board has announced that the second phase of the enhancement measures of the Deposit Protection Scheme (DPS) is effective from 1 January 2025, following the implementation of the first phase on 1 October 2024.

The second phase of the enhancement measures include the following:

- providing enhanced coverage to affected depositors upon a bank merger or acquisition; and
- requiring scheme members to display the DPS membership sign on their electronic banking platforms.

The first phase of the enhancement measures included: (a) raising the deposit protection limit from HKD 500,000 to HKD 800,000 per depositor per bank; (b) refining the levy system to enable the DPS Fund to reach its target size within a reasonable timeframe under the increased protection limit; and (c) streamlining the negative disclosure requirement on non-protected deposit transactions for private banking customers.

Financial Services and Markets (Resolution of Financial Institutions) (Amendment) Regulations 2024 gazetted

Following the Monetary Authority of Singapore's (MAS') December 2024 responses to the feedback it received on its September 2024 consultation paper on proposed amendments to the Financial Services and Markets (Resolution of Financial Institutions) Regulations 2024 (Principal Regulations), the Singapore Government has gazetted the Financial Services and Markets (Resolution of Financial Institutions) (Amendment) Regulations 2024 (Amendment Regulations).

The Amendment Regulations are intended to extend the statutory bail-in regime in Part 5 of the Principal Regulations to the insurance sector by:

- scoping in a Singapore-incorporated licensed insurer and a designated financial holding company which has at least one subsidiary that is a licensed insurer incorporated, formed or established in Singapore (referred to collectively as 'insurers') as a financial institution under Division 6 of the Financial Services and Markets Act 2022 and expanding the scope of eligible instruments to cover instruments issued by insurers; and
- introduce a new regulation 33A under Part 6 of the Principal Regulations to prescribe the maximum duration of two business days for temporary stays on the early termination rights in reinsurance contracts.

The amendments to the Principal Regulations are effective from 31 December 2024.

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

MAS responds to consultation on new guidelines on Notice 134 on recovery and resolution planning

The MAS has published its responses to the feedback it received on its October 2023 consultation on new guidelines on its Notice 134 on recovery and resolution planning.

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

- only 'notified insurers' (for now, notified insurers will be limited to those that the MAS has designated as domestic systematically important insurers) will be required to have a recovery planning process (RCP) under the MAS Notice 134, however it is generally a good practice for insurers to have an RCP to identify actions that can be taken to restore their financial position and viability under situations of severe stress;
- an RCP specific to a notified insurer in Singapore is still necessary even if the entity is included in its group RCP. A notified insurer and 'notified DFHC (Licensed Insurer)' may leverage the tools within the enterprise risk management (ERM) framework when developing the RCP. However,

these insurers should assess the appropriateness of using existing ERM tools and not simply rely on or duplicate them in the RCP;

- a notified insurer and a notified DFHC (Licensed Insurer) must keep the RCP up-to-date by reviewing it annually and upon the occurrence of an event that could materially impact the RCP. During the annual review, there is no need for further updates to the RCP if it has been adequately updated during a preceding off-cycle review;
- a notified insurer only needs to consider stress scenarios that are sufficiently severe to threaten the going concern and survivability of the notified insurer;
- when developing the communication strategy and plan for the RCP, insurers can leverage those developed for business continuity planning purposes, but they should be tailored accordingly for different stress scenarios and recovery options;
- the MAS will engage notified insurers and notified DFHC (Licensed Insurer)s on the expectations with regard to the information, e.g. level of details, structure of report etc., as part of the resolution planning process, taking into consideration the relevance of the information for each notified insurer and notified DFHC (Licensed Insurer). The MAS will also work with these insurers to leverage existing regulatory submissions and management reports, where relevant. Where the information is currently not available, these insurers should work towards establishing the required information as soon as practicable;
- the MAS will engage each notified insurer and notified DFHC (Licensed Insurer) on the information requirements and the transition period needed to meet the expectations set out in the proposed guidelines. For insurers and designated financial holding companies that become a notified insurer or a notified DFHC (Licensed Insurer) after the guidelines take effect, the MAS will provide at least a one-year transition period for the notified insurer or notified DFHC (Licensed Insurer) to make the necessary preparations to meet the expectations in the guidelines;
- a notified insurer or notified DFHC (Licensed Insurer) is expected to inform the MAS of a material change to its business or structure immediately. The MAS will engage notified insurers and notified DFHC (Licensed Insurer)s in the critical functions and critical shared services identification assessments;
- the MAS expects notified insurers and notified DFHC (Licensed Insurer)s to establish management information systems that are able to produce information necessary for recovery and resolution planning, resolvability assessment and the conduct of resolution in a timely manner. These insurers can rely on existing systems and processes if they are capable of meeting the expectations set out in the guidelines;
- notified insurers and notified DFHC (Licensed Insurer)s have to consider the operational arrangements required to ensure continuity of critical functions and critical shared services while it restores its capital and liquidity positions during recovery or resolution;
- in terms of expected timeline for the counterparty to maintain the contract in the event of a crisis, notified insurers and notified DFHC (Licensed Insurer)s should ensure that the contractual provisions provide for the

continued use of services and prevent termination from being triggered solely by recovery or resolution events as long as there is no default in obligations by these insurers; and

- notified insurers and notified DHFC (Licensed Insurer)s would have to incorporate the relevant terms in the contractual agreements with intra-group and third-party service providers which support critical functions and critical shared services. However, specific recovery actions and triggers need not be documented in these contracts.

Following the consultation feedback, the MAS has also published the final guidelines, which provide guidance to notified insurers and notified DFHC (Licensed Insurer)s on recovery and resolution planning requirements under the MAS Notice 134. The guidelines, together with the MAS Notice 134, have been effective from 1 January 2025.

RECENT CLIFFORD CHANCE BRIEFINGS

The new EU Insurance Recovery and Resolution Directive

The new IRRD will create a harmonised recovery and resolution planning framework for EU insurance and reinsurance companies and groups. It will give new resolution authorities powers to resolve insurance and reinsurance companies and their holding companies where they are failing or likely to fail, as an alternative to normal insolvency proceedings.

IRRD will also require insurance and reinsurance companies and their holding companies to include new bail-in and resolution stay recognition clauses in many contracts governed by the law of a non-EU state.

IRRD was published in the Official Journal of the EU on 8 January 2025 and Member States will be required to apply the new requirements to entities covered by the Directive from 30 January 2027.

This briefing discusses the new rules.

https://www.cliffordchance.com/briefings/2025/01/the-new-eu-insurance-recovery-and-resolution-directive.html

Polish law implementing the EU Corporate Sustainability Reporting Directive

The Act of 6 December 2024 Amending the Accounting Act, the Act on Statutory Auditors, Audit Firms and Public Oversight and Certain Other Acts came into force on 1 January 2025.

The Act implements into Polish law new sustainability reporting obligations, in line with the European Sustainability Reporting Standards (ESRS) introduced by Directive (EU) 2022/2464 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU on corporate sustainability reporting (CSRD).

The main objective of the CSRD is to ensure that more companies report relevant, comparable and reliable sustainability information. This is essential to achieve the goal of redirecting capital towards the financing of companies that are developing in a sustainable way or are striving for such a transition.

This briefing discusses the issues arising from the Act.

https://www.cliffordchance.com/briefings/2025/01/polish-law-implementing-the-eu-corporate-sustainability-reportin.html

'LMEs' – A.K.A., Language Matters Exercises – Fifth Circuit Disagrees with Serta Bankruptcy Court's Interpretation of 'Open Market Purchases'

On the last day of 2024, the Fifth Circuit Court of Appeals issued its decision involving one of the most notable (and litigated) liability management exercise (LME) transactions to date – a 2020 uptier transaction among Serta Simmons Bedding, L.L.C. and its affiliates and certain of Serta's existing lenders.

The Fifth Circuit reversed the Bankruptcy Court and held that the 2020 uptier transaction was not a permissible 'open market purchase' under an exception to the *pro rata* sharing provision of the applicable credit agreement because it did not take place on the secondary market for syndicated loans.

On the same day, the New York Supreme Court's Appellate Division (First Department) held that the Mitel non *pro rata* uptier exchange did not violate the applicable credit agreement, in part, because the relevant provision allowing the borrower to 'purchase' term loans did not preclude a refinancing or exchange of the existing debt.

This briefing discusses the two decisions.

https://www.cliffordchance.com/briefings/2024/12/-lmes----a-k-a---language-matters-exercises--fifth-circuit-disag.html

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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.

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