Global Survey 2019

Regulatory and Market Developments

Banking - Securities - Insurance
Covering 21 Countries and the EU

October 2019
OVERVIEW

The Institute of International Bankers (IIB) represents internationally headquartered banking/financial institutions from over 35 countries in connection with U.S. legislative, regulatory, compliance and tax issues that affect their banking, securities and other financial activities in the United States. In the aggregate, IIB members’ U.S. operations hold approximately $5 trillion in banking and non-banking assets, fund 25% of all commercial and industrial bank loans made in the U.S. and contribute to the depth and liquidity of U.S. financial markets. IIB members contribute to the employment of hundreds of thousands of employees in the United States, in the financial sector and related service sectors. As providers of credit and other financial services in the United States, the U.S. operations of foreign banks add diversity and competitiveness to the U.S. financial services markets, help U.S. businesses grow and promote U.S. and international financial stability.

This 32nd annual Global Survey of Regulatory and Market Developments in Banking, Securities and Insurance is part of the IIB’s ongoing efforts to contribute to the understanding of global trends in financial regulation and markets. This year’s Global Survey covers developments during the period from July 1, 2018 to June 30, 2019 in 21 countries and the European Union (EU). We are very grateful to the banking associations and financial services supervisory authorities from those countries and the EU that have contributed to this year’s Survey and without whose participation this publication would not be possible.

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AUSTRALIA

Overview

The Australian banking industry is going through a period of significant reform following the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission). The Royal Commission made 76 recommendations across the financial services industry. Following the outcome of the Australian election in May 2019, the incumbent Government was re-elected as a majority and has commenced the process of implementation of these recommendations.

Australian banks have nonetheless continued to perform well, paying out strong dividends to the predominantly Australian shareholders, who hold around 80 per cent on average of Australia’s four major retail banks.

Economy

Australia’s economy has entered its 28th year of continuous GDP growth. However, growth has weakened over the second half of 2018 and in the first few months of 2019, moderating to 1.8% through the year to the March quarter 2019. Some of the drivers of the slowdown in growth in the domestic economy over the second half of 2018, particularly mining activity, are expected to have been transitory. But other drivers, such as consumption and dwelling investment, are expected to remain soft over coming quarters.

Despite more moderate GDP growth, employment growth has been very strong, particularly full-time employment. Contrary to underlying demographic trends, labour force participation has risen to accommodate the rise in demand for workers. The unemployment rate remains around 5 ¼ per cent, having risen modestly over the past few months. Wage pressures remain subdued, as have broader measures of inflation.

After 18 months of declining house prices, particularly in the systemically-important Sydney and Melbourne markets, prices appear to have stabilised and there are nascent signs of improved demand. Following more than two and half years of unchanged monetary policy, the Reserve Bank of Australia cut the cash rate by 25 basis points to 1.25 per cent in June 2019 to provide additional support for the demand within the economy as it absorbs a winding down of residential construction activity.

Royal Commission

In December 2017, the Australian Government established a Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Hearings commenced in March 2018, with the Royal Commission undertaking seven rounds of hearings broadly dealing with lending practices to consumers and small and medium-sized enterprises, financial advice, farming finance, superannuation and insurance.

The final report was released on 4 February 2019 and made 76 recommendations of which 29 were directly related to the Australian banking industry. The recommendations advance the
interests of consumers in four key ways, by strengthening and expanding protections for consumers, small businesses, rural and remote communities; raise accountability and governance standards; enhance the effectiveness of regulators; and provide for remediation of those harmed by misconduct.

The Government released its response to the final report on 4 February 2019, agreeing to act on all 76 recommendations.

Banking Code of Practice

The ABA’s Banking Code of Practice (the Code) sets out the banking industry's key commitments and obligations to customers on standards of practice, disclosure and principles of conduct for their banking services. The Code applies to personal and small business bank customers.

An independent review of the Code commenced in July 2016. The independent review resulted in 99 recommendations; the ABA then commenced the process of redrafting the Code which included implementing the vast majority of those recommendations.

The new version of the Code includes changes including: improvements for small business, changing the way credit cards are offered, better protections for guarantors, greater transparency around fees and giving customers the ability to cancel a credit card online. The new Code was approved by the Australian Securities and Investment Commission (ASIC) in 2018 and comes into effect on 1 July 2019. The ABA has since submitted further changes to the Code for ASIC’s approval, following specific recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

Remuneration and Incentives

Stephen Sedgwick AO was commissioned by the Australian Banking Association (ABA) to undertake a review of product sales commissions and product based payments in retail banking in Australia. Mr Sedgwick released his final report in April 2017. Following this in February 2019, Mr Sedgwick completed a second review of the implementation status of his 2017 Recommendations. He concluded that significant progress had been made in respect to his 2017 recommendations which related to staff remuneration structures. In his 2019 report, Mr Sedgwick recommended a further review focusing on the quality of the implementation to be undertaken in 2021. Additionally, he recommended that the industry collectively seek an alternative customer outcomes-based measure to the Net Promoter Score. The ABA Council agreed to continue the implementation of the 2017 recommendations and to also implement the 2019 recommendations.

Open Banking

The Australian Government announced the introduction of an open banking regime in Australia in May 2017. The Consumer Data Right regime legislation expected to pass in late July. The phased implementation is in process with Phase 1 requiring major banks, and transaction banking products being the first to enter the regime. Elements of the regime remaining to be
finalised include the: registry, standards, rules, and user experience. Additionally, the regime test plan is yet to be rolled out to the first round of participants, which includes the four major banks.

Productivity Commission

Australia’s Productivity Commission (PC) which advises the Australian Government on economic reform, was tasked by the Government to undertake a review of Competition in the Australian Financial System in May 2017. The final report was released by the Government on 3 August 2018, making a series of recommendations across a range of sectors including financial advice, general insurance products, provision of finance to small and medium-sized enterprises and the payment system.

Comprehensive Credit Reporting (CCR)

In late 2017, the Australian Government announced Australia’s four major banks would be required to participate in Comprehensive Credit Reporting. The legislation passed the House of Representatives in mid 2018 but has not been listed in the Senate due to a lack of consensus between the major parties around how to report repayment history information (RHI) for customers in hardship arrangements. Major banks are participating in CCR and sharing positive data with credit bureaus for at least 50 per cent of consumer credit accounts.

Finalising the CCR legislation will remain a high priority for the newly elected Coalition Government. The Attorney General Department has conducted a review of hardship arrangements and how they intersect with mandatory CCR to set a clear plan for how banks should report customers in hardship arrangements.

Business Growth Fund

In November 2018, the Australian Government announced it would establish an Australian Business Growth Fund to provide longer term equity for small business. The Government has committed to investing $100 million in the fund. An independent Board and Chair appointed by shareholders will administer the scheme.

Australian Business Securitisation Fund

The Australian Government announced the Australian Business Securitisation Fund on 14 November 2018. The funds will invest up to $2 billion in warehousing and the securitisation market, providing additional funding to smaller banks and non-bank lenders to lend to small businesses. The Fund was legislated on 3 April 2019 and is authorised to undertake investments from 1 July 2019.

Cooperatives and Mutuals Reform

The Australian Government implemented reforms to the Cooperatives and mutual sector on 4 April 2019. The reforms introduced a new definition of mutual entity in the Corporations Act and removed uncertainties for mutual ADIs in their ability to raise capital without the risk of
demutualisation. The reforms also introduced a new bespoke capital instrument allowing mutual ADIs to raise capital.

**Australian Financial Complaints Authority (AFCA)**

AFCA commenced its operations on 1 November 2018 as a new external dispute resolution scheme to deal with consumer and small business complaints in the financial system. This is regarded as a ‘one stop shop’ as it consolidated the three existing schemes into the one body. In addition to receiving and determining complaints, over the past 12 months, AFCA has finalised its Rules, Operating Guidelines and created a Consumer Advisory Panel. In the Government’s response to the Royal Commission, it has added some additional elements to the operation of AFCA. Firstly, it has imposed a requirement on financial firms to take reasonable steps to cooperate with AFCA to resolve financial complaints. Secondly, the Government has expanded AFCA’s remit to accepting eligible, legacy complaints extending back to 1 January 2008 and that have not been previously subject to a settlement or determination.

**Responsible Lending Regulatory Framework**

In its final report, the Royal Commission recommended against any substantive changes to the responsible lending regulatory framework, ASIC has commenced a consultation process around proposed updates to its responsible lending guidance contained in RG 209. The regulator is seeking stakeholder feedback on proposed updates to what constitutes reasonable inquiries and verification of income and expenses, use of expense benchmarks, when responsible lending obligations do not apply, fraud risk and record keeping and written assessments. ASIC will consider stakeholder views with the aim of releasing updated guidance by the end of 2019.

**Banking Executive Accountability Regime (BEAR)**

The BEAR regime which draws on the Senior Manager Regime in place in the United Kingdom commenced for the four largest authorised deposit taking institutions (ADIs) on 1 July 2018 and for all other ADIs on 1 July 2019. The BEAR is an enhanced accountability framework for ADIs and their directors and senior executives. It strengthens their accountability obligations and imposes additional consequences for breaching those obligations. As part of the implementation of BEAR, the Australian Prudential Regulation Authority (APRA) has been given additional powers. In exercising its new powers, APRA will be able to more easily: impose substantial fines on banks disqualify accountable persons and ensure that remuneration policies include financial consequences for individuals.

The BEAR will be expanded to all financial entities including insurers and superannuation trustees as a consequence of the Royal Commission. Further, APRA will be expanding the BEAR to ensure responsibility of ADIs, subject to the BEAR, for all steps in the design, delivery and maintenance of all products offered to customers by the ADI. The timeline for this is yet to be determined.
Design and Distribution Obligations and Product Intervention Powers

The Australian Government has introduced two major consumer protection reforms in the form of Design and Distribution Obligations and a Product Intervention Power.

The Design and Distribution Obligations impose requirements on banks to ensure financial products are targeted and sold to the right customers. The Product Intervention Power empower ASIC to intervene in the distribution of a product to prevent harm. The obligations will apply to products that are sold to retail clients and banks will be required to put in place reasonable controls to ensure products are only distributed in accordance with identified target markets.

The Product Intervention Power will enable ASIC to intervene in the distribution of a financial product where it perceives a risk of significant consumer detriment. ASIC will be able to take actions such as requiring the amendment of product marketing or banning products for a period of up to 18 months, and to ban remuneration practices, where there is a direct link between remuneration and the distribution of a product.

The reforms have been developed as a result of recommendations of the Financial System Inquiry in December 2014. The Product Intervention Power came into effect on 6 April 2019. The Design and Distribution Obligations do not take effect until 5 April 2021.

APRA Prudential Standard on Cyber Security

In March 2019, APRA released for consultation, the final draft prudential standard, CPS 234 Information Security, aimed at strengthening the ability of APRA regulated entities to respond to a cyber breach. The proposed final standard sets minimum standards for the management of information security threats.

Capital Framework for Authorised Deposit-Taking Institutions (ADIs)

In 2018, APRA began consulting on revisions to the capital framework for ADIs to reflect changes resulting from the Basel III reforms as well as measures to address Australian ADIs’ structural concentration of exposures to residential mortgages. This included the design and application of a minimum leverage ratio requirement and potential adjustments to the overall design of the capital framework to improve transparency, international comparability and flexibility. Release of the final prudential standards is expected in January 2020 and coming into effect sometime after 2021.

APRA Capability Review

On 11 February 2019, the Australian Treasurer announced an independent capability review of the Australian Prudential Regulation Authority (APRA). The review will provide a forward-looking assessment of APRA's ability to respond to an environment of growing complexity and emerging risks for APRA's regulated sectors. Consultation with stakeholders is now complete and the review is expected to report to Government by the end of June 2019.

APRA Amendments to Prudential Guidance on Residential Mortgage Lending

In May 2019, APRA proposed amendments to the prudential practice guide APG 223 residential mortgage lending. APRA is proposing to:

- remove the quantitative guidance on the level of the serviceability floor rate, i.e. the reference to a specific 7 per cent floor. APRA will still expect ADIs to determine, and keep under regular review, their own level of floor rate, but ADIs will be able to choose a prudent level based on their own portfolio mix, risk appetite and other circumstances;
- increase the expected level of the serviceability buffer from at least 2 per cent (most ADIs currently use 2.25 per cent) to 2.5 per cent, to maintain prudence in overall serviceability assessments; and
- remove the expectation that a prudent ADI would use a buffer ‘comfortably above’ the proposed 2.5 per cent, to improve clarity of the prudential guidance.

APRA is hoping to finalise the amended guidance later in 2019.

ASIC Enforcement Review

In late 2016, the Australian Government announced a review into ASIC’s enforcement regime. The Taskforce’s report was provided to the Government in December 2017. The Taskforce made 50 recommendations relating to:

- Self-reporting of contraventions by financial services and credit licensees
- Harmonisation and enhancement of search warrant powers
- ASIC’s access to telecommunications intercept material
- Industry codes in the financial sector
- Strengthening ASIC’s licencing powers
- ASIC’s power to ban individuals in the financial sector
- Strengthening penalties for corporate and financial sector misconduct, and
- ASIC’s directions powers.

In April 2018, the Australian Government released their response to the report which agrees, or agrees in principle, to all recommendations made by the Taskforce. The process of implementation has commenced. Notably, the Government has passed legislation substantially increasing maximum penalties for a range of corporate and financial sector offences.

Accessibility Principles for Banking Services

In late 2018 the ABA released new banking Accessibility Principles to promote best practice across the industry and help ensure all bank services and products are accessible to people with disability. The Principles are high-level principles rather than technical standards. This reflects a general trend in standard-making away from prescriptive standards. Change is rapid and prescriptive standards may become outdated quickly. They also reduce the flexibility banks need to adapt to new technologies, devices and opportunities. The principles are underpinned by the Universal Design Principles and Web Content Accessibility Guidelines.
Customer Advocates

In April 2016, ABA member banks committed to appoint a Customer Advocate within each bank. Deloitte reported on the progress of the implementation of the Customer Advocate in May 2019. The report noted that a variety of models had been implemented across the sector and that good progress was being made in respect to the embedding of the function. Key areas of model divergence across member banks were the breadth of the role and the access of the Customer Advocate to the CEO and the Board. In respect to the former element, the report noted that the more complete implementations of the function incorporated systemic issue identification and resolution and being an influencer in the product design and distribution functions.

A key area for improvement of the implementations of the function was in respect to the positioning of Customer Advocate function with stakeholders. The report found that stakeholders tended to be confused in respect to the role played by the Customer Advocate, including in respect to the IDR/EDR processes. The report made several recommendations aimed at improving communications so as to give stakeholders, both internal and external to the bank, clarity of the role of the Customer Advocate. The ABA will support the industry in the implementation of the report recommendations.

Vulnerable Customers

The Australian Banking industry has increased its focus on customers experiencing vulnerability with changes to the new Banking Code of Practice (commencing 1 July 2019) and the development of a new Industry Guideline to support customers experiencing vulnerability. This new guideline will be finalised in late 2019 and commence in early 2020.

CANADA

Executive Summary

Canada’s banking system continues to be widely considered one of the safest in the world. Policy-making authority and regulatory oversight for Canada’s banks are undertaken by a number of federal bodies. Prudential regulation is conducted by the Office of the Superintendent of Financial Institutions (OSFI), while consumer-facing market conduct is regulated by the Financial Consumer Agency of Canada (FCAC). Deposit insurance is provided by the Canada Deposit Insurance Corporation (CDIC). The Bank of Canada and OSFI are active members of the Basel Committee on Banking Supervision. Canadian regulators have been active in adopting new and revised global regulatory standards.

Federal financial services legislation, including the Bank Act that governs the activities of banks in Canada, is required to be reviewed every five years. The current review was scheduled to conclude in 2017, but the 2016 federal budget postponed the conclusion of the review until 2019. The formal review process did commence in 2016, and the Canadian banks provided feedback to the federal government on what modifications to the bank legislative and regulatory regime should take place in the context of the 2019 review, with particular emphasis on measures that will facilitate the policy objectives of modernization and innovation. The federal government’s first
budget implementation bill for 2018 introduced changes to the Bank Act intended to facilitate innovation by easing current restrictions on banks’ ability to engage in financial technology (‘fintech’) activities and invest in fintech companies. The budget implementation bill also extended the review process to 2023 to allow the government to make further changes to the Bank Act as they deem appropriate. The second budget implementation bill for 2018 introduced a comprehensive federal financial consumer protection framework. The 2019 federal budget announced measures related to cyber, payments, AML, employment and housing.

Federal Financial Legislation and Regulations

2019 Federal Budget Measures

The Canadian government’s 2019 budget made a number of announcements relevant to the banking industry. The government announced measures related to strengthening oversight of cybersecurity, introducing a new framework for the oversight of retail payments, and proposing significant investments in the anti-money laundering regime. The budget also confirmed that the government will introduce pay transparency measures for federally regulated employees in order to reduce wage gaps and legislative amendments to better protect workplace pensions in the event of corporate insolvency. The budget also contained a number of housing initiatives.

There is expected to only be one budget implementation bill before parliament recesses in June 2019, meaning that some budget measures will be delayed until after the election in the Fall.

AML/ATF Measures

Five year review of The Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)

In support of the legislated five-year Parliamentary review of the PCMLTFA, the House of Commons Standing Committee on Finance (the Committee) held 14 hearings, travelled nationally and internationally to examine methods and best practices of other jurisdictions in their efforts to examine ML and TF as well as discussing Canada’s performance in these areas.

As a result, in November 2018, the Committee released a report, Confronting Money Laundering and Terrorist Financing: Moving Canada Forward (the Report) that included 32 recommendations for changes and additions focusing on increasing the effectiveness of the Canadian AML/ATF regime.

The recommendations were grouped thematically in the following areas: closing legislative and regulatory gaps; enhancing the exchange of information while considering the privacy rights of Canadians; strengthening intelligence capacity and enforcement; and, modernizing the regime.

The Department of Finance addressed the Committee’s Report by substantively agreeing with the direction of the majority of the Committee’s recommendations, and stating that they were aligned with the Government’s current direction on AML and ATF. As a first phase, the Government has focused on increasing law enforcement resources to fight financial crime and addressing gaps in information sharing. The Government has proposed to:
• Strengthen federal policing operational and investigative capacity;
• Create the Anti-Money Laundering Action, Coordination and Enforcement Team pilot initiative, bringing together dedicated experts across intelligence and law enforcement agencies;
• Create a multi-disciplinary Trade Fraud and Trade-Based Money Laundering Centre of Expertise; and
• Strengthen operational capacity at Canada’s AML/ATF regulator and financial intelligence unit, FINTRAC.

Improving Beneficial Ownership Transparency in Canada

Changes to the Canada Business Corporations Act were introduced to improve on the beneficial ownership recordkeeping requirements for business corporations. The amendments create a requirement for federally incorporated corporations to record individuals (a natural person) who have significant control over a corporation, and must include certain personal information. For 2019, the Government proposed further amendments to the Act to make the beneficial ownership information maintained by federally incorporated corporations more readily available to tax authorities and law enforcement.

Amendments to the PCMLTFA Regulations

On June 25, 2019, amendments to the regulations under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act were registered. The amendments introduce regulations with respect to businesses dealing in virtual currencies, foreign money services businesses and pre-paid products as well as changes to reporting requirements and customer due diligence.

Economic Sanctions

Throughout 2018 – 2019, the federal government made the following changes to Canada’s economic sanctions:

• On March 4, 2019, Canada made technical changes to the regulations under the United Nations Act and the Special Economics Measures Act, Canada’s key sanctions legislation. The purpose of the changes was to create greater consistency in language across all regulations, repeal obsolete provisions and correct non-substantive errors or omissions. The changes also modify the monthly reporting obligations for federally regulated financial institutions.

• On March 15, 2019, in coordination with the European Union and the United States, Canada imposed new sanctions in response to Russia’s actions in the Black Sea and Kerch Strait and Russia’s illegal annexation of Crimea. Since Russia’s illegal annexation of Crimea in 2014, Canada has sanctioned 435 individuals and entities. Canada’s sanctions impose asset freezes and dealings prohibitions.

• On April 15, 2019, in response to the Maduro regime, Canada announced its fourth round of sanctions against key figures in the regime, adding to the 70 that have already been sanctioned.
• On November 29, 2018, pursuant to the *Justice for Victims of Corrupt Foreign Officials Act*, Canada imposed sanctions on 17 Saudi nationals believed to be responsible for or complicit in the extrajudicial killing of Jamal Khashoggi that took place at the Saudi consulate in Istanbul, Turkey, on October 2, 2018.

• On June 25, 2018, in a coordinated effort with the European Unions to address Myanmar’s ongoing crisis, Canada imposed further targeted sanctions against senior officials who played a role in the military operations against the Rohingya in Myanmar’s Rakhine State in August 2017.

**Cybersecurity Threats to Financial Institutions Operating in Canada**

Greater involvement and coordination across government, regulators, law enforcement and national security is critical to ensure secure and resilient cyber systems in an increasingly connected digital economy. With cyber risk a growing concern in today’s world, the banking industry would like to continue collaboration with the government on cyber security issues to protect Canadians and the economy from cyber threats and attacks. The common goal is to create a more resilient, safer cyber environment for our citizens and businesses.

In the 2018 Federal Budget, the government provide some high-level insights into the new National Cyber Security Strategy including the announcement of a new Canadian Centre for Cyber Security under the Communications Security Establishment (CSE). The industry has long advocated for a single point of contact to provide cyber expertise and the industry has publicly supported this move by the government. In June, Public Safety Canada subsequently released its National Cyber Security Strategy entitled *Canada’s Vision for Security and Prosperity in the Digital Age* acknowledging our world continues to be transformed by digital innovation and the importance of cyber security to the Canada’s economy and national security. The banking industry would like to see the Canadian government proceed quickly with its implementation to protect Canadians and the economy. Cyber security legislation for critical infrastructures may be introduced in 2019 (though the fall election may impact this timeframe).

**Housing**

The 2019 federal budget announced housing policy measures designed to make home ownership more affordable for first-time homebuyers. The measures included:

• An increase to the Home Buyer’s Plan RRSP withdrawal limit from $25,000 to $35,000
• The introduction of a First Time Home Buyers Incentive, administered by the Canada Mortgage and Housing Corporation (CMHC), which allows qualifying first-time home buyers taking out an insured mortgage to receive a shared-equity mortgage (essentially an interest-free loan) from CMHC of either 5% or 10% of the home value. Eligibility requirements include that the home be owner-occupied, that the buyer have an annual household income of less than $120,000, and that the mortgage plus the incentive amount be no more than 4 times the buyer’s annual household income. The program is capped at $1.25 billion over 3 years and is expected to assist 100,000 first-time home buyers. The
10% shared-equity mortgage option is only offered to those buying new homes, to encourage housing supply. The program is expected to begin operating September 2019.

**Payments System Reforms**

Canada is in the process of modernizing its payments infrastructure and rolling out a new real-time payments platform, which supports the government’s objective of promoting innovation and increasing competition in payments and financial services. Banks have been collaborating with the Bank of Canada and Canada’s payment system operator, Payments Canada, on the conceptual design of this platform with the goal of ensuring it meets international standards for risk management.

In 2018, the federal government launched a review of the *Canadian Payments Act* to assess the effectiveness of Payments Canada’s current governance structure and get feedback on expanding the types of entities that can be members of Payments Canada and therefore access Payments Canada’s systems. The banking industry in Canada has consistently supported broadening access to the payments system to promote greater innovation, subject to a regulatory framework being in place that sets basic standards of protection for end-users and other measures to reinforce financial and operational resiliency. In early 2019, the government formally declared that it will introduce legislation to implement a new retail payments oversight framework that will govern new types of payment service providers, and also verified that the Bank of Canada will be given the mandate to register PSPs and oversee compliance with this framework (in particular, requirements that will cover operational risk and the safeguarding of end-user funds). Consistent with the banking industry’s advocacy, the government has made it clear that registration and regulation under the oversight framework (RPOF) are pre-conditions for enabling PSPs to process transactions (i.e., exchange, clear or settle payments) using Payments Canada’s systems.

Concurrent with outreach to support the modernization of the payments system and action on regulating the retail payments market, the industry has also been working with the government to address banks’ concerns about their exposure to liability associated with the modernization program and also changes governing access. The government has recognized the industry’s concerns and is working to better understand the source of liability and actions that can be taken to mitigate exposure.

**Basel III in Canada**

Basel III adoption in Canada is progressing well with Canada ranked category 4 (i.e. final rules in force) on many Basel standards (e.g. countercyclical capital buffer, capital requirements for equity investments in funds, capital requirements for central counterparties (CCPs), standardized approach for measuring counterparty credit risk (SA-CCR), margin requirements for non-centrally cleared derivatives, securitization framework, Total Loss-Absorbing Capacity (TLAC) capital and TLAC holdings, existing (2014) exposure definitions for the leverage ratio, definition of capital, capital conservation buffer, liquidity coverage ratio, G-SIB and D-SIB requirements, Revised Pillar 3 requirements (published 2015), and TLAC disclosures in the BCBS’s *Sixteenth progress report on adoption of the Basel regulatory framework* (May 2019). OSFI also developed domestic guidance in 2018 and 2019 for the Basel III standards highlighted in the report (please see further details below).
Summary of Financial Crisis Regulatory Actions

Imposition of Enhanced Capital and Other Requirements

Canadian banks implemented the Basel III regulatory capital requirements on an “all-in” basis as of January 1, 2013, forgoing the Basel Committee’s six-year transition period. The six Canadian domestic systemically important banks (D-SIBs) (i.e. Royal Bank of Canada, TD Bank Financial Group, The Bank of Nova Scotia, Bank of Montreal, CIBC, and National Bank of Canada) are subject to an enhanced capital requirement of 1% common equity tier 1 (a “D-SIB capital surcharge”). In addition, the D-SIBs are subject to a Domestic Stability Buffer (DSB) that is currently set at 1.75% of total risk-weighted assets, rising to 2% effective October 31, 2019. The increase reflects OSFI’s view that key vulnerabilities to Canada’s D-SIBs remain elevated and that a favourable credit environment and stable economic conditions continue to provide a window of opportunity for these banks to increase their capital holdings. These six banks are also subject to more intensive supervision and are required by OSFI to comply with the Basel Committee’s risk data aggregation and risk reporting principles, as well as the Enhanced Disclosure Task Force’s (EDTF) disclosure recommendations. On November 21, 2017, the Royal Bank of Canada was added to the list of global systemically important banks by the Financial Stability Board; however, OSFI has not required the bank to hold any additional capital as a result of this designation.

In October 2018, OSFI published updates to its Capital Adequacy Requirements (CAR) Guideline that were implemented in Q1 2019. The main revisions relate to the implementation of standardized approach for measuring counterparty credit risk exposures (SA-CCR), capital requirements for bank exposures to central counterparties, and the securitization framework.

Financial Market Infrastructure (FMI) Resolution

The Canadian Department of Finance recently released draft regulations related to Canada’s FMI resolution regime. The Canadian Bankers Association’s (CBA) FMI Resolution Working Group, jointly with the International Swaps and Derivatives Association provided feedback on the proposed regulations, focusing on central counterparty (CCP) risk resulting from the Canadian Derivatives Clearing Service (CDCS).

In Canada, the Bank of Canada (BoC) is the resolution authority for FMIs. Once the proposed regulations are finalized, the BoC will issue Guidance providing further details and assistance with implementation. CBA is awaiting the Guidance to be issued by the BoC soon after the proposed Regulations take effect. It is in the Guidance where CBA expects most of the issues of concern to members will be addressed. The CBA will continue its ongoing dialogue with the BoC on this matter.

Task Force on Climate-related Financial Disclosures (TCFD)

The Canadian D-SIBs have made a commitment to align with the disclosure recommendations set out by the Task Force on Climate-related Financial Disclosures (TCFD). The banks have initiated project plans related to TCFD disclosures, and are focused on five work areas related to the TCFD disclosures report: climate risk metrics and methodologies, green taxonomy
for sustainable finance, TCFD implementation roadmap, emerging regulations and leading practices, and approaches to climate scenario analysis. The banks are continuing to monitor developments globally as they work on implementing the disclosure recommendations.

**Leverage Ratio**

In October 2018, OSFI published updates to its *Leverage Requirements Guideline* to align with modifications to its *CAR Guideline*, with the changes implemented in Q1 2019. In November 2018, OSFI also published corresponding updates to its *Leverage Ratio Disclosure Requirements Guideline* which were implemented in Q1 2019.

**Large Exposures Limits for D-SIBs**

In 2019 OSFI issued the final B-2 Guideline for the Large Exposure Limits for D-SIBs, which come into effect starting November 1, 2019. Until OSFI provides further guidance, all other federally regulated deposit taking institutions (DTIs) remain subject to the original version of the Guideline B-2. The objective of the guideline is to limit a bank’s exposure to a single counterparty measured as a percentage of the capital base, and it stipulates that D-SIBs are to monitor large exposure requirements at the consolidated level only. The new exposure limit for inter-Canadian D-SIBs/G-SIB is 20% of Tier 1 Capital; however, the inter-G-SIB exposure limit is 15%. The guideline exempts some U.S. Government Sponsored Entities to avoid international competitive disadvantage (e.g. Federal National Mortgage Association (FNMA aka Fannie Mae), Federal Home Loan Mortgage Corporation (FHLMC aka Freddie Mac)).

**Liquidity Risk Framework**

The D-SIBs began to disclose their Liquidity Coverage Ratio (LCR) in May 2015, which was set at 100% (i.e. no phase-in period was permitted). In addition, banks continue to provide data to OSFI to support other liquidity monitoring tools, such as the domestic Net Cumulative Cash Flow (NCCF) measure. The NCCF captures the maturity spectrum between the 30-day LCR and 1-year NSFR and assumes a business-as-usual, non-stressed scenario.

In 2019, OSFI updated its *Liquidity Adequacy Requirements (LAR) Guideline*, including updated run-off factors for less-stable deposits. Instead of the typical 3% – 5% run-off factor for retail deposits, the factors were increased within a range of 10% - 40% in the LCR (and with equivalent changes in the NCCF and NSFR) for less-stable deposits such as uninsured deposits, those with no established client relationship, for non-transactional accounts, or those managed by an unaffiliated third-party. OSFI has extended the domestic implementation timeline of the NSFR to January 2020. While it remains uncertain at this time whether and when key foreign markets will implement the NSFR standard, OSFI remains committed to its implementation and will require D-SIBs to disclose their NSFR results by 2021.

**Regulation of Over-the-Counter Derivatives**

In April 2018, the Canadian Securities Administrators (CSA), an umbrella organization comprised of Canada's 13 provincial and territorial securities regulators, issued a proposed derivatives registration regime, which would require banks to register and demonstrate compliance
with the CSA requirements around the banks’ derivatives businesses. In June 2018, the CSA issued proposed rules relating to business conduct in derivatives transactions. In the fall of 2018, the Canadian banks provided comments on both proposals, including their potential impacts on the banking industry.

The Quebec Court of Appeal issued its decision on the constitutionality of the Cooperative Capital Markets Regulatory System (CCMR), a proposed joint federal-provincial securities and systemic risk regulatory body, in May 2017. The Quebec Court found both the draft provincial and the federal statutes underpinning the CCMR to be unconstitutional. The Quebec Court’s decision was appealed to the Supreme Court of Canada, which rendered its decision in November 2018. The Supreme Court ruled that the Constitution permits the implementation of pan-Canadian securities regulation under the authority of a single regulator according to the model established by the CCMR.

**CHINA**

**Significant Developments in the Banking Industry**

- China’s foreign exchange regulator has abolished 17 regulations on forex management to promote trade and investment facilitation. The abolished regulations used to address certain aspects, including import forex payments, trade-in-service and foreign debt, as well as the forex management for financial institutions, companies and individuals. As a part of the government’s reform to improve regulations and services, and by removing the outdated regulations, it will help market entities better understand the country’s forex policies, as announced in a statement by the State Administration of Foreign Exchange (SAFE), on October 16, 2018.

- On November 27, 2018, the People’s Bank of China (PBOC), the China Banking and Insurance Regulatory Commission (CBIRC) and the China Securities Regulatory Commission (CSRC) jointly released a guideline to improve China’s framework for supervising systemically important financial institutions, prevent systemic risks and maintain the prudent performance of the financial system. The guideline also clarified the definition and scope of such financial institutions, including those in the banking, securities and insurance sectors, as well as the evaluation of procedures and methodologies.

- China’s central bank has established a macro-prudential management bureau to replace the previous foreign exchange department, according to a statement released by the PBOC on February 2, 2019. The bureau will be responsible to formulate macro-prudential policies, assess financial agencies, draft rules and regulations, and monitor financial risks. It will also take on foreign exchange department duties, such as assessing foreign exchange policies and promoting the yuan’s cross-border transactions.

- China has also amended its regulations on the capital adequacy of transnational companies, according to the State Administration of Foreign Exchange (SAFE). The new regulations will help promote the liberalization and facilitation of cross-border trade and investment and better serve the country’s economy, said the SAFE. China will ease the registration management of
foreign debt and offshore loans and launch pilot reforms to facilitate foreign exchange settlement and payment in multinational companies after registration. China will also remove restrictions that demanded multinational companies cooperate with only a limited number of banks, according to the new regulations.

**Significant Developments in the Securities Industry**

- On September 25, 2018, the People’s Bank of China (PBOC) and the Ministry of Finance jointly released rules to standardize bond issuances by various types of overseas institutions in China’s interbank bond market. Foreign governments, foreign institutions with government functions and international development institutions must possess bond issuance experience and have sound solvency prerequisites, according to the rules. Overseas financial institutions must have paid-in capital of no less than 10 billion yuan or its equivalent, and have reported profits for the past three consecutive years, among other requirements.

- On December 26, 2018, the Cyberspace Administration of China (CAC) unveiled a set of stipulations on financial information services, which became effective on February 1, 2019. The stipulations define the services as those that provide users engaged in financial activities with information or financial data that might affect the financial market. Under the stipulations, providers should not produce, copy, release or distribute any information that contains false financial information, distorts the country’s financial and monetary policies or prompts others to partake in financial fraud schemes or economic crime. Information that misrepresents incidents or news in the financial market, or promotes financial products and services forbidden by authorities, or contains other matters that goes against laws and regulations will also be prohibited.

- On March 1, 2019, the China Securities Regulatory Commission (CSRC) released regulations on the science and technology innovation board, which pilots registration-based initial public offerings (IPO), a major reform step for China’s capital market. Under the pilot registration process, eligible companies can become listed by filing required documents.

- China’s securities regulator toughened punishment of illegal market activities in 2018 amid strengthened supervision, with total fines and administrative penalties reaching a three-year high, according to the Xinhua News on April 21, 2019. A total of 10.641 billion yuan ($1.59 billion) of fines and confiscations were issued by the CSRC in 2018, up 42.28% year on year.

**Significant Developments in the Insurance Industry**

- With approval from a Chinese market regulator, a number of overseas financial institutions are ready to expand their presence in the Chinese mainland. German insurer Allianz Group has obtained permission for the initial establishment of a foreign insurance holding company in China, according to a statement released by the China Banking and Insurance Regulatory Commission (CBIRC) on November 25, 2018. “For the next step, China will steadily expand its opening-up in the financial sector while improving its risk prevention and market supervision capabilities,” said the CBIRC.
On May 1, 2019, a total of 12 new rules were released by the CBIRC, demonstrating China’s confidence and resolution to boost high-quality development of its financial sectors and to open up its economy further and implement pro-market reforms.

China’s regulators have allowed insurance companies to use credit derivatives to hedge against risks, as part of its efforts to encourage insurance funds to serve the economy. The purpose of using credit risk mitigation and credit protection tools should be confined to risk hedging, and insurance institutions should not be credit risk bearers, according to a notice by the CBIRC. The notice requires participating insurance companies be capable of using derivatives to manage risks and to comply with related trading regulations.

**EUROPEAN UNION**

**Banking Supervision and Regulation**

**Banking Package**

On 16 April 2019 European Parliament approved the final agreement on a package of reforms proposed by European Commission to strengthen the resilience and resolvability of European banks. The Banking Package of reforms comprises two regulations and two directives - namely amendments to the Capital Requirements Regulation and Directive (CRR/CRD), the Bank Recovery and Resolution Directive (BRRD), and the Single Resolution Mechanism Regulation (SRMR). Building on the existing rules, this set of adopted measures will address the remaining challenges to financial stability, while strengthening the global competitiveness of the EU banking sector. The package includes in particular the following key measures:

- a leverage ratio requirement for all institutions as well as a leverage ratio buffer for all global systemically important institutions;
- a net stable funding requirement;
- a new market risk framework for reporting purposes, including measures reducing reporting and disclosure requirements and simplifying market risk and liquidity rules for small non-complex banks in order to ensure a proportionate framework for all banks within the EU;
- a requirement for third-country institutions with significant activities in the EU to have an EU intermediate parent undertaking;
- a new total loss absorbing capacity (TLAC) requirement for global systemically important institutions;
- enhanced Minimum Requirement for own funds and Eligible Liabilities (MREL) subordination rules for global systemically important institutions (G-SIIs) and other large banks; and
- a new moratorium power for the resolution authority.

The Banking Package implements some international rules set by the Basel Committee on Banking Supervision (BCBS) and the Financial Stability Board (FSB). However, the banking package does not fully implement the Basel IV framework, as the BCBS finalized its global standards after the 2016 Commission’s proposal for the banking package. The more recent
changes to that framework, most notably those on credit and operational risk, are going to be included in subsequent EU reforms.

The banking package was be published in the Official Journal of the EU and entered into force. Most of the new rules will start applying in 2021.

**Non-Performing Loans (NPLs)**

On 28 November 2018, the Commission highlighted in its third progress report on the reduction of non-performing loans (NPLs) that NPLs in the European banking sector have declined further, now standing at an EU average of 3.4%. The Commission said that while the development is very encouraging the efforts need to continue to address legacy issues still weighing on the sector since the financial crisis.

Valdis Dombrovskis, European Commission’s Vice-President responsible for Financial Stability, Financial Services and Capital Markets Union said that working out the high stocks of NPLs is part of efforts to reduce risks in the European banking sector. In the Eurogroup report to Leaders on EMU deepening on 4 December 2018, Eurogroup welcomed the sustained progress made with risk reduction, as reported by the institutions, notably on NPL reduction and minimum requirement for own funds and eligible liabilities build-up. Eurogroup said it looks forward to progress regarding insolvency regimes, in particular the adoption of the legislative proposals on insolvency and the benchmarking exercise.

On 17 December 2018, the European Banking Authority (EBA) published its final Guidelines on disclosure of non-performing and forborne exposures. The disclosure allowed market participants and stakeholders to have a better picture of the quality of the banks’ assets, the main features of their non-performing and forborne exposures, and in the case of more troubled banks, the distribution of the problematic assets and the value of the collateral backing those assets.

In their 7 January 2019 call for Advice the Commission services requested from the EBA to collect data on the recovery rate and speed which banks experience when trying to enforce NPLs in Member States. The request was made as part of the Commission's ongoing work on the benchmarking of national loan enforcement frameworks (including insolvency frameworks) from a bank creditor perspective. Commission accepted EBAs extension proposal and deadline was extended to December 2019 for the collection and preliminary analysis of the data and to July 2020 for the delivery and complete analysis of the report.

In its fourth progress report on the reduction of NPLs, the Commission confirmed on 12 June 2019 that NPL levels are continuing their downward trajectory towards pre-crisis levels. The ratio of NPLs in EU banks has more than halved since 2014, declining to 3.3% in the third quarter of 2018 and down by 1.1 percentage points year-on-year.

Valdis Dombrovskis said the EU banks are now better capitalised and better prepared to withstand economic shocks but working out the remaining stocks of NPLs is part of ongoing efforts to make the banking sector even stronger. He noted that there is still a need for a full general approach on the secondary markets for NPLs and accelerated collateral enforcement.
Dombrovskis added that a more robust framework to regulate and supervise banks was recently agreed as well as legislation to help prevent the build-up of NPLs in the future.

Despite clear improvements, high ratios of NPLs do remain a challenge in some Member States and deserve continued attention. Communication called on Member States and the European Parliament to accelerate work on the outstanding proposals to complement the EU’s action to tackle this issue. Important strides have already been made towards full implementation of the EU’s Action Plan to tackle the high stocks of NPLs. However, the Commission calls on co-legislators to quickly agree on its proposed measures around the benchmarking of national loan enforcement and insolvency frameworks, and to develop a sharper focus on insolvency in the European Semester process.

**Completing the Banking Union - EDIS**

The first two pillars of the banking union – the SSM and the SRM – are in place and fully operational. However, a common system for deposit protection has not yet been established and further measures are needed to tackle the remaining risks of the banking sector.

In June 2018, the Council took note of progress on the proposal for a European deposit insurance scheme (EDIS). A six-monthly progress report summarises work within the Council's working group, both on EDIS and on reducing risk and other measures related to the banking union. The progress report is intended to facilitate further work.

At its September 2018 meeting, the Eurogroup agreed that work on EDIS would be sequenced after risk reduction measures are assessed. In December, Eurogroup stated that, in line with the mandate from the June Euro Summit, work has started on a roadmap for beginning political negotiations on EDIS, adhering to all elements of the 2016 roadmap in the appropriate sequence. Stating that further technical work is still needed, Eurogroup informed that a High Level Working Group (HLWG) will be established with a mandate to work on next steps.

The Eurogroup set up a HLWG at the level of Ministries of finance’ deputies to further progress on EDIS. As EDIS interacts with many other policies and parts of the Banking Union, the Eurogroup assigned a broad mandate to the group, which was reported to mainly discuss three key issues:

- The “architecture” of the banking union, including the regulatory treatment of sovereign exposures and ring-fencing in the Banking Union;
- The sequencing, in particular whether the two-stage approach suggested by the October 2017 Commission’s Communication on the Banking Union should be followed; and
- Conditionality, i.e. which specific benchmark should be met for a Member State to access EDIS.

In April 2019, the Chair of HLWG on EDIS updated ministers on progress with the discussions on a roadmap for beginning political negotiations on EDIS and further work planned. In June, president of the Eurogroup, stated that the Eurogroup decided to broaden the scope of their discussions on EDIS. Report by the chair of the group set out a broader vision of what the key elements of the future "steady state" Banking Union could look like. There is broad convergence on the principles that should guide the further strengthening of the Banking Union.
Countries are not yet ready to take a decision on the next steps. More work is needed on this file and there is a need to define the sequence of the decision-making process. This should include the development of a roadmap towards beginning political negotiations on EDIS. HLWG was mandated to report back again in December 2019, with the result that could feed the next institutional cycle.

**Prudential Requirements and Supervisory Arrangements for Investment Firms**

In February 2019, the political agreement was reached by the European Parliament and Member States on more proportionate and effective prudential rules for investment firms. Agreed package of measures, composed of a regulation and a directive, is setting out new prudential requirements and supervisory arrangements for investment firms. The objective of the reform is to adapt the requirements to the firms’ risk profiles and business models while preserving financial stability.

The revised legislation will ensure more proportionate rules and better supervision for all investment firms on capital, liquidity and other risk management requirements. It should also ensure a level playing field between investment firms and credit institutions.

Investment firms which carry out bank-like activities and pose similar risks as banks will be subject to the same rules and supervision as banks. On the other hand, simpler and less risky firms will benefit from a fully revised rulebook more tailored to their business models. As part of the new framework, equivalence rules for the provision of investment services by third country firms will also be strengthened and clarified.

Until now, all investment firms have been subject to the same capital, liquidity and risk management rules as banks. The capital requirements regulation and directive are based on international standards tailored for banks, therefore, they do not fully take into account the specificities of investment firms. The investment firms review divides investment firms into three categories. Large firms will remain under the scope of the existing prudential rules, and the most systemic ones will now be brought under the same supervisory regime as significant credit institutions. The other firms will be placed in two groups in a revised rulebook, taking their specific risks into account. The smallest firms will benefit from simpler and more streamlined requirements. Targeted changes are also introduced under which providers based in non-EU countries can offer their services to EU companies and clients.

The revised legislation will simplify compliance for Europe's investment firms, supporting them in mediating investment flows between savers and economic actors. This should help channel savings towards capital markets and benefit investment and growth in the EU. The rules will also help European supervisors carry out oversight of the activities and risks posed by investment firms. Finally, it will ensure that EU clients can continue to benefit from the investment options and services provided by firms based in countries outside the EU, with suitable safeguards to protect investors and financial stability within the Union. In April 2019, the Parliament plenary adopted the texts of directive and regulation on the prudential requirements and supervision of investment firms. It is awaiting the Council first reading position.
Revision of European Market Infrastructure Regulation

In March 2019, the Commission welcomed the political agreement reached by the European Parliament and EU Member States to ensure a more robust and effective supervision of central counterparties (CCPs) offering services to the EU. This will contribute to preserving the financial stability in the EU.

The agreement upgrades the supervision of CCPs, established in EU and non-EU countries, offering or planning to offer services to EU clearing members and their clients, as well as to EU trading venues. The agreed rules build on the proposal to revise the European Market Infrastructure Regulation (EMIR) presented by the Commission in 2017 as part of the Capital Markets Union project. These new arrangements are important to protect financial stability due to the growing role of CCPs as intermediaries in financial transactions.

The reform of EMIR (EMIR 2.2) introduces a more pan-European approach to the supervision of EU CCPs. It establishes a CCP Supervisory Committee within the European Securities and Markets Authority (ESMA) with independent members, national supervisors and central banks. For the supervision of third country CCPs operating in the EU, based on the system of equivalence, it introduces a proportionate approach. Some CCPs established outside the EU may be of such systemic importance that they require additional conditions to be recognized as equivalent and to be able to keep operating in the EU. In such instances, ESMA obtains additional supervisory tools. If this is not sufficient, the Commission can, upon request by ESMA, decide that a CCP will only be able to provide some or all of its services in the Union if it is established in the EU.

The Commission also welcomed the political agreement to amend the Statute of the European System of Central Banks and of the European Central Bank. The amendments equip the European System of Central Banks with the powers necessary to perform the tasks set in the EMIR 2.2.

The act was adopted by Council on 14 May 2019, following its approval in the European Parliament in April. After adoption by the Council, ESMA published three consultation papers under EMIR 2.2 on tiering, comparable compliance and fees with a deadline set on the 29 July 2019. After considering the feedback, ESMA will finalise its technical advice to the Commission following the publication of EMIR 2.2 in the Official Journal of the European Union.

Anti-Money Laundering Developments

On the occasion of President Juncker’s state of the Union address, on 12 September 2018, the Commission published a Communication on strengthening the Union framework for prudential and anti-money laundering (AML) supervision. The Communication proposed to amend the Regulation on the European Banking Authority (EBA) in order to concentrate AML powers related to financial sector into the EBA. The proposal furthermore aims at strengthening the EBA’s mandate to ensure that all relevant authorities effectively and consistently supervise the risks of money-laundering and that they cooperate and share information. The Commission proposed to clarify mandate to EBA in the context of AML to make it more explicit and more
comprehensive, accompanied by a clear set of tasks, corresponding powers and adequate resources. The amended Regulation will:

- Ensure that breaches of AML rules are consistently investigated, the EBA will be able to request national AML supervisors to investigate potential material breaches and to request them to consider targeted actions;
- Provide that the national AML supervisors comply with EU rules and cooperate properly with prudential supervisors. The EBA’s existing powers will be reinforced so that, as a last resort if national authorities do not act, the EBA will be able to address decisions directly to individual financial sector operators;
- Enhance the quality of supervision through common standards, periodic reviews of national supervisory authorities and risk-assessments;
- Enable the collection of information on AML risks and trends while fostering exchange of such information between national supervisory authorities;
- Facilitate cooperation with non-EU countries on cross-border cases; and
- Establish a new permanent committee that brings together national AML supervisory authorities.

The proposal is part of a broader strategy to strengthen EU framework for prudential and AML supervision for financial institutions which consists of legislative and non-legislative measures to make AML supervision more effective and improve the cooperation between prudential and anti-money laundering supervisors.

On 4 December 2018, the Council adopted an action plan for enhanced monitoring setting out short term non-legislative actions to better tackle AML challenges. In particular, the Council recommended that a “post-mortem” analysis of recent money laundering cases in EU banks would be carried out to understand how they came about and to help shape possible additional actions.

On 19 December 2018, Council agreed on a position on reinforced supervision for banks. The EU is stepping up the fight against illegal cash by enhancing monitoring of money laundering and terrorist financing threats at EU level. EU ambassadors agreed the Council’s negotiating position on a proposal reinforcing the role of the EBA as regards risks posed to the financial sector by money laundering activities.

Recent cases involving money laundering in some EU banks have raised concerns that AML rules are not always supervised and enforced effectively across the EU, creating risks for the integrity and reputation of the European financial sector, as well as for the financial stability of those banks. Strengthening the role and powers of the EBA as regards AML supervision for financial institutions would ensure that AML rules are effectively applied in all member states and all authorities involved cooperate closely with each other.

According to the agreed text, the EBA would be given, in particular, the following tasks:

- Collecting information from national competent authorities relating to weaknesses identified in the context of their action to prevent or fight money laundering and terrorist financing;
• Enhancing the quality of supervision through the development of common standards and coordination among national supervisory authorities;
• Performing risk assessments on competent authorities to evaluate their strategies and resources to address the most important emerging AML risks at EU level;
• Facilitating cooperation with non-EU countries on cross-border case; and
• As a last resort if national authorities do not act, the EBA would be able to address decisions directly to individual banks.

On 14 June 2019, following political agreement of the European Parliament and the Council on Commission’s proposal, the Council adopted important priority file under the Security Union which facilitates law-enforcement access to financial information. This measure will give law enforcement authorities an important tool to get the financial information quickly helping them fight money laundering and terrorist financing more effectively.

The new measures for cross-border access to financial information by law enforcement authorities will complement the EU AML framework while ensuring:

• Timely access to information: law enforcement authorities, Asset Recovery Offices and anti-corruption authorities will have direct access to bank account information contained in the national centralised bank account registries. All Member States have to set up these registries under new EU AML rules.
• Better cooperation: the new rules will ensure greater cooperation between national law enforcement, Europol and Financial Intelligence Units (FIUs) and will further facilitate the exchange of information between the national FIUs.
• Stronger data protection safeguards: the new Directive provides for strong procedural and data protection guarantees in line with the Charter of Fundamental Rights.

On 24 July 2019, the European Commission adopted a Communication accompanied by four reports that will support European and national authorities in better addressing money laundering and terrorist financing risks. The reports stress the need for their full implementation while underlining that a number of structural shortcomings in the implementation of the Union's AML and counter terrorist financing rules still need to be addressed.

Towards a better implementation of the EU's anti-money laundering and countering the financing of terrorism framework, Communication gives an overview of the four published reports: the supranational risk assessment report provides an update of sectorial risks associated with money laundering and terrorist financing. The assessment of recent high-profile money laundering cases in the financial sector, the Financial Intelligence Units and the interconnection of central bank account registries’ reports analyse the shortcomings in current AML supervision and cooperation, while identifying ways to address them. This package will serve as a basis for future policy choices on how to further strengthen the EU anti-money laundering framework.

The European rules on AML and counter terrorist financing have been considerably strengthened in recent years, with two consecutive reforms being adopted since 2015. The latest revision of the AML Directive, the fifth AML Directive, was adopted in April 2018 and is due to be transposed at national level by January 2020.
Cybersecurity

**Cybersecurity Act**

On 12 March 2019, following a political agreement at the end of 2018, the European Parliament approved a new cybersecurity regulation known as the EU Cybersecurity Act. This regulation forms part of the EU’s Cyber Package first announced in September 2017. Cybersecurity Act or Regulation on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification entered into force on 27 June 2019.

The Cybersecurity Act strengthens the ENISA by granting the agency a permanent mandate which replaces its limited mandate that would expire in 2020. ENISA is also mandated to increase operational cooperation at EU level, helping Member States who would request it to handle cybersecurity incidents, and supporting EU coordination in case of large-scale cross border cyberattacks and crises. This task builds on ENISA’s role as secretariat of the national Computer Security Incidents Response Teams Network, established by the NIS Directive (Directive on security of network and information systems). In order to fulfil its new role, the Cybersecurity act reinforced ENISA’s financial and human recourses.

The Cybersecurity Act also creates a framework for European Cybersecurity Certificates for products, processes and services that will be valid throughout the EU. This is an important development as it is the first EU-wide rule that takes up the challenge of enhancing the cybersecurity of ICT products, processes and services. It will boost cybersecurity in a broad range of digital products and services, from connected products to critical infrastructure. The creation of such a cybersecurity certification framework incorporates security features in the early stages of their technical design and development, enables their users to ascertain the level of security assurance, and ensures that these security features are independently verified.

Companies in the EU will benefit from having to certify their products, processes and services only once and see their certificates recognised across the Union, avoiding conflicting or overlapping national certifications. On the other hand, framework will increase the transparency of the cybersecurity assurance thereby improving trust and helping end users make informed choices.

As regards the certification framework, the Commission will prepare the first requests for ENISA to develop certification schemes and set up the governance structure with the establishment of the relevant expert groups:

- The European Cybersecurity Certification Group, comprised of representatives from Member States that will have to appoint the representatives from their competent authorities; and
- The Stakeholder Cybersecurity Certification Group, which will be responsible to advise ENISA and the Commission.

The Commission will also prepare the “Union rolling work programme for European Cybersecurity Certification”, which will identify strategic priorities for certification and in particular include a list of ICT products, services and processes or categories thereof that may
benefit from being included in the scope of a European Cybersecurity Certification Scheme. The Union rolling work programme will be subject to a public consultation. ENISA will also maintain a website that provides information on and publicizes the schemes, consultations, and national cybersecurity certification schemes that have been replaced.

**Joint Advice on ICT risk management and cybersecurity**

On 10 April 2019, European Supervisory Authorities (ESAs) published Joint Advice on Information and Communication Technology risk management and cybersecurity. The ESAs published two pieces of Joint Advice:

- Joint Advice on the need for legislative improvements relating to Information and Communication Technology (ICT) risk management requirements in the EU financial sector; and
- Joint Advice on the costs and benefits of a coherent cyber resilience testing framework for significant market participants and infrastructures within the EU financial sector.

In Joint Advice on the need for legislative improvements, ESAs' objective was that every relevant entity should be subject to clear general requirements on governance of ICT, including cybersecurity, to ensure the safe provision of regulated services. Proposals presented in the Advice aim at promoting stronger operational resilience and harmonisation in the EU financial sector by applying changes to their respective sectoral legislation. Incident reporting is highly relevant to ICT risk management and allows relevant entities and authorities to log, monitor, analyse and respond to ICT operational, ICT security and fraud incidents. Therefore, the ESAs call for streamlining aspects of the incident reporting frameworks across the financial sector. Furthermore, the ESAs suggest considering a legislative solution for an appropriate oversight framework to monitor the activities of critical third-party service providers.

In Joint Advice on the costs and benefits of a coherent cyber resilience testing framework, the ESAs found clear benefits of such a framework. However, ESAs warned that there are significant differences across and within financial sectors as regards the maturity level of cybersecurity. ESAs advise for short-term is to focus on achieving a minimum level of cyber-resilience across the sectors. The ESAs also propose to establish on a voluntary basis EU wide coherent testing framework together with other relevant authorities taking into account existing initiatives, and with a focus on Threat Lead Penetration Testing (TLPT). In the long-term, the ESAs aim is to ensure a sufficient cyber maturity level of identified cross-sector entities.

To implement the proposed actions, the ESAs highlighted the required legal basis and explicit mandate, which they deem necessary for the development and implementation of a coherent resilience testing framework across all financial sectors by the ESAs in cooperation with other relevant authorities.
Significant market developments

Capital Markets Union (CMU)

On 15 March 2019, the Commission reported on progress made in completing the building blocks of the capital markets union (CMU), including as regards sustainable finance. The Commission stressed the need for the European Parliament and the Council to accelerate work on the pending proposal. Commission report showed substantial achievements with political compromises reached on several Commission’s proposals, as well as non-legislative actions.

The Commission has delivered all the measures it has committed to in the CMU action plan of 2015 and the mid-term review of 2017, contributing to laying key building blocks of the CMU. These include important proposals for the creation of new opportunities across the Single Market for businesses and investors through new EU-wide products and services, simpler, clearer and more proportionate rules, as well as a more efficient supervision of the financial industry. The Commission reported that agreements have been reached on 10 out of 13 legislative CMU proposals tabled by the Commission and 3 are already adopted. In addition, agreements have been reached on 2 out of 3 Commission proposals on sustainable finance.

On 21 March 2019, Commission welcomed political agreement on the core elements of the reform of the European supervision in the areas of EU financial markets including when it comes to anti-money laundering. After mentioned agreement only 2 out of 13 legislative CMU proposals remain without agreement. Commission pointed that the agreement will improve supervision in the European Union by reinforcing the role and powers of the European Supervisory Agencies (ESAs). To ensure a fully functioning and operating CMU the EU needs to ensure that supervision keeps pace with further integration.

With the building blocks as a basis, further progress in the future will allow to complete a successful CMU in the EU. Future action will also need to reflect the impact on capital markets of the United Kingdom's departure from the EU and other short or medium-term economic and societal challenges. Completing the CMU is essential to make Member States' economies and Economic and Monetary Union more resilient, to safeguard financial stability, strengthen the international role of the euro and diversify sources of finances for SMEs.

FRANCE

Since May 2019, Paris is the new home of the European Banking Authority, one of the three European Supervisory Authorities. Paris has also hosted the European Supervisory and Markets Authority, ESMA, since 2010. As other European countries, French banks are preparing for Brexit to ensure minimal disruption to financial markets in the case of a no-deal scenario.

The ongoing work on EURIBOR and EONIA to ensure compliance with the benchmarks regulation (BMR) is progressing smoothly. The European benchmark regulation, adopted in June 2016, entered into force on 1st January 2019. However, given the significant regulatory impact for all market participants, a transition period of two years was granted.
As part of the French presidency of the G7, a first "cyber" crisis simulation exercise affecting the financial system took place on June 4, 5 and 6, 2019. The goal was to evaluate the exchange protocol between G7 financial authorities. This G7 exercise was based on the three-year test of the “robustness French Group” of the Banque de France, the French Central Bank.

This exercise took place on 4 and 5 June 2019 in France, with a feedback workshop on 6 June in France. The scenario consisted of a computer incident on Target 2 with a cyber attack infecting connected banks via malicious software capable of impacting the functioning of the payment chain banks and modify legitimate operations. The publisher of the infected software was a multinational computer hardware company used by the financial sector in 170 countries. This scenario had a serious impact on banks' liquidity, large payments, SEPA transactions in Europe and the possibilities of supplying ATMs, due to the shutdown of Target 2, but it did not prevent current payments in France.

This exercise was useful for the French banking industry and well prepared by banks, the FBF and the Banque de France.

In the context of Brexit, the revision of the European Market Infrastructure Regulation (EMIR 2.2) has transferred the supervision of CCPs from the previous cross-national supervisory colleges to the European Securities and Markets Authority (ESMA, which is based in Paris). ESMA will also be given supervisory powers for third country CCPs. Market participants will be required to transfer their euro denominated transactions from London to the Eurozone. To prevent disruptions to the markets, the European Commission has agreed to an extended transition period, which will expire at the end of March 2020. At the time of writing, it is possible but not clear that this transition period will be extended, depending on the progress of the Brexit negotiations.

Progress has been made with regards to contactless payment and instant payments, and the French banking industry has been heavily involved in the national payment strategy (Stratégie Nationale des paiements). The French Banking Industry has been working closely with the Banque de France and the National Commission for Cashless payments (Commission Nationale des paiements scripturaux) to promote cashless payments in France and further a single payments markets in the European Union. Contactless payments are becoming increasingly popular in France. In 2018, over 2 billion contactless payments were made, up from 1.2 billion in 2017 – a new record. Contactless payments are possible for transactions up to 30 Euros. Instant payments
are also becoming increasingly popular. New Interbank European payment infrastructures were launched in 2018, permitting the 34 participating SEPA countries to receive and issue instant payments. This service is available 24/7 and may be used for Euro denominated payments for up to 15,000 Euros.

**GERMANY**

The need for consolidation in the German banking industry remains unchanged. This is due not only to prolonged low interest rates but also to the challenging competitive environment. However, the consolidation of the banking sector slowed last year. At the end of 2018 there were still 1,583 financial institutions. This corresponds to a fall of 2.9 percent, compared to 4.7 percent in 2017.

At 4.6 percent, the decline in the number of financial institutions was most pronounced in the cooperative sector, compared with 1.3 percent for the savings banks. The trend towards consolidation has weakened in both sectors, although it has slowed particularly sharply in the savings banks sector.

It is striking that the private banks were able to completely escape the consolidation trend for the first time since 2013. In the private sector, the number of financial institutions rose by 1.5 percent compared with 2017, the strongest increase since the financial crisis in 2009. The reason for this increase is the foreign banks active in Germany, whose number rose for the second consecutive year since the Brexit referendum in 2016.

**New Developments in Insolvency Law**

In 2018, the Ministry of Justice published a report evaluating the insolvency law reform implemented in 2012 by the German Act on Further Facilitating the Restructuring of Companies (Gesetz zur weiteren Erleichterung der Sanierung von Unternehmen). The first draft of an act to incorporate the results of the evaluation into German insolvency law is expected to be published in 2019. According to reports, the same act will also transpose the European Directive on insolvency, restructuring and second chance into German insolvency law in order to achieve a uniform and consistent reform of the insolvency regime. This will add some new aspects to German law, as the restructuring mechanisms will take effect even prior to the insolvency event.

**New Developments in Securities Law**

The German government has announced that it will be drafting a blockchain strategy over the summer of 2019. As a first step, the Ministry of Justice and Consumer Protection and the Ministry of Finance jointly published in March 2019 a key-issues paper on the regulatory treatment of electronic securities and crypto tokens.

The goal is to permit electronic securities while ensuring investor protection and creating the necessary legal certainty and application security under civil and regulatory law. This key-issues paper goes beyond the blockchain strategy in that it proposes that electronic securities also be permitted outside blockchain and comparable technologies.
Guided by the Federal Debt Management Act (Bundesschuldenwesengesetz), this key-issues paper presents core aspects related to digital securities and discusses regulatory options and regulatory challenges associated with crypto tokens, especially what are known as utility tokens. The plan is to open German legislation to electronic securities. In other words, the current rule whereby securities must be represented by physical certificates will no longer apply across the board. However, the aim is to introduce the electronic issuance of securities as an option, not an obligation. Issuers will remain free to use the tried-and-tested system of securities certificates.

The proposed legislation will take the form of an omnibus act that will contain legal provisions on electronic securities and amend current regulatory law. To begin with, the change will be restricted to electronic debt securities; rules on electronic shares may be introduced at a later stage.

**Revision of the German Regulation Governing Reporting of Large Exposures and Loans of EUR 1.5 Million or More (GroMiKV)**

In February 2019, the Federal Financial Supervisory Authority (BaFin) published amendments to the German Regulation governing reporting of large exposures and loans of EUR 1.5 million or more (GroMiKV), which have applied since March 2019. On the one hand, GroMiKV further fleshes out requirements of the European large exposures regime (CRR Art. 395 ff.). On the other hand, it includes provisions on German reporting of loans of EUR 1.5 million or more. In light of the new AnaCredit reporting framework, BaFin abolished the requirements for reporting under the “Euro-Evidenz” system (exchange of information among national credit registers for the purpose of passing it on to reporting institutions), which was enshrined in GroMiKV and used to collect information on the total liabilities of a single debtor. Furthermore, the new GroMiKV allows for electronic submission of master data. At the moment, institutions have to report the data in paper form. BaFin is expected to soon make use of the possibility to switch from paper form to electronic form.

On a side note, last year the German Country Risk Regulation (Länderrisiko-verordnung [LrV]) was abolished. LrV required German institutions to report the volume of external loans on a quarterly basis.

**Securitisations - Germany Designated BaFin as Competent Authority**

On 21 December 2018, the Act aligning financial market legislation with Regulation (EU) 2017/2402 and with Regulation (EU) 575/2013 amended by Regulation (EU) 2017/2401 was published in the Federal Law Gazette. It amends German financial market legislation in order to bring it into line with the new European Regulation on Securitisations (STS Regulation). STS Regulation Article 29 requires member states to designate a competent authority responsible for supervising, for example, compliance by originators, original lenders and SPVs with STS Regulation Articles 6 to 9 (Risk retention, transparency, ban on resecuritisation, criteria for credit-granting) and compliance by originators, sponsors and SPVs with STS Regulation Articles 18 to 27 (requirements for simple, transparent and standardized securitisations). Germany designated BaFin as competent authority.
Facilitated Reporting of Financial Information to Banking Supervisors

On 13 July 2018, the Second Regulation amending the Regulation on submission of financial and internal capital adequacy information (FinaRisikoV) came into force. FinaRisikoV contains national reporting requirements for financial information. The new arrangements made numerous reporting templates superfluous, while submission dates were aligned with the harmonized submission dates set in ECB Reporting Regulation (EU) No 2015/534. In addition, reporting will no longer be necessary at group level in future if it is performed at solo level. This means that German supervisors have taken first welcome steps to eliminate double reporting and remove redundancies in European and national reporting provisions.

Regulation on the Liquidity of Institutions

The Regulation on the liquidity of institutions (Liquidity Regulation [Liquiditäts-verordnung (LiV)]) came into force on 1 January 2007. It supersedes Principle II on the liquidity of institutions previously in force. The Liquidity Regulation fleshes out the provisions of Section 11 (1) sentence 1 and Section 51b (1) sentence 1 of the German Banking Act (Kreditwesengesetz [KWG]), which require institutions and housing undertakings with a saving facility to have sufficient liquidity at all times.

Pursuant to Article 412 (5) of Regulation (EU) No 575/2013 (Capital Requirements Regulation [CRR]), EU member states may maintain national provisions in the area of liquidity requirements only until the binding minimum standards for liquidity coverage requirements are fully introduced. With the full introduction of the liquidity coverage ratio (LCR) at 100 percent as of 1 January 2018, it was therefore necessary to suspend application of the Liquidity Regulation, based on national law, to CRR credit institutions. For this reason, the scope of application of the Liquidity Regulation was restricted with the Second Regulation amending the Liquidity Regulation of 22 December 2017. The Liquidity Regulation continues to apply only to institutions which are not subject to the provisions of CRR Articles 411 to 428. These include guarantee banks, housing undertakings with a saving facility and certain CRR investment firms.

HONG KONG

Banking Industry Overview

The Hong Kong banking sector remains safe and sound notwithstanding external headwinds and heightened global financial market volatility. Locally incorporated authorized institutions (AIs) continue to be well capitalised. The consolidated total capital adequacy ratio of locally incorporated AIs increased from 19.1% at the end of 2017 to 20.3% at the end of 2018, well above the international minimum requirement of 8%. The average Tier 1 capital ratio rose to 17.9% from 16.5% during the same period. The average Liquidity Coverage Ratio of category 1 institutions was 167.6% in the fourth quarter of 2018, well above the statutory minimum requirement of 90% applicable in 2018. The average Liquidity Maintenance Ratio of category 2 institutions was 54.3% in the last quarter of 2018, also well above the statutory minimum requirement of 25%. Meanwhile, the classified loan ratio of the banking sector reduced to 0.55% at the end of December 2018 as compared to 0.68% at the end of December 2017.
Belt and Road Initiative

The Infrastructure Financing Facilitation Office (IFFO) of the Hong Kong Monetary Authority (HKMA) continues its work to facilitate infrastructure investments and financing by organising a number of well-attended seminars, workshops and roundtables to promote its key functions, namely information exchange and experience sharing capacity and knowledge building, market and product development and as well as deal facilitation. Among these events some highlights are:

- the second “Investors and Debt Financing Roundtables” on 25-26 October 2018, discussing topical issues such as collaboration and co-investment in emerging markets, recent innovations to enhance bankability of infrastructure projects, and IFFO’s Reference Term Sheet for Non-Recourse Infrastructure Loans in Emerging Markets. The Term Sheet aims to provide project owners and developers with a tool to make their projects more bankable and to facilitate private sector financing into projects in emerging markets.
- the “ESG & Impact Investing: Creating Long-Term Value” seminar co-organised with the International Finance Corporation (IFC), a member of the World Bank Group, on 6 May 2019 discussing how environmental, social and governance (ESG) is embedded in IFC’s investment process, and the importance of ESG in creating long-term value.

The IFFO continues to harness and cooperate with a strong network of key stakeholders with an aim to promoting the use of Hong Kong for infrastructure investments and financing. The number of IFFO’s partners has grown to 95, further strengthening the IFFO as a strategic and collaborative platform offering “East and West” and public and private sector perspectives in infrastructure investments and financing.

Financial Technologies (Fintech)

The following developments in Fintech signify Hong Kong’s new era of smart banking, bringing new opportunities to various industry participants and a new banking experience to customers:

- The Faster Payment System (FPS) was successfully launched in September 2018. The FPS enables real-time round-the-clock fund transfers and payment services in Hong Kong Dollars (HKD) and Renminbi (RMB) with ease, through using mobile phone numbers or email addresses, among users of banks and stored value facilities (SVF). To complement the launch of the FPS, the HKMA also introduced the common quick response (QR) code standard to facilitate merchants in using a single QR code to accept payments from different payment schemes, while the Hong Kong Association of Banks (HKAB) released a technical specification in April 2019 to facilitate merchants in making the FPS as a mobile payment option.
- The HKMA revised its Guideline on Authorization of Virtual Banks in May 2018 and has granted a total of 8 virtual bank licences. The introduction of virtual banks will likely facilitate fintech innovation, introduce new customer experience and promote financial inclusion.
- The HKMA published an Open Application Programming Interface (Open API) framework in July 2018 to facilitate the development and wider adoption of Open API by the banking sector in Hong Kong in four phases. Over 500 Phase-I Open APIs were launched in January 2019, covering information of deposits, loans, insurance, investments and other banking products and services. The HKMA also launched the Open API on its official website in July 2018 to provide
In October 2018, eTradeConnect was launched. It is a blockchain-based trade finance platform fully funded by a consortium of 12 major banks in Hong Kong, which aims to improve trade efficiency, build better trust among trade participants, reduce errors and risks of fraud, and facilitate trade counterparties in obtaining financing by digitising trade documents, automating trade finance processes and leveraging the features of blockchain technology. A Memorandum of Understanding has been signed between the operators of eTradeConnect and European blockchain-based trade finance platform “we.trade” to conduct a proof-of-concept on connecting the two platforms to further facilitate cross-border trades.

In January 2019 the HKMA and an international group of 28 financial regulators and related organisations established the Global Financial Innovation Network, which seeks to create a framework for collaboration between financial services regulators on innovation-related topics. Together with other members, the HKMA launched a cross-border pilot test for firms that wish to test innovative products and services across international markets.

The HKMA also entered into fintech Memorandum of Understanding with the Central Bank of Brazil in September 2018 and the Bank of Thailand in May 2019 to foster cross-border collaboration and promote innovation in financial services.

There have been further pilot trials of products through the HKMA’s Fintech Supervisory Sandbox (FSS), including permission of 53 new technology products into the FSS as of May 2019. Out of these cases, 34 pilot trials have been completed and the products have subsequently been rolled out.

The Fintech Career Accelerator Scheme (FCAS) 2.0, which consists of four programmes including gap year placement, summer internship in Shenzhen, overseas summer boot camp, and fresh graduate programme, has been launched to nurture young talents at different stages of their career development. In 2018-19, over 200 students benefited from FCAS 2.0.

On 28 June 2019, the Securities and Futures Commission (SFC) issued two circulars to (i) provide a definitive list of acceptable approaches for online account opening, particularly for onboarding overseas individual clients; (ii) simplify the know-your-clients requirements; and (iii) expand the list of persons who can certify documents to include a chartered secretary. The circulars, effective from 5 July 2019, help clarify the SFC’s approach to online account opening and further enhance Hong Kong’s development as a fintech hub.

Green Finance and Development of the Hong Kong Bond Market

The Hong Kong Government has launched a Government Green Bond Programme to promote the development of green finance in Hong Kong by encouraging issuers to arrange financing for their green projects through Hong Kong’s capital markets and growing the local green investor base. The inaugural green bond under the Programme was issued in May 2019, with an issuance amount of USD1 billion and a tenor of 5 years.

The HKMA has worked with key industry stakeholders in actively reaching out to potential green bond issuers, and encouraging them to make use of Hong Kong's platform. In January 2019, the HKMA co-organised a study tour with the People’s Bank of China (PBoC) and the Hong Kong Green Finance Association for more than 120 representatives of potential Mainland China green bond issuers to facilitate their consideration of green bond issuance in Hong Kong.
In February 2019, the Climate Bond Initiative issued its first Green Bond Market Briefing Report on Hong Kong, which indicated the amount of green bonds arranged and issued in Hong Kong totaled USD11 billion in 2018, more than triple that of 2017.

To promote Hong Kong as a major hub of green finance, three sets of measures were announced by the HKMA in May 2019, including (i) a three-phase approach to promote green and sustainable banking (Phase I: Development of a common greenness assessment framework for banks, Phase II: Setting out supervisory requirements with a consultation, and Phase III: Evaluating banks’ progress); (ii) responsible investment by the Exchange Fund managed by the HKMA, in particular the HKMA will further grow the Exchange Fund’s green bond portfolio, with a priority given to ESG investments if the long term return is comparable to other investments on a risk-adjusted basis; and (iii) the launch of the Centre for Green Finance under the IFFO, to serve as a platform for technical support and experience sharing for the green development of the Hong Kong banking and finance industry.

The SFC and the Stock Exchange of Hong Kong Limited (HKSE) also supported green finance development in Hong Kong. The SFC published its strategic framework for green finance in September 2018. On 17 May 2019, HKSE published a consultation paper on Review of the ESG Reporting Guide and related Listing Rules, ESG guidance materials and an updated guidance letter to set out HKSE’s expected disclosure on ESG matters and requiring disclosure.

Enhancements to the Hong Kong Government’s Qualifying Debt Instruments

Scheme (QDI Scheme) have been made through the passage of the Inland Revenue (Amendment) (No.5) Bill 2018 by the Legislative Council on 14 November 2018. The provisions are applicable to QDIs issued on or after 1 April 2018 and seek to develop the Hong Kong Bond market and the QDI Scheme by (i) exempting profits tax from debt instruments, regardless of their tenors; and (ii) allowing debt instruments listed on the HKSE as well as for instruments lodged with and cleared by the Central Moneymarkets Unit (CMU) to be qualified for tax exemption.

Renminbi Banking Business and the Greater Bay Area Development Plan

Hong Kong’s offshore RMB business has maintained stable growth. Although RMB lending fell in 2018, offshore RMB bond issuance regained momentum and more than doubled over 2018 to RMB41.9 billion. Hong Kong has continued to be a global hub for offshore RMB business, processing about 70% of RMB payment activities worldwide according to SWIFT statistics.

In November 2018, the PBoC issued offshore bills of RMB20 billion for the first time in Hong Kong with the assistance of the HKMA’s CMU, expanding the spectrum of high-quality RMB assets and improving the yield curve of RMB bonds in Hong Kong.

Various enhancements have also been introduced to the Bond Connect and Stock Connect schemes which connect the financial markets between Hong Kong and Mainland China. The delivery-versus-payment settlement for Bond Connect was fully implemented in August 2018 to increase settlement efficiency and reduce settlement risks. Block trade allocation functionality on
Institute of International Bankers

Global Survey 2019

Bond Connect was also launched in August 2018, whilst an additional electronic trading platform was included in the Bond Connect in November 2018. These measures help facilitate overseas investors’ access to, and provide greater convenience for investing in Mainland China’s bond market. Starting from April 2019, onshore RMB bonds are included in Bloomberg/Barclays Global Aggregate Index over a 20-month period. MSCI and FTSE have also included and increased weight of China A shares in their indexes. Northbound turnover under the Bond Connect and Stock Connect schemes increased in the first half of 2019 as a result.

The Greater Bay Area (GBA) Outline Development Plan released in February 2019 has further enhanced Hong Kong’s status as an international financial centre and a global offshore RMB business hub. Various financial facilitation measures have been introduced, including the launch of a pilot scheme in March 2019 for Hong Kong residents to open Mainland China personal bank accounts in the GBA through witness account opening, and the launch of the cross-border payments services by Hong Kong e-wallet operators.

Implementation of Basel III in Hong Kong

The HKMA continues to implement the Basel III reform package in Hong Kong in accordance with the timetable set by the Basel Committee on Banking Supervision (BCBS) as described below:

- The BCBS’ large exposures framework has been implemented by the Banking (Exposure Limits) Rules (BELR) which is expected to come into effect on 1 July 2019, allowing AIs a six-month implementation grace period. Apart from implementing the BCBS framework, the BELR also updated a set of local exposure limits. Amendments have further been made to the Banking (Capital) Rules (BCR) to incorporate a marginal risk weight add-on addressing sovereign concentration risk as well as to the Banking (Disclosure) Rules. Additionally, interpretations to certain provisions of the BELR have been set out in the Banking (Exposure Limits) Code which is also expected to take effect on 1 July 2019.

- Having implemented the Liquidity Coverage Ratio (LCR) and Net Stable Funding Ratio (NSFR) according to the Basel timelines of 2015 and 2018 respectively, the HKMA consulted the industry in July 2018 and gazetted the Banking (Liquidity) (Amendment) Rules 2019 (BLAR) on 28 June 2019 which (i) expand the scope of high-quality liquid assets recognisable as “level 2B assets” under the LCR (and as "liquefiable assets" under the local Liquidity Maintenance Ratio); and (ii) implement a required stable funding charge of 5 per cent for total derivative liabilities maintained by an AI under the NSFR (and the local Core Funding Ratio). The BLAR is expected to come into operation on 1 January 2020.

- The HKMA also issued in August 2018 for industry consultation the proposed draft amendments to the BCR to implement the standardised approach for measuring counterparty credit risk exposures and the capital requirements for bank exposures to central counterparties in Hong Kong. It is expected that these amendments will be published sometime in 2020. The HKMA will have regard to the implementation progress of other major jurisdictions (e.g. the US and the EU) in finalising the proposed commencement date of the amendments.

- The HKMA in December 2018 published its new standardised framework for Interest Rate Risk in the Banking Book (IRRBB) in line with Basel III IRRBB standards issued in April 2016.

- The local framework excluded AIs incorporated outside Hong Kong in cases where the parent group of the AI is not additionally represented in Hong Kong through any locally incorporated AI. Non-exempted AIs are required to measure and report their IRRBB exposures.
using the new standardised framework after 1 July 2019, with the first report based on data as at 30 June 2019.

- To inform policy formulation for the local implementation of the December 2017 Basel III Final Package, the HKMA is currently conducting a quantitative impact study on the capital positions of AIs. The HKMA will start consulting the industry on its policy proposals for implementing standards included in the Package in late 2019.

**Over-the-counter (OTC) Derivatives Market Regulation**

Hong Kong continues to develop detailed rules for implementing its regulatory regime for the OTC derivatives market. Different aspects of the regulatory regime are implemented in phases.

With respect to margin requirements for non-centrally cleared derivatives, Phase 3 initial margin requirements commenced in September 2018, expanding the scope of covered entities. On 18 March 2019, the HKMA issued a circular to AIs regarding (i) the HKMA’s intention to maintain the UK’s status as a deemed-comparable jurisdiction in the context of margin requirements for non-centrally cleared derivatives independent of its EU membership status; and (ii) clarifications issued by the BCBS and the International Organization of Securities Commissions (IOSCO) with respect to the final implementation phases for initial margin requirements.

Amendments to the Securities and Futures (OTC Derivatives Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules came into effective in March 2019 to ensure that the scope of persons subject to clearing obligation under the OTC derivatives regulatory regime in Hong Kong remains appropriate.

In April 2019, the HKMA and SFC issued a joint consultation on further enhancements to the OTC derivatives regulatory regime to ensure that the Hong Kong reporting and clearing requirements keep up with international developments and remain relevant and appropriate. The regulators propose:

- mandatory identification of transactions required to be reported to the trade repository with unique transaction identifiers based on standards set out in the technical guidance issued by the Committee on Payments and Market Infrastructures and IOSCO;
- removal of 17 jurisdictions from the list of designated jurisdictions for the masking relief of the reporting obligation following clarification by the Financial Stability Board (FSB); and
- an update to the list of financial services providers under the OTC derivatives clearing regime (this part of the joint consultation was subsequently concluded on 28 June 2019 which paved the way for HKMA and SFC to implement their original proposals with some fine tuning).

**Resolution Regime**

Hong Kong continues to operationalise the resolution regime established under the Financial Institutions (Resolution) Ordinance (FIRO) through developing resolution policies, advancing resolution planning and building up the execution capacities of the resolution authorities. The Financial Institutions (Resolution) (Loss-absorbing Capacity Requirement – Banking Sector) Rules (LAC Rules), a subsidiary legislation under the FIRO, came into operation on 14 December 2018. The purpose of the LAC Rules is to prescribe loss-absorbing capacity
(LAC) requirements for within scope banking sector entities under FIRO. As further guidance to supplement the LAC Rules, the HKMA published on 20 March 2019 a Code of Practice chapter on Resolution Planning – LAC Requirements.

The Inland Revenue (Amendment) Ordinance 2019 commenced from 15 February 2019. The amendments clarify tax treatment for instruments issued by AIs to meet the requirements under the LAC Rules so that non-capital LAC debt instruments now receive debt-like tax treatment.

**Prevention of Money Laundering and Terrorist Financing**

As part of Hong Kong’s overall anti-money laundering and counter-terrorist financing (AML/CFT) efforts, the HKMA has developed relevant policies and guidance for the banking sector which focus on safeguarding the banking system from money laundering and terrorist financing risks.

The HKMA published the revised Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (for Authorized Institutions) (AML/CFT Guideline) on 19 October 2018 (effective from 1 November 2018). The revised AML/CFT Guideline, among other things, further aligns the regulatory requirements with the latest international standards and also facilitates implementation of the risk-based approach by AIs.

The HKMA also published the Supervisory Approach on Anti-Money Laundering and Counter-Financing of Terrorism in its Supervisory Policy Manual to set out the HKMA’s overall policy and supervisory approach for AML/CFT policies, procedures and controls of AIs. The HKAB and the HKMA collaborated to publish an expanded set of frequently asked questions in relation to AML/CFT in July 2019, designed to be read with the AML/CFT Guideline.

Hong Kong’s fourth round mutual evaluation conducted by the Financial Action Task Force (FATF) and Asia/Pacific Group on Money Laundering on the effectiveness of Hong Kong’s AML/CFT regime took place in November 2018. The evaluation report was discussed and adopted in the FATF Plenary meeting in June 2019 and will be published in due course. The Plenary concluded that Hong Kong has a strong legal foundation to underpin its AML/CFT regime and understand its risks, while it also needs to prioritise efforts in a number of areas, including AML/CFT implementation by small institutions.

**Retail Payment Industry**

The SVF industry continues to grow in Hong Kong, with operators actively expanding service and customer reach. Under the Payment Systems and Stored Value Facilities Ordinance, the HKMA granted two new SVF licences in May 2019, bringing the number of licensees operating SVF to a total of 18. The HKMA also designated two additional retail payment systems in August 2018.
Interest Rate Benchmark

Whilst no plan has been made to discontinue the publication of the Hong Kong Interbank Offered Rate (HIBOR), the HKMA, as an FSB member, continues to work with the Treasury Markets Association (TMA) in Hong Kong on developing an alternative reference rate (ARR) for HIBOR. The TMA has proposed the Hong Kong Dollar Overnight Index Average (HONIA) as an ARR for HIBOR, and conducted a consultation in April 2019 with the industry on some technical refinements to HONIA, addressing issues of data source, reporting window and publication time. On the preparation for the possible discontinuation of the London Interbank Offered Rate (LIBOR) which is used extensively in the Hong Kong banking industry, the HKMA on 5 March 2019 issued a notice to all AIs urging them to start making preparations for the transition to ARRs in case the need to fall back on such rates arises.

Investor Protection and Suitability

In 2018-19 the HKMA issued a number of circulars which aim to enhance customer experience in the selling process of investment and insurance products while according protection to customers. Risk-based regulatory standards for online and offline distribution of investment products and for online sale of life insurance products through digital channels were issued. Investor protection measures on the sale of debt instruments with loss-absorption features were introduced. Practices of AIs’ selling of annuity insurance products and medical insurance products were enhanced with a view to ensuring adequate protection of customers.

Supervision for Bank Culture

Following the HKMA’s launch of the Bank Culture Reform in 2017 through promoting the adoption of a holistic and effective framework for fostering a sound culture within AIs, the HKMA announced in December 2018 supervisory measures for bank culture (namely, self-assessment, focused reviews and culture dialogues) to gauge the progress of Bank Culture Reform in Hong Kong.

Hong Kong as an International Asset Management Centre

The long-awaited open-ended fund companies regime commenced from 30 July 2018, enabling investment funds to be established in corporate form in Hong Kong. The SFC published the Code on Open-Ended Fund Companies to supplement information on registration, management and operation of open-ended fund companies and their business.

The SFC’s revised Code on Unit Trust and Mutual Funds came into effect from 1 January 2019. The key amendments include strengthening requirements for key operators and introducing new fund types such as active exchange-traded funds.

New mutual recognition of funds agreements have been signed with various international regulators in October 2018, January 2019 and May 2019 respectively in support of developing Hong Kong as an international asset management centre.
The Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Bill 2018 took effect from 1 April 2019 to provide profits tax exemptions for eligible onshore and offshore funds operating in Hong Kong, regardless of their structure, size or the purpose they serve.

Private Equity (PE) fund activities in Hong Kong are robust. Hong Kong is the largest PE hub in Asia after Mainland China. Total capital under management by PE funds in Hong Kong reached USD156 billion in 2018 according to Asian Venture Capital Journal. The Government is now studying the establishment of a limited partnership regime for PE funds, with a view to providing the industry with more fund structure choices. The Government will also study the case of introducing a more competitive tax arrangement to attract PE funds to set up and operate in Hong Kong.

Development in Insurance Sector

The Insurance Authority (IA) was established in 2015 as the new insurance industry regulator when the Insurance Companies (Amendment) Ordinance 2015 (IC(A)O) came into effect. Under the new statutory regime, the IA will take over the self-regulation of insurance intermediaries and will be responsible for all aspects of the regulation of insurance intermediaries in Hong Kong, including granting licences, conducting inspections and investigations and imposing disciplinary sanctions where applicable. In addition, the IA may delegate to the HKMA its inspection and investigation powers on AIs’ insurance activities. The delegation is scheduled to take effect upon the commencement of the new statutory regime on 23 September 2019. A new Memorandum of Understanding between the IA and the HKMA will be signed in July 2019 to strengthen the cooperation between the two authorities. To facilitate implementation of the new statutory regime, the IA will issue various codes and guidelines to provide guidance to the industry.

INDIA

Major Developments in the Banking Sector

Economic Overview

Economic activity weakened in the second half of 2018-19, bringing down the annual growth for 2018-19 to 6.8 per cent from the previous year’s 7.2 per cent. The main drivers of GDP – investment and consumption – both turned weak. The gross fixed capital formation (GFCF) and private final consumption expenditure (PFCE) at constant (2011-12) market prices have displayed a lower growth rate of 3.6 per cent and 7.3 per cent respectively in Q4:2018-19. India is widely believed to remain world’s fastest-growing major economy in the medium to long term. The growth projections of several global agencies rank India at the top among the G-20 economies. In the medium term, annual growth is projected at around 7.5 per cent by the IMF and the World Bank.
Performance of the Banks

The performance of the banking sector was better than the previous year. It saw an improvement in the credit pick up which increased from 10.4 per cent from the previous year to 13.2 per cent in March 2019. Similarly, the deposits also increased to 9.9 per cent in March 2019 as against 6.9 per cent during the corresponding period of the previous year. Asset quality of most of the banks has shown visible improvement and many of them were able to come out of red. Government has also taken timely measures to recapitalise the state owned banks to strengthen them. Insolvency and Bankruptcy Code (IBC) has brought in a paradigm shift in the resolution process with specific time frame and also established creditors in possession concept in the resolution process. Recent announcement on appointment of Chief Risk Officer (CRO) and enhanced powers of CRO could help banks in appropriate pricing of the products and robust risk management. These are encouraging signals for the banking sector.

Financial Inclusion

The Reserve Bank has made sustained efforts during the year to increase the penetration of formal financial services in unbanked areas, while continuing with its policy of ensuring adequate flow of credit to all productive sectors of the economy. Some of the new initiatives during the year include setting up of an expert committee/working group to examine the issues relating to credit flow to MSMEs and agriculture sectors, and allowing SCBs to co-originate loans with non-deposit taking systemically important NBFCs for credit delivery to the priority sector. Further, the National Strategy for Financial Inclusion 2019-24 was prepared, besides ongoing measures to strengthen financial literacy and inclusion in the country.

The Government of India launched India Post Payments Bank (IPPB) to provide every district with one branch which will help increase rural penetration and has opened branches across 650 districts to achieve the objective of financial inclusion.

The Government of India has made the Pradhan Mantri Jan Dhan Yojana (PMJDY) scheme an open ended scheme and has also added more incentives.

Trainers’ Programme for Capacity Building of Business Correspondents

To build the capacity and skills of Business Correspondents (BCs), for effectively delivering financial services at the grass-root level, a two-tier ‘train the trainers’ programme, ‘Skill Upgradation for Performance of Resources – BCs’ (SUPER-B) was designed by the Department, with the following objectives: (a) to train a group of motivated trainers who will take the responsibility of training their field level functionaries who deal with the BCs; (b) to create a professional BC workforce to cater to the needs of the people beyond the traditional financial products; and (c) to provide a forum to share the best practices on BC framework and possible convergence across the banks and apprise them of the potential opportunities and risks with rapid expansion of BC network.

During the first tier of the programme, Members of Faculty from the banks’ training establishments and officers from the Regional Offices of the Reserve Bank are sensitised at the CAB, Pune. The second tier of the programme involves a one-day sensitisation workshop for bank
branch managers (with special focus on rural bank branches) to be driven by the beneficiaries of the first-tier programme. Finally, the bank managers being trained under this programme are expected to sensitise and handhold the BCs attached to their branches.

Setting up of National Centre for Financial Education (NCFE)

The NCFE has been set up under Section 8 of the Companies Act, 2013 as per the directions of the Financial Stability and Development Council – Sub Committee (FSDC-SC) with a share capital of ₹1,000 million (shared among RBI, SEBI, IRDAI and PFRDA in the ratio of 30 per cent, 30 per cent, 30 per cent and 10 per cent, respectively). The NCFE continued its focus on promoting financial education across India for all sections of the population under the aegis of the National Strategy for Financial Education for creating financial awareness and empowerment through financial education campaigns across the country in the form of seminars, workshops, conclaves, trainings, programmes, campaigns, etc.

Resolution Process

The progress of IBC framework so far has been encouraging and has resulted in better recovery as compared to the earlier mechanisms. Data available till January 3, 2019 suggest that the resolution processes have been approved in 66 cases, involving around ₹800 billion as resolution value to creditors. The gradually building resilience of the banking sector is evidenced by the fact that banks have improved their profitability ratios and capital positions. Other soundness indicators such as the tier I leverage ratio at 6.7 per cent and the liquidity coverage ratio at 134.8 per cent as at end-September 2018 remain well above the minimum regulatory requirements. Provision coverage ratio also increased to 52.4 per cent at end-September 2018 from 48.3 per cent at end-March 2018. Bank credit is recovering from the risk aversion of recent years.

Payment Systems

Reserve Bank of India on May 15 2019 released a vision document, 'Payment and Settlement Systems in India: Vision 2019 - 2021', with its core theme of Empowering Exceptional (E) payment Experience that aims to achieve a highly digital and cash-lite society. RBI targets to: increase digital payment transaction of GDP by 15%; increase payment system operators fourfold; increase in digital transactions; increase debit card transactions by 35%; increase total card acceptance infrastructure to six times; reduce currency in circulation with no specific target; reduce the volume of cheque-based payments to less than 2%; reduce pricing of electronic payment services by at least 100 basis points; improve the security of digital payment systems; and facilitate mobile-based payment transactions. To achieve these objectives, the RBI outlined specific actions to take over the next two years. Some of these include: set up self-regulatory bodies for payment system operators; develop feature phone-based payment services to complement smartphone-based services and develop offline payment solutions and USSD-based payment solutions; improve interoperability and build capability to process transactions of one system in another and explore the adoption of newer technologies, including distributed ledger technology for enhancement of digital payment services; encourage standing instructions for payment transactions; and push contact-less payments and tokenization. It plans to improve the use of bill discounting systems or TReDs and increase coverage of the cheque truncation system.
Consolidation in the Banking Sector

In what is the first three-way merger for Indian banks, Bank of Baroda has merged Vijaya Bank and Dena Bank with itself. The new entity is now India’s second largest public lender after SBI and third largest overall in the Indian Banking sector. The mega bank now has a balance sheet size of over Rs 15 lakh crore with deposits worth of Rs 8.75 lakh crore and advances worth Rs 6.25 lakh crore. The combined entity has now 120 million customers, 85,000 employees, over 9,500 branches and 13,400 ATMs across the country.

Interest Subvention Scheme for MSMEs 2018

The Micro, Small and Medium Enterprises [MSME] sector is a significant contributor towards building up of a strong and stable national economy. The Prime Minister, Shri Narendra Modi, launched a historic support and outreach programme for the Micro, Small and Medium Enterprises (MSME) sector on 2nd November, 2018. As part of this programme, the Prime Minister unveiled 12 key initiatives which will help the growth, expansion and facilitation of MSMEs across the country. Twelve announcements have been made to address each of these five categories. These include access to credit, access to market, technology upgradation, ease of doing business, and a sense of security for employees. As part of access to credit, Prime Minister announced 2% interest subvention for all GST registered MSMEs, on fresh or incremental loans.

Ministry of MSME (MoMSME) has decided that a new scheme viz. “Interest Subvention Scheme for Incremental credit to MSMEs 2018” will be implemented over 2018-19 and 2019-20. The Scheme aims at encouraging both manufacturing and service enterprises to increase productivity and provides incentives to MSMEs for onboarding on GST platform which helps in formalization of economy, while reducing the cost of credit.

Key Developments in Insurance

A crucial component of India’s financial industry is the insurance industry. The insurance industry has been expanding at a fast pace. The insurance industry of India consists of 63 insurance companies of which 24 are in life insurance business and 39 are non-life insurers. Among the life insurers, Life Insurance Corporation (LIC) is the sole public sector company. Apart from that, among the non-life insurers, there are seven public sector insurers. In addition to these, there are two national re-insurer. Other stakeholders in Indian Insurance market include agents (individual and corporate), brokers, surveyors and third party administrators servicing health insurance claims.

In FY19 (up to Feb 2019), gross direct premiums of non-life insurers reached Rs 1.51 trillion (US$ 23.38 billion), showing a year-on-year growth rate of 13.43 per cent. The industry has been spurred by product innovation, vibrant distribution channels, coupled with targeted publicity and promotional campaigns by the insurers. The market share of private sector companies in the non-life insurance market rose from 13.12 per cent in FY03 to 54.72 per cent in FY19 (up to Feb 2019). In life insurance segment, private players had a market share of 33.74 per cent in new business in FY19 (up to Feb 2019).
The total first year premium of life insurance companies reached Rs 159,004 crore (US$ 22.04 billion) as of Jan 2019. As of FY19 (up to September 2018), life insurance sector had 23 private players in comparison to only four in FY02. With a 68.20 per cent share of new business market in FY19 (up to September 2018), Life Insurance Corporation of India, the only public sector life insurer in the country, continues to be the market leader.

The overall insurance industry is expected to reach US$ 280 billion by 2020. Life insurance industry in the country is expected grow by 12-15 per cent annually for the next three to five years.

**The Government of India has taken a number of initiatives to boost the insurance industry.**

- In September 2018, National Health Protection Scheme was launched under Ayushman Bharat to provide coverage of up to Rs 500,000 (US$ 7,723) to more than 100 million vulnerable families. The scheme is expected to increase penetration of health insurance in India from 34 per cent to 50 per cent.

- The Insurance Regulatory and Development Authority of India (IRDAI) plans to issue redesigned initial public offering (IPO) guidelines for insurance companies in India, which are to looking to divest equity through the IPO route.

- IRDAI has allowed insurers to invest up to 10 per cent in additional tier 1 (AT1) bonds that are issued by banks to augment their tier 1 capital, in order to expand the pool of eligible investors for the banks.

**Key Developments in Capital Market**

The Mutual Fund (MF) industry in India has seen rapid growth in Assets Under Management (AUM). Total AUM of the industry stood at Rs 23.16 trillion (US$ 321.00 billion) as of February 2019. At the same time the number of Mutual fund (MF) equity portfolios reached a high of 74.6 million as of June 2018.

In FY19, equity mutual funds have registered a record net inflow of Rs 990.87 billion (US$ 14.18 billion). Total equity funding’s of microfinance sector grew at the rate of 39.88 to Rs 96.31 billion (Rs 4.49 billion) in 2017-18 from Rs 68.85 billion (US$ 1.03 billion) in 2016-17. The public deposit of NBFCs increased from US$ 293.78 million in FY09 to Rs 319.05 billion (US$ 4.95 billion) in FY18, registering a compound annual growth rate (CAGR) of 36.86 per cent.

Along with the secondary market, the market for Initial Public Offers (IPOs) has also witnessed rapid expansion. The total amount of Initial Public Offerings (IPO) stood at Rs 14,032 crore (US$ 1.94 billion) as of Feb 2019.

In November 2018, Bombay Stock Exchange (BSE) has enabled offering live status of applications filed by listed companies on its online portal and also introduced weekly futures and options contracts on Sensex 50 index from October 26, 2018. The Government of India is planning to launch a global exchange traded fund (ETF) in FY20 to raise long term investments from overseas pension funds.
Government Initiatives

- In December, 2018, Securities and Exchange Board of India (SEBI) proposed direct overseas listing of Indian companies and other regulatory changes. It has provided companies with a broader investor base, better valuation, increased awareness, analyst coverage and visibility.

- Bombay Stock Exchange (BSE) introduced weekly futures and options contracts on Sensex 50 index from October 26, 2018.

- In September 2018, SEBI asked for recommendations to strengthen rules which will enhance the overall governance standards for issuers, intermediaries or infrastructure providers in the financial market.

ITALY

Significant Market Developments

In an unfavorable international economic context, the Italian economy remains healthy, thanks to several strengths that contrast the well-known national structural weaknesses. In 2018 the growth rate of the Italian economy was positive for the whole year (+0.9%), even if in the second half of 2018 GDP declined slightly.

The latest available indicators show a slight recovery in the Italian economic activity in the first quarter of 2019, thus interrupting the negative trend recorded in the second half of 2018. Despite the weak international economic situation, a variety of factors make the Italian economy resilient and able to cope with any deterioration of the economic outlook. These include: the positive current account of the balance of payments, which has shown a surplus since 2013; the high household wealth; the private sector debt, which is among the lowest in the euro area; the banking sector, which continues to strengthen and support the economy.

Banks’ lending to the private sector has been growing since the end of 2016. The most recent data, updated to May 2019, show that total loans to households and non-financial firms continue to grow at a rate of around +1.1% on an annual basis. In particular, loans to households grew by about 2.5% year-on-year, pushed by the increase in residential mortgages, thanks to the favorable conditions in the real estate market, driven by the improvement in the Italian consumer confidence index, the stability of house prices and the level of interest rates, which remain very low.

Thanks to the high level of liquidity and sound capitalization of Italian banks, the recent increase in domestic sovereign bond yields has only gradually been transmitted to credit conditions. Total funding from customers shows an upward trend in 2018, which is confirmed in the early months of 2019, driven by deposits, while retail bonds continue to decline. Overall, the latest figures (updated to May 2019) indicate that total funding from customers (deposits and bonds) grew by 2.1%.
In 2018, the Italian banks’ asset quality also continued to improve steadily, both in terms of flows and stock of Non-Performing Loans (NPLs). The flow of new NPLs, which has been decreasing since 2014, stood at approximately 1.4% of total loans, below the pre-crisis average, while the stock of NPLs, net of provisions, stood at 90 billion euro at the end of 2018 (40% less than at the end of 2017). The reduction in NPLs inflows, combined with the simultaneous increase in their outflows, has led to a sharp reduction in the NPL ratio: it decreased from 16.2% in 2015 to 8.7% in December 2018 if measured in gross terms, or from almost 10% to 4.3% if measured in net terms (which means taking into account the losses on NPLs already accounted for in banks’ balance sheet).

The NPLs coverage ratio rose from 50.4% in December 2016 to 52.7% at the end of 2018, over the euro area banks average. Capitalization has also increased and is well above the minimum prudential target requested by banking supervisors. The Common Equity Tier 1 ratio for the whole Italian banking sector stood at 13.3% at the end of 2018 (12.7% for Significant Banks and 16.5% for Less Significant Banks), almost doubled since 2007 (7.1%).

The profitability of Italian banks, although still below the cost of capital, as for most other European banks, is improving. In 2018, the Return of Equity (ROE), net of extraordinary components, rose to about 5.7% from 4.1% in 2017. Overall, the improvement was mainly due to lower loan loss provisions (about one-third less) and a 3.9% reduction in operating costs.

Local Regulation of Securities Firms, Insurance Firms, Commodities Firms and other Nonbank Financial Firms

As it regards the developments in the Italian local regulation, the period under scope of analysis saw an important reorganization of the Private Insurance Code Law (“Codice delle Assicurazioni Private”, namely the Legislative Decree n. 209 of 7 September 2005) and some connected changes to the Italian Consolidated Financial Law (“Testo Unico della Finanza”, namely the Legislative Decree n. 58 of 24 February 1998), aimed at aligning the Italian legislation on distribution of insurance products to the provisions of the Directive 2016/97/EU on Insurance Distribution (i.e. IDD), which entered into force on 1 October 2018.

As the IDD legislative framework is composed of two Delegated and Implementing Acts (directly applicable in the entire European Union), which detail, respectively, the product governance of every insurance product and the conduct rules applicable to the distribution of investment-based insurance products (i.e. IBIPs), its transposition has led, for the time being, to the issuance by IVASS of two regulations focused on: i) general provision on distribution matters (namely, IVASS Regulation N° 40 of 2 August 2018); ii) information and advertising (namely, IVASS Regulation N° 41 of 2 August 2018). Two more regulations on IBIPs are expected by Consob and IVASS.

Another important development of the Italian local regulation regards the Italian Law of supplementary pension schemes (“Disciplina delle forme pensionistiche complementari”, namely the Legislative Decree N° 252 of 5 December 2005) aimed at aligning the Italian legislation on supplementary pensions to the Directive 2016/2341/EU on the activities and supervision of institutions for occupational retirement provision (i.e. IORP II), which had to be transposed into national law by 31 January 2019.
Italian Consolidated Financial Law has been amended also to fully implement the European regulatory framework on auctioning of greenhouse gas (CO2) emission allowances established by Directive 2003/87/EC and subsequent amendments and by Regulation (EU) 1031/2010, which are nowadays recognized as financial instruments by MiFID II. In particular, provisions relating to the authorization and supervision of subjects entitled to submit an application for participation in the auction market, pursuant to the aforementioned Regulation 1031/2010 has been introduced (among which the possibility for Italian SIMs and banks to participate to the emission allowances auction market on behalf of their clients, if they are already authorized to provide investment trading services on their own account and / or execution of orders).

Furthermore, Directive 2007/36 (SHRD) on shareholder rights, as amended by Directive (EU) 2017/828, has been transposed into Italian Law. Several changes have been done to the Civil Code, to Legislative Decree 24 February 1998, n. 58 (TUF), to the Legislative Decree of 5 December 2005, n. 252 (Discipline of complementary pension forms) and to the Legislative Decree 7 September 2005, n. 209 (Private Insurance Code) in order to adapt them to the provisions of the new European regulation. In particular, the changes concern: transactions with related parties; the centralized management and the obligations of the intermediaries for the purposes of exercising the rights connected with the ownership of the shares; remuneration policies; transparency of institutional investors, asset managers and voting consultants; the regulation of shareholders' rights; the sanctioning regime; the extension of the transparency regulation of institutional investors also to pension funds. Secondary level regulation will be amended by Consob to adjust its own regulation on the above mentioned subjects.

**Development Regarding the Regulation of Derivatives, Securities Products and Investment Services**

On the 25th of March 2019 it was issued the Law Decree n. 22 (hereinafter also the "decree"), in consideration of the continuing uncertainty regarding the ratification, by the United Kingdom (UK), of the agreement for a withdrawal from the Treaty on the European Union, approved by the European Council dated November 25, 2018. The regulatory measures aim (i) at ensuring continuity in the provision of investment services and activities by both Italian entities operating in the United Kingdom and British entities operating in Italy, as well as (ii) to regulate an ordered exit from the Italian domestic market by UK entities called to cease operations within the Republic by the withdrawal date.

The entry into force of such provision is conditioned to the lack of an agreement on the withdrawal (so-called hard-Brexit scenario, or no-deal scenario), and they provide for a different regime according to (i) the type of entities/operators, (ii) the way they provide investment services (free provision of services vs establishment of a branch) and (iii) targeted customers.

The Decree clarifies the entities/operators and the conditions upon which there is a call to cease any activity and, in such cases, it provides for a requirement to communicate the initiatives taken to guarantee the orderly cessation of the activities (i) to customers, (ii) to those with whom they have relations due to the provision of investment services and (iii) to the local competent authorities.
With specific regard to derivative contracts, banks and investment firms in the UK will be allowed to continue managing life cycle events of OTC derivative contracts not subject to clearing by a central counterparty, even in cases where this involves the modification/amendment of these contracts or the conclusion of new contracts, as far as it is within the transitional period, subject to notification to the competent authorities (where “transitional period” is defined as the timeframe between the date of withdrawal without an agreement and the end of the 18th following month).

**The EU Risk Reduction Package**

In the relevant period (1 July 2018 – 30 June 2019), some significant legislative developments took place mainly at EU level rather than at a national one. In particular, after complex European political negotiations, dating from November 2016 to April 2019, a set of legislative measures was finalised to increase the resilience of EU banking institutions and enhance the financial stability.

Particularly, after the long legislative process, on 16 April 2019 the European Parliament formally ratified the so called EU’s **Risk Reduction Measures (RRM) package** - a combination of the EU’s fifth Capital Requirements Directive (CRD5), the second Capital Requirements Regulation (CRR2), the second Bank Recovery and Resolution Directive (BRRD2) and the second Single Resolution Mechanism Regulation (SRMR2).

The political agreement on this package of banking and resolution measures represents one of the most significant pieces of EU-level banking regulation in years, aimed at reducing risks in the banking system and avoiding national taxpayer funded bailouts. These improvements should enable further progress to be made towards the completion of Banking Union.

The RRM contains several important elements, including criteria for determining the MREL requirement together with the introduction in the EU legislation of Total Loss Absorbing Capacity requirement (TLAC), and measures for the implementation of Basel III as a binding leverage ratio and a binding net stable funding ratio. Both are designed to have a positive effect on stability in the banking sector. Also, the package makes an effort to better implement the proportionality principle in the banking sector, in order to design a governance and supervisory system which better fits the diversified business models in the EU.

While this is undoubtedly an important milestone in the EU’s adoption of post-crisis standards on bank resolution, capital and liquidity, it is far from the end of the line. In fact, although the legal texts have been published on the Official Journal of the European Union on the 7th of June 2019, and thus entered into force on the twentieth day following that publication, several more months of national implementation work and secondary rulemaking lie ahead before the RRM can be fully implemented.

Taking all of this into consideration, there is a lot for EU banks to keep track of, as they consider the financial and operational demands of implementing new resolution and capital rules over the coming years.
Class Action

The Italian Parliament recently approved Law no. 31 of April 12, 2019, regarding “Provisions on class actions” (the “Law”). The Law – which will enter into force on April 2020 – is aimed at radically changing the class action system by allowing class actions to be used more broadly.

To this end, the Law provides for an extension of class actions from two different perspectives:
- From a subjective perspective, the class action system, which was previously regulated by the Italian Consumer Code, is now governed by the Italian Code of Civil Procedure. This implies that the provisions regarding class actions no longer refer exclusively to consumers and now address a much wider audience.
- From an objective perspective, while under the previous system class actions could be used exclusively for specific cases of tort law liability (namely, cases concerning the contractual rights of a plurality of consumers, product liability, unfair commercial practices, and unfair competitive behavior), the Law now extends its enforceability to all tort law liability scenarios.

As for the procedure, the Law establishes that the action shall be presented exclusively before the specialized section for corporate matters and not to the ordinary court. The intention of the lawmaker is to ensure that class action cases will be heard by judges with specific expertise. In the new scenario, opting-in is now possible not only after the order admitting the action (as already provided for by the previous regulations) but also after the issuance of the judgment that establishes the liability of the defendant.

Product Oversight and Governance (POG)

On 5 December 2018 Bank of Italy implemented the Guidelines on Product Oversight and Governance (POG), issued by EBA on 22 March 2016, introducing a regulation aimed at ensuring that banking and financial products are targeted to customers for whom they are adequate, identified in the product design phase. The new regulation applies to products designed and distributed from 1 January 2019.

Anti-Money Laundering

In mid-2018 Bank of Italy/FIU launched a public consultation on the means of retention and use of data for anti-money laundering purposes (which will replace the current legislation in force) and the Instructions for the so called “objective communications”. The first initiative contains a draft of the rules governing the way data and information should be made available to FIU and Bank of Italy (leaving intermediaries the possibility to choose whether to extract data from the “chosen” storage system, based on technical specifications and of the standards provided by the regulators, or make use of standardized archives, in particular the former “AUI”, for which technical registration standards are provided). With regards to “objective communications”, the draft Instructions identify the categories of operations involved, define methods and frequency of data communication and the related reporting scheme. The Instructions were issued on March 28, 2019, like the provisions concerning the organization, procedures and internal controls aimed at preventing the use of intermediaries for ML purposes, that were also adopted in
March. Eventually, the Regulator put in public consultation a “scheme” of Legislative Decree aimed at transposing the V Anti-Money Laundering Directive into domestic legal framework. The main proposals include specific group supervision rules, amendments to the know your customers provisions and the establishment of the Register of beneficial owners. Public consultation expired on April the 20th.

**Payment Services Directive (PSD2)**

In the months following the entry into force of the Legislative decree 218/2017 – transposing in Italy the second European directive on payment services (PSD2)\(^2\) – the National Competent Authorities continued to work to fully implement the PSD2 at national level, with particular reference to the secondary legislation issued by the European Banking Authority (EBA).

The Ministry of Economy and Finance (MEF) issued a circular on the application of the PSD2 by Public Administrations, which was published on the Official Journal in July 2018.

In January 2019, following the publication of the EBA Guidelines on the conditions to be fulfilled in order to benefit from an exemption from emergency measures in the PSD2 (that is to say from the obligation to implement the fallback mechanism under the Regulation (EU) 2018/389 on strong customer authentication and common and secure communication – RTS on SCA & CSC), the Bank of Italy placed in public consultation some amendments to the Supervisory Provisions (secondary legislation) aimed at implementing the PSD2.

In March 2019, the Bank of Italy published a new release of the Transparency Provisions (secondary legislation) which were amended, following a specific consultation, to implement the PSD2. The main changes concern pre-contractual information, communications to customers and complaints.

**Payment Accounts Directive (PAD)**

In relation to the transposition of the European directive on payment accounts (PAD)\(^3\):

- On the issue of transparency and comparability of expenses related to payment accounts, in December 2018, the Bank of Italy placed in public consultation some changes to the Transparency Provisions (secondary legislation) aimed at implementing the Commission Regulations provided for under the PAD with regard to the Union standardized terminology (Regulation (EU) 2018/32) and the standardized presentation format of the Fee Information Document – FID (Regulation (EU) 2018/34) and of the Statement of Fees – SoF (Regulation (EU) 2018/33).

- On the access to payment accounts with basic features, on 19 June 2018 – with Decree n. 70 of 3 May 2018 – the Ministry of Economy and Finance has defined the characteristics of unbanked vulnerable consumers entitled to open payment account with basic features at


\(^3\) Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features.
advantageous conditions (without an annual fee). With this act the implementation in Italy of the PAD has been completed.

Covered Bonds
- According to the previous Bank of Italy’s regulation, covered bonds could be issued only by banks with the following prerequisites: (i) own funds not lower than EUR 250 million; (ii) a total capital ratio not lower than 9%.
- In October of 2018, Bank of Italy’s regulation has been amended, in order to allow banking institutions, which are not complying with the above capital requirements, to issue covered bond.
- In particular, according to the new provisions, the issuing bank that does not meet the above capital requirements may establish a covered bond programme upon notification to the Bank of Italy that gives evidence of several requirements, accompanied by a report from the compliance function.
- Bank of Italy could deny the authorization of the covered bond programme.
- The new rules anticipate the principles expressed in the Commission proposal for a dedicated EU framework for covered bonds, consisting of a directive and a regulation.

Cybersecurity

Based on a cybersecurity governance framework, developed according the European Network Information Security Directive, Italian authorities, as well as other financial authorities across Europe, have developed the following key actions:
- Continuous monitoring and collection of cyber vulnerabilities and incidents, developing a common framework for incident reporting as requested by regulation (e.g. PSD2, GDPR, NIS).
- Participation in international and European technical meetings between central banks and financial sector players for a continuous info sharing of vulnerabilities related to the financial services and development of common initiatives and measures to prevent and react to cyber threats.
- Promoting and endorsing sector wide public-private collaboration on cyber security like the Italian CERTFin, or for example the Nordic Financial CERT, with the aim to increase the collection and the analysis of cybersecurity threats, the capacity of cyber-risk management and the cyber-resilience of the financial sector.
- Implementing awareness campaign targeted to the operators and customers of the financial sector related to the use of digital financial services.
- Planning/participating to national/international simulation exercises, in order to improve the capability to cope with and respond to cyber-attack in complex environment.
**JAPAN**

**Economic policy**

Action Plan of the Growth Strategy, etc.

On June 21, the government approved the “Action Plan of the Growth Strategy” and the “Growth Strategy Follow-Up” at a cabinet meeting.

The growth strategy follow-up intends to follow up on the decisions made under the current growth strategy and sets out new measures to be taken that take into account the contents of the Action Plan of the Growth Strategy (major issues relating to finance are as described in the table below).

<table>
<thead>
<tr>
<th>(1) Realization of Society 5.0</th>
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</table>
| ① Definition of rules for the digital market | · Improvement of rules for the digital market  
· Approaches to digital platform companies  
· Promotion of data distribution |
| ② Fintech/finance | · Revision of regulatory regimes for a function-based, cross-segment framework that applies the same rules to the same functions and risks  
· Acceleration of initiatives to realize a cashless society  
· Promotion of innovation, such as the practical application of FinTech  
· Establishment of infrastructures to promote linkage of financial EDI and commercial EDI etc. |
| ③ Corporate governance | · Corporate governance reforms  
· Promotion of smooth funding through the realization of vibrant financial and capital markets |
| ④ Smart public services | · Realization of the most business-friendly country in the world (e.g. Establishment of a legal framework and a registration system relating to movable properties as collateral) |
| ⑤ Aiming for realization of a carbon-free society | · Promotion of green finance |
| ⑥ Establishment of innovation ecosystem aiming for realization of Society 5.0 | · Promotion of open innovation among the industry, academia and government |

<table>
<thead>
<tr>
<th>(2) Reforms of Social Security System for All Generations</th>
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</tr>
</thead>
<tbody>
<tr>
<td>① Securing employment opportunities up to the age of 70</td>
<td>· Revision of the pension system in response to diversification of working styles, prolonged life expectancy, and expansion of aged-employment</td>
</tr>
</tbody>
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<tr>
<th>(3) Reinforcement of Local Policies under Population Decline</th>
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</thead>
<tbody>
<tr>
<td>① Maintenance of Community Infrastructure and Competition Policy</td>
<td>· Management integration of regional banks</td>
</tr>
<tr>
<td>② Increase in productivity of</td>
<td>· Support for practical digitalization of SMEs</td>
</tr>
</tbody>
</table>
SMEs and micro businesses

| · Promotion of the restructuring of enterprises
| · Strengthening the functions of SME support institutions
| · Support for core local enterprises

Monetary Policy

At the Monetary Policy Meeting held in July 2018, Bank of Japan ("BOJ") decided to strengthen its commitment to achieving the price stability target by introducing forward guidance for policy rates, and to enhance the sustainability of “Quantitative and Qualitative Monetary Easing (QQE) with Yield Curve Control.”

In April 2019, BOJ decided the clarification of forward guidance for policy rates, which intends to maintain the current extremely low levels of short- and long-term interest rates until at least around spring 2020, the expansion of eligible collateral for BOJ’s provision of credit, and to consider the introduction of Exchange-Traded Fund (ETF) Lending Facility.

Cyber Security

In April 2019, the revised Basic Act on Cybersecurity (the “Act”) came into effect, and the Cyber Security Council (the “Council”) was established based on the Act. The primary objective of the Council is to undertake activities that proactively tackle cyber security threats in Japan, including the sharing and analysis of threat and other related information, and the creation and sharing of countermeasure information promptly through collaboration across various public and private entities (including the financial sector).

Furthermore, the Financial Services Agency of Japan (the “JFSA”) summarized actual conditions and common challenges, etc. identified through approaches taken in line with the “Policy Approaches to Strengthen Cyber Security in the Financial Sector” (published in July 2015, updated in October 2018), and published the report on cyber security across the financial sector in June 2019.

Regulation and Supervision

JFSA’s Organizational Reform

In July 2018, the JFSA implemented organizational reform, which abolished the Planning and Coordination Bureau and the Inspection Bureau and newly established the Strategy Development and Management Bureau and the Policy and Markets Bureau, to better address changing challenges financial administration faces, based on the Cabinet Order for Partial Amendments to Cabinet Order for Organization of the Financial Services Agency.

<table>
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<tr>
<th>Before</th>
<th>After</th>
<th>Purpose</th>
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<tbody>
<tr>
<td>Planning and Coordination Bureau</td>
<td>Strategy Development and Management Bureau</td>
<td>to enhance JFSA’s strategy development with holistic perspectives across financial services and to upgrade JFSA’s</td>
</tr>
</tbody>
</table>
Institute of International Bankers

Global Survey 2019

<table>
<thead>
<tr>
<th>Inspection Bureau</th>
<th>Policy and Markets Bureau</th>
<th>to respond timely to the changing environment surrounding financial markets and to develop regulatory framework in line with IT and other innovations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supervision Bureau</td>
<td>Supervision Bureau</td>
<td>to conduct more effective and efficient monitoring through seamless off-site and on-site monitoring</td>
</tr>
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</table>

Financial Service Policy

In September 2018, the JFSA published “For Providing Better Financial Services in the Era of Transition Financial Services Policy: Assessments and Strategic Priorities 2018” which provides the following Strategic Directions and Priorities:

- Responding to the accelerating digitalization - “Finance Digitalization Strategy”
- Promoting long-term personal asset building
- Promoting active capital market and securing market integrity and transparency
- Securing effective financial intermediation and financial stability - The roles and responsibilities of management and governance
- Enhancing trust from customers - conduct and compliance issues -
- Contributing to global policy discussion and building global network
- Reforming the JFSA

JFSA’s supervisory approaches

Based on “JFSA’s supervisory approaches” published in June 2018 that summarizes basic concepts and approaches to realize a new inspection and supervision model, the following thematic discussion papers were developed and published respectively as a basis for dialogue among the JFSA and banks to achieve better practice:

- “JFSA’s supervisory approaches for compliance risk management (Basic policy for compliance risk management)” (October 2018)
- “JFSA’s supervisory approaches for ensuring stability of financial system (Basic policy for prudential standards)” (March 2019)
- “Discussion Paper on Dialogues and Practices Regarding IT Governance at Financial Institutions” (June 2019)

* The JFSA published, in addition to the above, the analysis report on system failures at financial institutions. It illustrates main tendencies and cases of system failures (events, causes, and countermeasures) which are common to the financial sector or unique to a specific financial sector. With a view to establishing and enhancing a system integration risk management framework, the JFSA published, the detailed guidance on the concepts and viewpoints regarding system integration risk management frameworks and the monitoring report on system integration and renewal at financial institutions. The latter contains cases (classified by business type/line, issue, cause and measure) that may occur at
any financial institutions implementing large-scale, complex system integration and renewal.

Consideration on the Future Direction of the Financial System

The bill for partial amendments to the “Payment Services Act” to address diversification in financial transactions arising from the advancement of information and communications technology was submitted at the 198th Diet session (convened in January 2019) and enacted in May 2019. This act reflects a portion of “Report on the development of regulations for financial institutions regarding data utilization” published by the Study Group on the Financial System, “Review of Current Regulations on Direct Financial Markets” published by the Working Group on Financial Markets and the “Report from the Study Group on Virtual Currency Exchange Services” as described below.

Discussions at the Study Group on Financial System

Based on the interim note published in June 2018, the Study Group on the Financial System has discussed the following topics since September 2018: 1) appropriate data utilization; 2) cross-sectoral legislation on settlement; 3) taking actions for platformers; and 4) review of regulations on banks and banking groups.

In January 2019, in light of rapidly changing environment surrounding the financial sector, the study group published the “Report on the development of regulations for financial institutions regarding data utilization,” which states that “[i]n the short run, it is appropriate to allow banks, insurance companies, securities companies, and investment management companies to engage in the business of providing data held to a third party in a manner that relates to their core businesses.”

Discussions at the Working Group on Financial Markets

In December 2019, the Working Group on Financial Markets published the “Review of Current Regulations on Direct Financial Markets.”

Since September 2018, the working group has also primarily considered and discussed stable asset building including the future of financial services in an aging society.

Discussions at the Study Group on Virtual Currency Exchange Services

In December 2018, the Study Group on Virtual Currency Exchange Services published a report whose key messages are as follows: improve the institutional framework for the virtual currency exchange service, clarify that trading on margin and ICO (Initial Coin Offering) for investment are subject to financial regulations, and apply regulations on the custody of customers’ virtual currencies that currently apply to virtual currency exchange service providers.
Prudential Regulations

In March 2019, the national prudential regulations were implemented in Japan concerning the following international agreements:

- “Interest rate risks in the banking book (IRRBB)” published by the Basel Committee on Banking Supervision (BCBS).
  [Note] IRRBB (pillar 2 and 3) for internationally active banks has already been introduced since March 2018, and those for domestic banks has been introduced since March 2019.
- “Pillar 3 disclosure requirements – consolidated and enhanced framework” by BCBS.
  [Note] Only some parts of the templates have been introduced.
- “Capital requirements for banks’ equity investments in funds” by BCBS.
- 3% leverage ratio minimum requirement (Pillar 1) as a part of “Basel III: Finalising post-crisis reforms” by BCBS.
  [Note] Internationally active banks have been subject to this requirement.
- “Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution” by FSB and “TLAC holdings” by BCBS.
- “Revisions to the securitisation framework”(2014) and “Revisions to the securitisation framework” (including the alternative capital treatment for “simple, transparent and comparable” securitisations) (2016) by BCBS

Enhancement of Payment and Cashless Society
Initiatives by the Payments Japan Association

In July 2018, the Payments Japan Association (the “Association”) was established based on the recommendations in the “Cashless Vision” published by the Ministry of Economy, Trade and Industry (METI) as an organization in which the industry, academia and government will collaborate across industries. The purpose of the Association is to realize a cashless society as early as possible.

In April 2019, it published the Cashless Roadmap 2019, which outlines the direction for accelerating activities aimed at realizing a cashless society. The Association also set a target date of switching to a unified QR code (JPQR) for user-presented QR code payment at 0:00 a.m. on August 1, 2019.

Efforts by Japanese Banks' Payment Clearing Network (More Time System/Zengin EDI)

- On October 9, 2018, Japanese Banks' Payment Clearing Network (Zengin-Net) launched “More Time System” to enable real-time payments in the evening to night period on weekdays, Saturdays, Sundays and holidays. This, together with the existing system (Core Time System) that operates during the period between morning and late afternoon on weekdays, has realized real-time payments on a 24/7 basis. 504 financial institutions participated in More Time System at the time of launching.
- On December 25, 2018, Zengin-Net shifted to XML Messages (ISO20022) for domestic remittance instructions exchanged between companies and launched Zengin EDI System (ZEDI) that enables to attach various EDI information (e.g., payment notice number and invoice number) when making a bank transfer from a paying company to a recipient
company. 321 financial institutions participated in ZEDI at the time of launching.

Establishment of an electronic check clearing house system

- On June 13, Japanese Bankers Association (JBA) decided to establish an electronic check clearing house system in three years’ time (by 2022). The system will enable clearing of notes and checks by sending/receiving their image data. This will enable financial institutions to eliminate physical transportation of notes and checks, and will improve the efficiency of their business processes. In addition, the adverse impacts caused by disasters, etc. are expected to be reduced, since it is not necessary for financial institutions to transport notes and checks.

Tax system
The FY2019 Tax Reform

In December 2018, the Cabinet approved the “FY2019 Tax Reform.” The following points were determined as bank-related measures:
- Even if a person temporarily leaves Japan due to, for example, an overseas transfer, products that are already held in a NISA account can continue to be held in the NISA account (however, maximum holding period is 5 years).
- The tax exemption of the gift tax for lump-sum gifts of educational funds will be extended for two years (until the end of March 2021).
- As a result of reviewing taxation on excessive interest payments, for interest recipients, interest payments that are included in taxable income for tax purposes in Japan (such as interest on loans from domestic financial institutions) will be excluded from the scope of interest payments. In addition, giving due consideration to a holding company, the adjusted income tax will be calculated based on the domestic corporate group as a whole (the holding company and its subsidiaries, etc. with a capital relationship of more than 50%).
- For cross-border bond repurchase agreements (repo), the tax exemption for interest received on JGB repo transactions executed by foreign funds with domestic financial institutions will be extended for two years (until the end of March 2021). The scope of this exemption will be expanded to include foreign bonds (e.g., U.S., Euro Zone, UK and Australian government bonds).
- The tax exemption for J-Sukuk will be extended for three years (until the end of March 2022).

Anti-Money Laundering Measures
Laws and regulations

In November 2018, Order for partial amendments to Ordinance for Enforcement of Act on Prevention of Transfer of Criminal Proceeds was partially enforced, and due diligence measures to verify the identity of natural persons via online were added. In addition, the identity verification methods have been enhanced for some types of non-face-to-face transactions.

Initiatives by supervisors

In August 2018, the JFSA published the report titled “Current Status and Challenges of Anti-money Laundering and Terrorist Financing” that summarized initiatives by the JFSA to
tackle Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT) and the status of AML/CFT risk management in financial institutions, etc.

In February 2019, the JFSA partially amended “Guidelines for Anti-Money Laundering and Combating the Financing of Terrorism” to emphasize the importance of preventing the financing of proliferation of weapons of mass destruction, and risks posed by transactions with non-profit organizations.

Initiatives by the banking sector

The Study Group on the Enhancement of the AML/CFT Frameworks was established with the aim of conducting joint research by member banks on issues to be discussed across compliance divisions (AML) and operation divisions, such as sharing operational procedures among banks to enhance the AML/CFT frameworks.

Financial Markets, etc.
“Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks”

In August 2018, the “Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks” (“the Committee”, the secretariat: the Bank of Japan) has been established to conduct necessary deliberations with aims to facilitate market participants and interest rate benchmark users to appropriately choose and use Japanese Yen (“JPY”) interest rate benchmarks corresponding to the characteristics of financial instruments and financial transactions, in light of the global discussions on benchmark reform efforts, including the possible permanent discontinuation of LIBOR, and the measures taken so far in Japan, such as TIBOR reform and the identification of the JPY risk-free rate (“RFR”). The Committee held the public consultation regarding the transition and fallbacks, and specific requirements for developing term reference rates based on RFRs on July 2, 2019.

Based on the responses to this consultation, the Committee plans to publish the deliverables reflecting the outcome of the consultation around fall 2019.

“Final Report - Roundtable on Risks Associated with the Settlement of Foreign Exchange Transactions” published by the JFSA

JFSA’s Roundtable on Risks Associated with the Settlement of Foreign Exchange Transactions established in December 2016 released its final report in August 2018, which compiled the results of discussions on practical issues and solutions for introducing Payment-versus-Payment (“PvP”) settlement for trust funds to effectively mitigate foreign exchange settlement risk.

Corporate Governance
Amendments of the Companies Act

A general meeting of the Legislative Council held in February 2019 adopted Outline on Reviewing Companies Act (Related to Corporate Governance) (Draft), and reported it to the Minister of Justice. The main proposals in the Outline are 1) the introduction of a system to
electronically submit general shareholders meeting materials, 2) the revisions to the shareholders' right to propose (e.g., limiting the number of agendas shareholders can submit), 3) the review of the requirements related to remuneration for directors and 4) mandating companies that have established a board of company auditors (public and large companies) and that file securities reports to appoint outside directors. A bill that includes these proposals will be submitted to the Diet by the government.

Amendments to the Cabinet Office Ordinance on Disclosures

Based on the recommendations by the Working Group on Corporate Disclosure of the Financial System Council, “Cabinet Office Ordinance on the Disclosure of Corporate Affairs, etc.” and other rules were amended in January 2019 to enhance financial and narrative (non-financial) information, provide information to promote constructive dialogue between investors and companies, and ensure reliability and timeliness of information. These amendments require companies to disclose the method applied to verify the reasonableness of holding cross shareholdings and expanded the number of stocks subject to separate disclosures from the current 30 to 60 stocks.

Resolution
Decision on changing the deposit insurance premium rates by Deposit Insurance Corporation of Japan

Regarding the deposit insurance premium rates for fiscal 2019, the Policy Board of the Deposit Insurance Corporation of Japan (“DICJ”) decided to change the current rates (the effective rate: 0.034%; general deposits, etc.: 0.033%; and deposits for payment and settlement purposes: 0.046%) to the following rates (the effective rate: 0.033%; general deposits, etc.: 0.032%; and deposits for payment and settlement purposes: 0.045%). These changes were approved by the relevant authorities on March 29, 2019.

SDGs, ESG (financial-related)

The JFSA published an updated version of Financial Administration and SDGs in June 2018, reflecting the current progress of initiatives in capital markets and cross-industry initiatives. SDGs are consistent with the goal of the financial administration that aims to enhance the welfare of the people through sustainable corporate and economic growth and stable asset building. The JFSA is actively working on the promotion of this goal.

In August 2018, the METI established the TCFD Study Group on Implementing TCFD Recommendations for Mobilizing Green Finance through Proactive Corporate Disclosure. In December 2018, the Study Group formulated the Guidance for Climate-related Financial Disclosure (TCFD Guidance) that aims to provide industry-based viewpoints that companies should take to show their efforts.

In July 2018, the High Level Meeting on ESG Finance of the Ministry of the Environment with the participation of major players in the financial markets announced the recommendation that it is essential to develop ESG investments, which are being accelerated ahead in direct finance, into those with a larger social impact, and to realize ESG financing in indirect finance through
collaborations between regional financial institutions and local governments, etc. with financial institutions’ responses to the global trend in mind. Based on this recommendation, the ESG Finance High-Level Panel was established in February 2019 as a forum for each industry leader in the financial and investment fields and the government to work together and discuss and take actions to improve the awareness and efforts on ESG finance.

In May 2019, the TCFD Consortium was launched to promote initiatives in a concerted manner across business corporations and financial institutions that support the TCFD Recommendations. JBA has expressed its support for the TCFD recommendations, and its chairman is one of the founders of the TCFD Consortium.

Coexistence with Foreigners
Financial measures for accepting and coexisting with foreign people

In April 2019, the JFSA published a brochure summarizing matters related to the use of deposit accounts and remittances services for foreign people.

LATVIA

During reporting period the Financial and Capital Market Commission (the FCMC) continued to improve the legal framework governing the activities of the participants of the financial and capital market. The main developments were taking place in AML/CTF sector. The changes in the framework of other regulatory requirements were mainly based on the legal acts issued by the EU institutions in order to ensure a harmonised framework in the EU single financial market. At the middle of 2019 amendments to the governance mechanism of the FCMC were approved by the Parliament.

AML/CTF and Sanctions

During 2018, Latvia continued its active work in improving AML/CFT regulatory base. In 2018, amendments to the Law on the Prevention of Money Laundering and Terrorist Financing (the AML/CTF Law) were adopted stipulating that credit institutions, payment institutions, electronic money institutions, investment brokerage companies, and – in relation to the management of individual portfolios of customers and the distribution of certificates of open investment funds – also investment management companies are prohibited to establish business relationship or to execute an occasional transaction with a shell arrangement, if following indications are met:

- it has no affiliation of a legal person to an actual economic activity or the operation of a legal person forms a minor economic value or no economic value at all, and the subject of the AML/CTF Law has no documentary information at its disposal that would prove the contrary; and
- laws and regulations of the country where the legal person is registered do not provide for an obligation to prepare and submit financial statements for its activities to the supervisory institutions of the relevant state, including the annual financial statements.
The amendments to the FCMC “Normative Regulations of Enhanced Customer Due Diligence” and “Normative Regulations of Enhanced Customer Due Diligence to Credit Institutions and Licensed Payment and Electronic Money Institutions” came into force, supplementing them with the measures that should be carried out by a financial institution regarding the compliance of a shell arrangement to the characteristic features of the prohibited shell arrangement determined by the AML/CTF Law.

Furthermore, the legislative framework on international and national sanctions have been amended governing explicit responsibilities of the FCMC in relation to the supervision of compliance with the sanctions regulations. In line with amendments in the Law on International and National Sanctions of the Republic of Latvia the FCMC is entitled to enact administrative liability and to impose corrective measures for violation of legal provisions in the area of international or national sanctions. Following the amendments thereto the FCMC has adopted the Regulation on Sanctions Risk Management requiring establishment of internal control system and management of the risk related to international and national sanctions as of 01.05.2019. The International and National Sanctions of the Republic of Latvia has been amended once again in 2019 in order to ensure that the legal framework is consistent with the latest UNSCRs and the FATF requirements.

On 28 June 2018 the FCMC’s “Recommendations to credit institutions and licensed payment and electronic money institutions to reduce the risks associated with the failure to comply with sanctions” were adopted that explain the duties of financial institutions in the compliance of sanction requirements and give recommendations on the control measures to be taken in order to prevent the financial institutions from engaging in the circumvention of the sanctions.

5th EU Anti-Money Laundering Directive has been transposed with the Amendments to AML/CFT Law that came into force on 29 June 2019.

Changes in legal and business environment in 2018 accelerated the process of change of business models by banks focused on servicing foreign clients. The change of the business models by reducing the share of high-risk customers and achieving the target variables set by the FCMC for the sector as a whole is closely monitored on continuous basis and remains as a main objective for year 2019. Banks previously focused on servicing foreign clients are shifting towards domestic/EU market and customers, revision of financing structure (i.e. attracting domestic/EU deposits), engaging in new business lines and services, e.g. lending to domestic/EU customers, asset/wealth management and e-commerce.

Other Regulatory Requirements

The amendments approved in 2018 to the “Normative Regulations on Prudential Requirements for the Application of Options and Transition Periods Laid Down in the Directly Applicable Legal Acts of the European Union” determine the transition period in relation to the application of restrictions of large exposures for exposures with the Central governments of the Member States, central banks, public sector companies, as well as regional municipalities or local authorities, which are considered to be exposures with the central government that are denominated in the currency of any other Member State and which according
to the version of Article 495(2) of Regulation (EU) No. 575/2013, being in force on 31 December 2017, would be assigned the risk weight 0% and which were incurred on 12 December 2017 or later.

In the transition period from 1 January 2018 to 31 December 2020 the institution (a credit institution and an investment firm within the meaning of Regulation No. 575/2013 may undertake the aforementioned exposures, without exceeding the following restrictions: 1) 100% of Tier 1 equity of the institution by 31 December 2018; 2) 75% of Tier 1 equity of the institution by 31 December 2019; 3) 50% of Tier 1 equity of the institution by 31 December 2020.

As of 1 January 2021, the aforementioned exposures will be applied the restrictions laid down in Clause one of Section 395 of Regulation No. 575/2013 (currently it is 25% of the relevant equity of the institution).

Continuing the introduction of the EU Solvency II regime in the insurance sector, the “Normative Regulations on Solvency Assessment of Insurance or Reinsurance Company Group” were developed, that explain in more detail the application of requirements of Insurance and Reinsurance Law and directly applicable EU normative acts. The regulations replace the regulations previously approved by the FCMC with respect to the calculation of group solvency capital requirement and own funds, preserving the requirements prescribed therein, as well as supplementing them with detailed requirements for separate aspects of the determination of capital adequacy in accordance with that which is stated by the guidelines of the EIOPA.

The FCMC approved the “Amendments in the “Normative Regulations on the Preparation of Reports for the Insurers and Reinsurers”, clarifying the amount of information to be provided in annual and quarterly activity reports submitted for the needs of statistics by insurance companies that have founded branches abroad, as well as the quarterly balance sheet of the branches of Member State insurers for financial statistics needs was simplified and specified.

Normative Regulations on the Preparation and Submission of Central Securities Depository Supervision Reports, approved in 2018, lay down the information which is disclosed by central securities depositories to the FCMC on the services they provide and their activities, including their supervision reports, that are necessary to supervise the compliance with the requirements laid down in Title I of EU Regulation No. 2017/390, reports on activities in financial instrument settlement systems that are maintained by central securities depositories, as well as the form and content of these reports, procedure and terms for the provision of this information.

FCMC Governance

Amendments to the Law on the Financial and Capital Market Commission was adopted on 13 June 2019. The law provides changes to the governance structure and a gradual replacement of the current management of the FCMC. The Law stipulates that henceforth the FCMC Board will have three Members, instead of the current five: the Chair and two Board Members. The Chair and the Board Members shall be appointed by the Parliament for a period of five years upon a proposal of the Cabinet of Ministers for the Chair and upon a proposal of the Chair for the Board Members. Contenders shall be selected by the Cabinet of Ministers in an open
competition, and the same person may not hold the post of the FCMC Chair or Council Member for more than two consecutive terms.

Moreover the amendments clarify the existing functions and responsibility of the FCMC regarding the prevention of money laundering and the enforcement of international and national sanctions in the financial and capital market.

THE NETHERLANDS

The Dutch Banking Association (Nederlandse Vereniging van Banken, or ‘NVB’)
strives to achieve a strong, healthy and internationally competitive banking system for the approximately 70 Dutch and foreign banks and credit institutions operating in the Netherlands. The NVB is the link between the banking sector, the government and the public and contributes to a vital and sustainable sector. We want to bridge the gap between the banks and the public by facilitating dialogue between all parties involved in the sector. Together, we work on innovation, security, stability and transparency.

Dutch Banking Sector

The Dutch banking sector is characterized by its relatively large size, high level of concentration and diversity. Measured against the size of the Dutch economy, the Dutch banking sector is relatively large from an international perspective. Nonetheless, the Dutch banking sector has shrunk considerably in the past years. The size of the assets relative to the GDP of the Netherlands has decreased from 600% in 2008 to 329% in 2018.

The Dutch banking sector is increasingly regulated on a European level, regarding prudential and financial markets legislation. Most of this legislation requires the national implementation of EU laws, in which national authorities and policy makers have some scope to adjust the EU standards to the national context and to complement it with specific national legislative measures.

As a member of the Eurozone, the Netherlands is subject to additional European banking legislation compared to non-euro counties. The Banking Union project established a Eurozone-wide banking supervision and resolution mechanism. Seven banks in the Netherlands are under the direct supervision of the Single Supervisory Mechanism, which is part of the European Central Bank (ECB).

The Dutch banking sector is rapidly adjusting to the new challenges, one of the major challenges is the innovation in financial services. Dutch consumers usually use computers, tablets or smart phones to transfer money. In 2018, 98% of total transactions took place via mobile or online banking. Since 2018, mobile transactions are larger than transactions via online banking. Because of the strong digital infrastructure in the Netherlands standards are high and new start-ups (Fintech) and traditional banks seeking cooperation are at the same time competing to deliver excellent financial services.

4 For more information on the Dutch banking sector in English see: https://www.nvb.nl/2240/english.html
Oath and Discipline Law

Along with the introduction of a social charter and updating the Banking Code, the Dutch banking industry has in 2015 taken the initiative to implement an ethics statement. The Dutch banks hereby intend to show that everyone working in the industry is bound by the codes of conduct for the ethical and careful practice of this profession. Employees have personal responsibility for complying with those codes of conduct and can be held accountable for non-compliance.

The bankers’ oath is a so-called “ethics statement” subscribed to by all employees working at bank offices in the Netherlands. It has the aim for banking employees to be fully aware of and keep into mind their special role in society, ensuring that they always carefully weigh the interests of all stakeholders with the interests of the customer taking a central place. The most important parts of the bankers’ oath concern:

- Integrity and diligence;
- Careful weighing of interests with the customers’ interests taking a central place;
- Compliance with laws, rules and code of conduct;
- Confidentiality and no abuse of knowledge;
- Transparency and responsibility;
- Preservation of trust in the financial industry.

If there is a violation of the code of conduct, a report regarding the relevant employee is submitted to an independent Bank Disciplinary Law Foundation (Stichting Tuchtrecht Banken) especially set up for this purpose. The Bank Disciplinary Law Foundation carefully reviews whether there was a violation and if it was serious enough to bring to the Disciplinary Commission. This Commission can impose penalties.

Since April 1 2015 the oath and the Disciplinary Law are effective and implemented in the Dutch Financial Supervision Act (“Wft”). Since April 1 2015, approximately 87,000 employees working in the Dutch banking industry are obliged by law to take the Banker’s Oath. At the heart of this oath lies the Code of Conduct. Oath takers who break one of the rules enshrined in the code can be persecuted by the Disciplinary Commission. Disciplinary sanctions range from reprimands to severe fines – up to a maximum of €25,000 – and/or a three year moratorium on working anywhere in the Dutch banking industry. Anyone can file a complaint against a banker suspected of breaking a rule in the Code of Conduct. This must always be done by using the form on this website. Since its inception there were 53 rulings.

Sustainability

Banks in the Netherlands take into account the social and environmental impact of their financing and investment decisions. They have non-financial risk management systems in place, as well as policies to stimulate better non-financial performance among their clients.

In addition, Dutch banks aim to contribute to solving today’s larger societal challenges, such as climate change, scarcity of raw materials and human rights infringements. Both on their own account and collectively, Dutch banks engage in projects enabling the transition to a carbon
neutral economy, such as the National Energy and Climate Agreements and various initiatives promoting the circular economy.

Transparency and disclosure are seen as important elements. The Dutch Banking Association has drawn up a protocol that offers banks a tool to report in detail on all outstanding loans on the balance sheet and many of its members have reported accordingly. The aim is to show customers and other stakeholders what type of economic activities are financed by banks. Dutch banks also generally publish their overall and sector-specific sustainability policies.

In 2016, the Dutch banking sector initiated a multi-stakeholder agreement with a view to improve the human rights outcomes of project finance and corporate lending the Dutch Banking Sector Agreement on International Responsible Business Conduct regarding Human Rights. This is a unique partnership between banks, the Dutch government, NGOs and trade unions. Parties pool and share expertise and experience in order to achieve a material positive impact for people (potentially) facing an adverse human rights situation. In light of this, the parties organized an International Conference on Banking & Human Rights in 2019 to enable an exchange on good practices of responsible business conduct and work towards an international level playing field. In addition, the parties published results of their analysis on human rights risks and opportunities in the cacao and palm oil value chains. In 2019 the parties will consider next steps for this Agreement.

In July 2019 around 50 Dutch banks, insurers, pension funds and asset managers and their umbrella organizations signed a pledge to the Dutch Climate Agreement. Banks committed themselves to the mandatory reporting of CO2 emissions of their loans and investments from 2020 onwards. In addition, in 2022 banks will publish action plans which will include 2030 CO2 reduction targets. Annually, in the context of the commitment, a report will be published, which focuses on the efforts of the financial sector and what it has achieved so far.

**Prudential Requirements**

On 1 January 2014 various amendments to the Dutch Bank Act and the Dutch Financial Supervision Act came into effect. With the European Capital Requirements Regulation (CRR) and the Capital Requirements Directive (CRD IV) having entered into force, DNB in 2014 imposed additional capital requirements, the so-called Systemic Risk Buffer of 3% of risk-weighted assets on ING Bank, Rabobank and ABN AMRO Bank and 1% on Volksbank. The Systemic Risk Buffer is a macro-prudential tool, which the Dutch Central Bank set much higher than the average of other European banks. In general the Dutch banking sector is in a very good shape, with capital having doubled, and a low amount of non-performing loans. In 2019 the CRD V/CRR2 have become final. The CRD V will be implemented in the Dutch Financial Supervision Act.

**Single Resolution Mechanism**

On 1 January 2016 the Single Resolution Mechanism has become fully operational, and is regarded as an important further step towards the European Banking Union, indispensable in developing the European Economic and Monetary Union and to prevent bank bail-outs. Resolving failing banks can be expensive for the society as a whole. Based on the Bank Recovery and
Resolution Directive, the Single Resolution Mechanism will ensure that any resolution costs must be borne primarily by a bank’s shareholders and creditors.

In the Netherlands, pursuant to the EU’s Single Resolution Mechanism (SRM) Regulation the Dutch Central Bank (DNB) has been the designated National Resolution Authority (NRA). The European Single Resolution Board (SRB), in charge of deciding when to place a bank in resolution, is fully operational since 1 January 2016. The SRB consists of representatives from the relevant national authorities (those where the bank has its headquarters as well as branches and/or subsidiaries). It has the powers to decide whether and when to place a bank into resolution and sets out, in the resolution scheme, a framework for the use of resolution tools and the Single Resolution Fund (SRF). Under the supervision of the SRB, the NRA is in charge of the execution of the resolution scheme.

Furthermore, banks together with the DNB have prepared recovery plans for events of default. In the Netherlands the final implementation of the Banking Recovery and Resolution Directive (BRRD) was finalised in November 2015. The Dutch banks contributed approximately EUR 550 million in 2016 and in total EUR 4.5 bln (in 8 years). The whole euro area fund will in 2023 consist of EUR 60 billion. In 2019 the BRRD 2 and the SRM2 were confirmed. In 2020 this will have to be implemented in Dutch law.

**MIFID II/MIFIR (Markets in Financial Instruments Directive & Regulation)**

The revision of the Markets in Financial Instruments Directive and the new Markets in Financial Instruments Regulation (respectively referred to as MiFID & MIFIR) entered into force on 3 January 2018. These laws govern the provision of investment services in financial instruments by banks and investment firms and the operation of traditional stock exchanges and alternative trading venues. MiFID II and MIFIR contain more stringent rules in order to encourage efficient, competitive and transparent European financial markets. These rules also aim to increase the protection of investors.

**EMIR**

The European Market Infrastructure Regulation (EMIR) which was adopted on 4 July 2012, entered into force on 16 August 2012. EMIR has introduced central clearing and reporting obligations. The clearing obligation applies to standardized classes of OTC derivative contracts that have been specified as being subject to this obligation. The first derivatives that are to be centrally cleared are specific classes of interest rate derivatives in the G4 currencies. The regulations governing this mandatory clearing (Commission Delegated Regulation (EU) 2015/2205) were published on 1 December 2015. The clearing obligation for these interest rate derivatives are implemented in stages, depending on the status of the parties involved. There are several categories for different parties; the first of which (clearing members) were subjected to the clearing obligation from 21 June 2016 onwards. The last category consisting of non-financial counterparties, were the last to come under the clearing obligation, from 21 December 2018 onwards.

The Netherlands Authority for the Financial Markets (AFM) and the Dutch central bank (DNB) are carrying out the supervision of the obligations under EMIR. In 2018, two central
counterparties (CCP’s) established in the Netherlands are authorised under the European Markets Infrastructure Regulation (EMIR): ICE Clear Netherlands and EuroCCP NV.

Remuneration

The Dutch Act on the Remuneration Policies Financial Undertakings came into effect on 7 February 2015. The Act is part of the Dutch government’s endeavours aimed at a sound and sustainable Dutch financial sector. Remuneration rules are included in the Capital Requirement Directive (CRD4) in which a 1:1 ratio is set between fixed and variable remuneration. The Dutch Act is more restrictive with a bonus cap of 20%. The Act also introduces all-encompassing legislation that requires financial undertakings to maintain sound remuneration policies and sets out rules with respect to the type of remuneration, as well as malus and claw-back provisions.

Cybersecurity

The EU has agreed on the Directive on security of network and information systems (NIS Directive) for operators of essential services like telecom, energy production and also the financial sector. The cybersecurity law in the Netherlands that implements the NIS Directive (which is called the Wet bevrijling netwerk- & informatiesystemen or Wbni) is effective since the beginning of 2019. Due to extensive rules, regulations and measures already applicable for the Dutch banks, the implication of the new legislation proved to be limited.

The Dutch government published its overview of cybersecurity risk in August 2019 (Cyber Security Assessment Netherlands). The CSAN 2019 states that nearly all vital processes and systems in the Netherlands are partly or entirely digitized, with hardly any fallback options or analogue alternatives available. These factors, combined with the inadequate level of cyber resilience, make the Netherlands vulnerable to digital attacks. The CSAN 2019 calls for “significant investments by both government and the business community, the new cybersecurity notification obligation as well as more stringent laws and regulations will need to become visible in the next few years”.

The Dutch financial sector considers itself a front runner in taking measures to improve the resilience of the banks. Together with the Dutch Central Bank (DNB) the banking sector has taken the initiative to set up an extensive red-blue teaming program TIBER (Threat Intelligence-Based Ethical Red teaming). It comprises of hack tests at financial institutions, with realistic scenarios based on current threat intelligence. The aim is to make institutions in the financial core infrastructure (FCI) more resilient as they learn from best practices. At a European level, central banks and other authorities have joined forces to create a similar TIBER-EU program. This should prevent European financial institutions from being burdened with a multitude of tests and to foster collaboration among authorities.
NORWAY

Norway is not a member of the EU but participates in EU’s internal market under the European Economic Area Agreement (EEA). According to this agreement Norway is obliged to implement all EU directives and regulations that relate to financial institutions and markets, such as the CRR/CRD IV, MiFID, Prospectus Directive, Solvency II etc. This ensures Norwegian financial institutions the same rights and obligations as institutions established within the EU. When it comes to EU’s structure for supervision of financial markets, the EFTA Surveillance Authority (ESA) is responsible for decisions that are binding for Norwegian companies.

Solvency Regulation for Banks

The European capital adequacy regime was introduced in Norway in 2013, with a gradual introduction of new buffer requirements along with a requirement for banks to hold capital against risks not covered by the minimum and buffer requirements. Norwegian institutions are currently obliged to have a CET1 ratio of minimum 12 percent. This includes a required countercyclical capital buffer of 2 percent. The level of the buffer is decided by the Ministry of Finance based on a recommendation from the Norwegian Central Bank (Norges Bank) and should be between 0 and 2.5 percent. The central bank delivers its comments on the level of the buffer 4 times a year, when it publishes its Monetary Policy Report. In December 2018, the Ministry of Finance decided to increase the level of the countercyclical capital buffer to 2.5 percent. The new level will become effective from 31. December 2019. Norwegian banks also face an extra capital requirement through Pillar 2 decided by the Norwegian FSA.

Financial institutions regarded as systemically important (SIFI) must hold an additional CET1 of 2 percentage points. DNB and Kommunalbanken are currently defined as systemically important banks. To become a SIFI, at least one of the following criteria must be met:

- By the end of the previous year, total assets must have been equivalent to over 10 percent of GDP for Mainland – Norway.
- By the end of the previous year, market share for domestic lending to the general public needs to have been higher than 5 percent.

In May 2019, the Ministry of Finance rejected a proposal from the FSA on implementing a third criteria related to a bank’s regional market share. With the proposed criteria of minimum 10 percent market share in a given region an additional six banks would have been classified as systemically important.

Due to implementation issues the CRR/CRD IV has not been formally adopted in the EEA-agreement until March 2019. Pending the final approval from the governments in Iceland and Liechtenstein (approved in Norway in June 2019) the legislation will enter into force also in Norway. The formal implementation (expected 2H 2019) implies that the Norwegian version of the Basel 1 floor is removed for IRB banks and that the discount in capital requirements for exposures to small and medium-sized enterprises (EU’s SME discount) will apply for all banks.

The Ministry of Finance implemented the leverage ratio on 30. June 2017. Banks, credit institutions etc. are faced with a 3 percent requirement, but an additional 2 percent buffer applies
for banks. Systemically important banks will also need to have an extra 1 percent, i.e. a total of 6 percent.

**Recovery and Resolution**

The legislation implementing EU’s Banking Recovery and Resolution Directive (BRRD) was implemented in Norway on 1. January 2019. The legislative package includes a requirement on minimum eligible liabilities (MREL). The FSA has stated that nine banks will receive their requirement on MREL during 2019 and that an additional six banks will follow in 2020. The FSA will assess whether remaining (smaller) banks also should have MREL.

**Tax on Financial Companies**

As of 2017, a specific tax on financial companies has been implemented. The tax has been initiated due to the sector being exempted from value added tax (VAT) and consists of two parts. The first part implies that financial companies will not be affected by the lowering of the corporate tax in general, from 25 percent to now 22 percent (2019), whereas the second part is the application of an additional tax of 5 percent based on the wage base. There is an on-going discussion on amending the tax which includes removing the tax on employment or having one tax rate for both the cost of employment and the company’s surplus combined. The Government will present its suggestion for the Parliament in autumn 2019.

**Cybersecurity**

In Norway, there is high attention regarding the prevention of cybercrime and increasing the financial sector’s robustness towards such risks. Norwegian legislation includes requirements on the use and outsourcing of IT-systems and services. The Norwegian financial infrastructure is considered as solid, with adequate stability. However, new technological solutions are developed and implemented rapidly. This may contribute to vulnerability and threats which the financial sector continuously will have to manage.

To strengthen the Nordic financial industry’s resilience to cyber-attacks, Nordic Financial CERT was established in 2017. It enables Nordic financial institutions to respond quickly and efficiently to cyber security threats and online crime. It also implies that members can work together, sharing information and creating a coordinated response to threats.

**Housing Market Regulation**

On 15. June 2015, the government announced a new strategy for the housing market. The objective of the strategy was to simplify regulations and bureaucracy to increase housing supply in relevant areas, as well as tighten credit regulations to dampen the growth in house prices and household debt. The latter led to a change in regulation which was temporary and set to last until 31. December 2016. On 14. December 2016, the Ministry of Finance announced a further continuation of the mortgage credit regulation including new measures which became effective from 1. January 2017. In June 2018 the regulation was extended further with some minor adjustments and currently sets out the following requirements for borrowers:

- Maximum loan-to-value (LTV) of 85%,
It is possible with higher LTV if one has additional security in the form of other property or others provide a personal guarantee,
- Maximum debt-to-income (DTI) at 500%,
- Mandatory instalments for loans with LTV over 60%,
  - Set to 2.5% annually or the equivalent to instalments on an annuity loan with 30-year duration,
- Credit lines up to maximum 60% of market value,
- Borrowers must be able to withstand an increase in the mortgage interest rate of 5 percentage points.
- To ensure some flexibility, banks are able to deviate from the above requirements in certain cases. The limit is set to 10% of granted loans each quarter.

Due to the development in Norway’s capital Oslo, borrowers buying a home in this area also face a requirement of maximum 60% LTV for secondary homes. In addition, banks’ deviation limit from the above requirements is set to 8% of granted loans each quarter.

The mortgage regulation will expire on the 31. December 2019. The FSA is currently reviewing the effects of the current legislation on the development in household debt and will deliver its assessment to the Ministry of Finance before 10. September. The FSA’s review will include a recommendation on whether the regulation should be extended, possibly with amendments.

Regulation on Consumer Loans

The market for consumer loans has experienced high growth rates in recent years. To prevent vulnerable households from taking on consumer loans with high interest rates the Ministry of Finance established regulations on requirements for financial institutions’ consumer lending practices on 12. February 2019. The regulation is similar to those on mortgages (requirements concerns debt servicing capacity, DTI and monthly instalments) and will remain in force until 31. December 2020. In addition, information on an individual’s consumer loans, which until recently has not been fully transparent, will be available for all lenders from 1. July 2019. Three entities have been granted license to provide debt information services on consumer loans, implying better information for banks’ credit assessments.

Solvency II

Solvency II entered into force for Norwegian insurance companies on 1. January 2016. The main elements of the Solvency II-framework are implemented in Norwegian legislation through a new law for financial institutions (in force on 1 January 2016). The law is complemented by a regulation based on the implementing measures (Level 2) to the Solvency II framework Directive. This regulation was adopted on 25. August 2015 by the Norwegian FSA and includes several of the permanent and transitional measures for long-term guaranteed products under Solvency II that were introduced by the Omnibus II-Directive in 2013. On 21 December 2016, the Ministry of Finance made some amendments in the regulation to adapt it to delegated regulation 2016/467.

For life insurers, there exists a transitional period until 31. December 2031 subject to approval from the Norwegian FSA. This implies a phase in period of the full Solvency II technical
provisions. However, this measure is made subject to a national limitation, capping much of the effect.

Solvency II is mandatory for both life and non-life insurers. On 8. June 2018, the Ministry of Finance announced that a simplified Solvency II-requirement has been established for pension funds. The legislation entered into force 1. January 2019, but key elements will be gradually phased in towards 2032.

Through national legislation, Norwegian insurance companies and pension funds have previously been prevented from owning more than 15 percent of a company which is not directly linked to insurance or pension. With the introduction of risk sensitive capital requirements through Solvency II, the Ministry of Finance repealed this requirement for insurers on 14. December 2018, effective from 1. January 2019.

On 3. May 2019, The Ministry of Finance put forward for public consultation a proposal from the Norwegian FSA, increasing the Solvency II capital requirements for Norwegian insurers’ investments in residential mortgages. The proposal introduces a minimum floor of 30 per cent in the calculation of loss given default, so that the Solvency II capital requirement for default risk is minimum 4.5 per cent of a loans value. The proposal aims to make the capital requirement for insurers’ investments in residential mortgages more equal to the current capital requirement for banks. The consultation runs until 15. August 2019.

Life Insurance and Pensions

Historically, pension schemes in Norway have been defined benefit plans, both in the public and private sectors. Defined contribution pensions were introduced from 2002, but reached a significant amount at first from 2006, when a law of mandatory occupational pensions was introduced for all employees in the private sector.

For several years, there has been a trend in Norway of transition from defined benefit pension schemes (DBs) to defined contribution schemes (DCs) in private sector, regarding old-age pensions. Lower interest rates, higher longevity risk and the introduction of Solvency II supports this development even further. This trend is an increasing challenge for life insurance companies, due to the increasing amount of paid-up policies. Paid-up policies are up-earned pension rights for employees who quit a company with a DB scheme or work in a company that changes the pension schemes from a DB to DC. The capital linked to paid-up policies in life insurance companies is approximately 311 billion NOK and has an average annual interest rate guarantee from 3-4 per cent.

Almost all new pension schemes in the Norwegian market in private sector are drawn as DC plans, and almost none of the new private plans established in the past couple of years were DB plans.

The hybrid pension product (“target benefit pensions”) was a new competitive old-age pension scheme introduced by new legislations from 2014. However, the first hybrid pension schemes occurred the first time in 2015 and have a small market share (around 14.700 employees)
in the Norwegian market, which is dominated by defined contribution pension schemes (around 1.4 million employees have DC plans). Less than 50,000 employees have DB plans.

Due to high capital requirements for DB schemes and paid-up policies under Solvency II, insurance companies are no longer willing to receive a DB product or paid-up policies from other life insurance companies.

From 1. September 2014, the legislature introduced a new product called “paid-up policies with investment choice”. The new product makes it possible for existing holders of paid-up policies with guarantees, to convert paid-up policies into unit-linked policies (if they relinquish the guarantees). Paid-up policies with investment choice amount to around 15 billion NOK.

The Norwegian FSA is currently reviewing changes to the legislative framework for guaranteed life insurance products, based on a mandate from the Ministry of Finance. The aim is to identify possible regulatory changes that would substantially increase customers’ returns on their pension savings, with a moderate increase in risk. The FSA has until 30. June 2019 to put forward its proposal, which the Ministry of Finance will then consider consulting publicly.

On 14. December 2018, the Government presented a new legislative proposal on “individual pensions account,” aiming to make it easy for policyholders to gather all their accrued pension rights and capital at one pension provider, thereby allowing them to take advantage of economies of scale and save (asset) management fees. The policyholders will have a free choice of provider, both for their accrued rights and capital, and for their ongoing pension scheme. The proposal was adopted in April 2019 and is expected to enter into force on 1. January 2021.

On 3. March 2018, the Ministry of Labor and the employee organizations agreed on a new public pension scheme, which will be introduced from 2020 for employees born in 1963 and later. The Government and the labor organizations also work on proposals for new rules for special age limits. A new proposal is expected to be ready in November 2019 and will probably be the subject of negotiations in 2020.

**PORTUGAL**

In 2018, the Portuguese economy grew by 2.1% (-0.7 p.p. year-on-year). Private and public consumption rose more than in 2017, but domestic demand decreased its contribution to GDP due to a deceleration in investment. Net external demand had a more negative contribution as the deceleration in exports of goods and services was higher than that of imports. According to the 2019-2023 Stability Programme, GDP is expected to increase by 1.9% in 2019.

At the end of 2018, the Portuguese banking system comprised 150 institutions, 60 of which were banks (including 30 branches of foreign banks), 86 mutual agricultural credit banks and 4 savings banks. As a result of its ongoing deleveraging process, the Portuguese banking system reduced its weight of total assets to the country’s GDP from 310.6% in 2010 to 193.8% in 2018. The five largest banks accounted for 78% of total assets.
In the aftermath of the financial crisis and of the economic crisis that followed, the Portuguese financial system has undergone a very intense transformational process that resulted in significant achievements in all fronts: solvency, liquidity, asset quality and, more recently, profitability, as well as business model adjustments and governance improvements. The Portuguese banking sector is now more resilient and prepared to face potential adverse shocks. Solvency has been strongly reinforced: CET1 reached 13.2% in 2018 (versus Core Tier 1 of 7.4% in 2010); liquidity stood at comfortable levels (loan-to deposit ratio of 88.9% versus 158.7% in June 2010; liquidity coverage ratio at 196.5%); profitability improved (RoE5 reached 7.1%). Furthermore, ambitious strategies have been implemented to reduce NPL and remarkable progress has been achieved: non-performing loans (NPL) fell by €24.6 billion since the maximum level attained in June 2016 with the NPL ratio decreasing from 17.9% to 9.4% and the NPL coverage ratio increasing from 43.2% to 51.9%.

Legislative and Regulatory Framework

In addition to the implementation of several European legislative initiatives, a number of domestic initiatives were adopted in the second half of 2018 and throughout 2019 to tackle specific national issues.

The following European initiatives have been transposed/implemented in Portugal:


The following national initiatives were passed/implemented:

Macroprudential Measures Applicable to New Consumer Credit Agreements

In July 2018, a recommendation from Banco de Portugal placing limits on some of the criteria used by banks to assess borrowers’ creditworthiness entered into force. It covers the granting of new loans on residential immovable property, credit secured by a mortgage or equivalent guarantee, and consumer credit agreements. Limit types include limits to LTV and DSTI ratios and the maturity of loans.

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5 Source: Banco de Portugal. Calculated based on income before taxes and minority interests

The aim of the measure is to ensure that credit institutions and financial companies do not take excessive risks in granting new loans and that borrowers have access to sustainable financing.

**Negative Interest Rates on Mortgage Loans**

On July 19th 2018, Law 32/2018, of 18 July, amending Decree-Law 74-A/2017, of 23rd June, on credit agreements for consumers relating to residential real estate property, entered into force and, in the context of residential mortgages, imposed on banking institutions the obligation to reflect the existence of negative rates in the calculation of interest rates applicable to such loans.

According to this law, when the sum of the relevant index rate (such as Euribor) and the spread is negative, the resulting negative interest rate amount will have to either (i) be discounted from the principal outstanding amounts or (ii) be converted into a credit which may in the future be set off against positive interest rates (and ultimately be paid to the borrowers if not fully set off at maturity).

**Anti-Money Laundering and Terrorist Financing Framework**

In September 2018, Banco de Portugal issued Notice 2/2018, which regulates the conditions of exercise, procedures, instruments, mechanisms, enforcement formalities, reporting obligations and other aspects necessary to ensure compliance, by entities subject to Banco de Portugal’s supervision, with the anti-money laundering and terrorist financing framework, namely with the duties set forth in Law 97/2017, as well as the measures that payment service providers should use to detect transfers of funds where information on the payer or the payee is missing or incomplete.

**New Pre- and Post-Contractual Information Documents on Bank Accounts and the Fee Comparison Website**

Decree Law 107/2017, of 30th August, which transposed Directive 2014/92/EU of the European Parliament and of the Council of 23rd July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, introduced new pre- and post-contractual information documents on bank accounts and the fee comparison website (managed by Banco de Portugal). These new requirements were implemented during the last quarter of 2018/beginning of 2019.

**ROMANIA**

**Recent Developments**

In October 2018, the NBR issued Regulation no.5/2018 amending and supplementing NBR Regulation no.5/2013 on prudential requirements for credit institutions, which establishes the level of materiality thresholds used by credit institutions in the context of the definition of default, and the deadline for compliance with those thresholds, and the obligation for credit institutions to draw and communicate to the National Bank of Romania a list of their bank agents. Based on the information transmitted by the credit institutions, the National Bank of Romania...
keeps and updates a bank agents’ register.

Also in October 2018, the NBR issued Regulation no. 6/2018 (published in The Official Journal of Romania Part I no. 950 of 9th of November 2018) which amended the NBR Regulation no. 17/2012 on certain lending conditions, in order to strengthen the sustainable growth of the lending activity. The regulation provides for an aggregate DSTI ceiling of 40% of which the maximum DSTI for loans denominated or indexed in a foreign currency granted to debtors exposed to foreign exchange risk is 20%. The maximum levels of DSTI are increased by 5 percentage points in case of a mortgage loan contracted by the debtor for the purchase of the first residential property to be occupied by the debtor. The regulation provides also for an exemption from the maximum level of the aggregate DSTI, under certain conditions, for up to 15% of the loan portfolio of a creditor. The obligation of lenders to comply with the new provisions introduced by NBR Regulation no. 6/2018 intervened with effect from 1 January 2019. However, the aforementioned amendments do not apply to loans granted exclusively for repaying debts relating to loans granted before their entry into force.

In December 2018, the NBR issued two legislative acts in the capital buffers field:

- the NBR Order no. 8/2018 regarding the systemic risk buffer, which updated the methodology used to determine the values of the indicators according to which the systemic risk buffer is calculated, pursuant to the NBR Order no. 4/2018.

- the NBR Order no. 9/2018, according to which, starting with the 1st of January 2019, credit institutions authorized in Romania and identified as O-SII have to maintain an O-SII buffer, the level of which is foreseen in the Order and determined on the basis of the total exposure amount, calculated in accordance with Art. 92 para. (3) of Regulation (EU) No. 575/2013.

Also in this field, in March 2019, the NBR issued NBR Order no. 2/2019, which amended the methodology provided by the NBR Order no. 8/2018 on the basis of which the values of the indicators for calculating the systemic risk buffer are determined. The amendments had the objective to reflect the situation of loan portfolios recognised in mergers, in accordance with their economic and accounting treatment.

In 2019, according to the NBR Order No.12/2015, the capital conservation buffer must consist in Common Equity Tier 1 capital equal to 2.5% of the total risk exposure amount. According to the same NBR Order, the countercyclical capital buffer is set at 0%.

In order to ensure the compliance with the Guidelines on complaints - handling for the securities (ESMA) and banking (EBA) sectors (JC 2018 35), the legislation was supplemented by issuing the NBR Instructions from 30 May 2019 on governance arrangements for retail products and complaints in the financial and banking sector.

As regards the transposition of Directive (EU) 2015/2366 on payment services in the internal market, the inter-ministerial approval procedure of the draft law has been completed and the parliamentary approval procedure was initiated. NBR has actively participated in the inter-institutional transposition groups in order to finalize the transposition.
The draft law in the area of *money laundering and terrorism financing*, for transposing into the national legislation the provisions of the *Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing* (elaborated in collaboration with National Office for Prevention and Control of Money Laundering, Ministry of Justice and other national authorities), has been retransmitted to the Parliament in order to align the text of the draft law with the provisions of the Romanian Constitution, according to the decision of the Constitutional Court of Romania no. 790 of 5 December 2018.

Moreover, NBR has participated in the negotiation process conducted at the level of the Council of the European Union (through representatives within working groups and also in the context of the Romanian Presidency of the Council of the European Union), regarding the legislative proposals issued by the European Commission in the field of non-performing loans, covered bonds, the establishment of the European Deposit Insurance Scheme, risk reduction measures (RRM package), which includes amendments to the Directive 2013/36/EU, Regulation (EU) no.575/2013, Directive 2015/59/EU and Regulation (EU) 806/2014.

**Ongoing Financial Regulatory Reform Efforts**

An objective in the regulation field is to update the secondary regulatory framework in line with the new developments in the national legislative framework in the area of money laundering and terrorism financing, payment institutions and electronic money institutions. Also, NBR will work on the analysis on the need to revise the legal framework that applies to the non-bank financial institutions sector.

Another objective is to review the national framework applicable to credit institutions in areas such as licensing, changes in the situation of credit institutions, mergers/divisions, licensing of the bridge - credit institution, corporate governance, outsourcing, risk management, including information and communication technology risk. In this context, NBR will also ensure the transposition of the EBA guidelines in the above-mentioned areas, including EBA Guidelines on internal governance and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders.

In order to ensure the harmonization of national legislation with guidelines and recommendations issued by European Banking Authority, the National Bank of Romania is constantly updating the prudential regulatory framework. Areas in which the EBA guidelines and recommendations were transposed into Romanian regulations refer to supervision of significant branches, outsourcing to cloud service providers and equivalence of confidentiality regimes, as well as minimum criteria of a business reorganisation plan.

NBR will continue to implement the recommendations made by the International Monetary Fund and the World Bank as a result of Financial Sector Assessment Program in Romania (2017 – 2018).

**Developments in the Accounting Regulation Field**

Taking into consideration the Ministry of Public Finance reporting requirements to ensure the comparability of the information covered by the semi-annual accounting reports at the national
level, the semi-annual accounting reporting system applicable to the entities under the National Bank of Romania accounting regulation scope was updated in August 2018 by issuance of the NBR Order no. 6/2018, amending the NBR Order no. 10/2012. The aspects of the Order envisaged thereby are:

- update the templates of semi-annual accounting forms applicable to credit institutions in respect of the "Statement of Assets, Liabilities and Equity" and "Profit and Loss Account", following the implementation of IFRS 9 provisions starting with January 1, 2018. The update was made with reference to the provisions of the NBR Order no. 9/2017;
- update the template of accounting report form code 30 - "Informative data", according to the requirements of the Ministry of Public Finance.

In order to ensure the regulation framework regarding bookkeeping in line with the new accounting treatments set out in IFRS 16 – Leases (which replaces IAS 17 Leases), the NBR Order no.27/2010 was amended by issuing the NBR Order no. 10/2018. This Order also brings changes due to the need to facilitate the reporting requirements of the FINREP framework (on an individual and consolidated basis), as well as due to the provisions regarding interim financial statements to be drawn up by credit institutions which, according to the law, decided for the quarterly distribution of dividends.

Regarding the application of FINREP reporting framework on solo basis by credit institutions in Romania and the statistical information reported by Romanian branches of credit institutions based in other Member States, the National Bank of Romania issued Order no.1/2019 amending the NBR Order no. 9/2017 and the NBR Order no. 10/2017. The main aspects envisaged by the Order are:

- update the mapping of the chart of accounts to FINREP reporting templates on solo basis following the amendments brought to the accounting regulations applicable to credit institutions by issuance of the NBR Order no. 10/2018;
- amending the FINREP reporting framework on solo basis follow to the amendments brought by the EBA to the consolidated FINREP reporting framework, published on the EBA website in April 2018 and adopted at EU level by (EU) Regulation no.1627/2018;
- update of the reporting template F 46.00 - Statement of changes in equity, as well as of the correlations within/between individual FINREP templates, due to practical issues arisen from NBR Order no. 9/2017 and the NBR Order no. 10/2017 application;

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7 National Bank of Romania Order no.10/2012 for the approval of the Semi-annually accounting reporting system, applicable to the entities under the National Bank of Romania accounting regulation scope.
8 Order of the National Bank of Romania no. 9/2017 for the approval of the Methodological Norms on the preparation of FINREP financial statements at individual level, in compliance with the International Financial Reporting Standards, applicable to credit institutions for prudential supervision purposes.
9 IFRS 16 - Leases has been adopted at EU level by Commission Regulation (EU) no. 2017/1986, with mandatory effective date of application January 1, 2019, allowed to apply earlier than this date.
10 Order of the National Bank of Romania no. 27/2010 for the approval of the Accounting Regulations in compliance with the International Financial Reporting Standards, applicable to credit institutions.
11 The National Bank of Romania Order no. 10/2017 approving the Methodological rules regarding the preparation of the periodic reports containing financial and accounting statistical information applicable to Romanian branches of credit institutions having their headquarters in other Member States.
• clarifying the way in which the POCI (purchased or originated credit) financial assets are reported within the FINREP framework, according to the approach agreed at the level of the banking community;
• update of the reporting framework regarding financial and accounting statistical information, applicable to the Romanian branches of credit institutions having their headquarters in other Member States, according to the amendments brought to the FINREP individual reporting framework.

Taking into consideration the modifications of the accounting regulatory framework at national level, the National Bank of Romania issued Order no. 3/2019 amending and supplementing the NBR Order no. 6/2015\(^{13}\), which introduces provisions regarding the preparation of interim financial statements in case, the institutions decided, according to the law, for the quarterly distribution of dividends. NBR Order no. 3/2019 also updated the chart of accounts and its correspondence with some positions in the balance sheet template applicable to financial institutions.

In order to ensure a unified treatment with that provided for economic operators, as requested by the Minister of Public Finance, and taking into consideration the application of IFRS 9 by credit institutions starting with the financial year 2018, the National Bank of Romania issued Order no. 5/2019 amending the NBR Order no. 1/2013\(^{14}\). The main provisions of the amending Order are:
• update the template of the annual accounting reporting form code 30 - "Informative data", following the modification/completion of the information provided by the Ministry of Public Finance;
• update the template of the annual accounting reporting forms Code 10 - "Statement of assets, liabilities and equity", code 20 - "Profit or loss account", code 50 - "Breakdown of certain items in the profit and loss account" and code 60 - "Other Information" and the correlations within and between these forms, following the implementation of IFRS 9 provisions starting with January 1, 2018.

SINGAPORE

Key Developments in the Regulation and Supervision of Banks

Implementation of the Banking (Amendment) Act 2016

The Banking (Amendment) Act 2016 was brought into force on 30 November 2018. The key amendments were aimed at enhancing prudential safeguards, corporate governance and risk management controls in the banking industry, and comprise provisions to –

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\(^{13}\) Order of the National Bank of Romania no. 6/2015 for the approval of the Accounting Regulations compliant with the European directives applicable to entities that fall within the scope of the National Bank of Romania regulation other than credit institutions

\(^{14}\) Order of the National Bank of Romania no. 1/2013 for the approval of the Methodological Norms for the preparation of the annual accounting reporting for the Ministry of Public Finance’s information requirements applicable to credit institutions
Prudential safeguards
- empower the Monetary Authority of Singapore (MAS) to require foreign banks to locally incorporate all or part of their banking business, if it is necessary or expedient in the interest of the public, depositors or Singapore’s financial system; and
- empower MAS to set prudential requirements that cap banks’ leverage and ensure they maintain sufficient liquidity.

Corporate governance
- empower MAS to remove key appointment holders of banks if they are found to be not fit and proper;
- protect banks’ external auditors who disclose, in good faith, information to MAS in the course of their duties from any liability that may arise from such disclosure;
- empower MAS to direct banks to remove their external auditors if they have not discharged their statutory duties satisfactorily; and
- empower MAS to prohibit, restrict or direct a bank to terminate any transaction that the bank enters into with its related parties if it is deemed to be detrimental to depositors’ interests.

Risk management controls
- formalise MAS’ expectation for banks to institute risk management systems and controls that are commensurate with their business profiles and operations; and
- introduce a requirement for banks to obtain MAS’ approval to establish new places of business where non-banking activities are conducted.

Resolution Powers

Under the MAS Act and the Banking Act, MAS has resolution powers in respect of Singapore-licensed banks. Broadly, MAS powers include assuming control of a bank, imposing moratoriums and/or ordering transfers of business. The MAS Amendment Act 2017 has come into operation, and the amendments relating to the resolution framework came into force on 29 October 2018. MAS’ resolution powers now include, amongst other things, the power to temporarily stay early termination rights (including set-off and netting rights) of counterparties to financial contracts entered into with a financial institution over which MAS may exercise its resolution powers (which would include Singapore licensed banks), statutory bail-in powers, and powers relating to the cross-border recognition of resolution actions, creditor safeguards and resolution funding.

On 30 January 2019, MAS issued the MAS Notice 654 on Recovery and Resolution Planning, as well as the accompanying Guidelines to this Notice. The Notice applies to a bank to which a direction for a recovery plan and its implementation has been issued under section 43(1) of the MAS Act. It sets out the requirements that such bank has to comply with in its recovery and resolution planning.

Depositor Protection

On 1 April 2019, the Deposit Insurance (DI) coverage limit was increased from SGD 50,000 to SGD 75,000. The increase in DI coverage limit was part of the legislative amendments,
which the Singapore Parliament approved in July 2018, to enhance the DI and Policy Owners’ Protection Schemes.

Implemented revised BCBS standards for Interest Rate Risk in the Banking Book and Holdings in Total Loss-Absorbing Capacity Instruments

MAS amended MAS Notice 637 to implement the revised Basel Committee on Banking Supervision (BCBS) standard for Interest Rate Risk in the Banking Book (IRRBB) with effect from 31 December 2018, and to implement the BCBS’ standard on holdings in Total Loss-Absorbing Capacity (TLAC) instruments with effect from 1 January 2019. The amendments also include a widening of the scope of eligible collateral for credit risk mitigation purposes, revisions to the risk weight for certain exposures to public sector entities, and various technical amendments.

MAS Notice 615 on Appointment of Auditors

On 17 July 2018, MAS issued the revised MAS Notice 615 on Appointment of Auditors to discontinue mandatory audit firm rotation for banks incorporated in Singapore. Under the revised MAS Notice 615, banks incorporated and headquartered in Singapore are required to perform an audit re-tendering exercise every 10 years to ensure continued independence and quality of their external auditors.

Implemented Singapore Financial Reporting Standard (International) 16 on Leases

SFRS(I) 16 and FRS 116 Leases, which are applicable for annual reporting period beginning on 1 January 2019, replace the existing lease accounting requirements and require almost all leases to be recognised on the balance sheet. They also change the way in which lease expenses are presented in the income statement.

MAS Notice 610 on Submission of Statistics and Returns

MAS issued a revised Notice 610 on Submission of Statistics and Returns in May 2018, which sets out the revised reporting standards for banks in Singapore. The key changes to the regulatory requirements include:

- collecting more granular data of banks’ assets and liabilities by currency, country and industry. Greater granularity allows better identification of potential risks to the banking system;
- rationalising the collection of data on RMB business activities and deposit rates. The standardised requirements will provide greater consistency and reusability of the data; and
- removing the Domestic Banking Unit (DBU) and Asian Currency Unit (ACU) and for banks to report their regulatory returns in Singapore dollar and foreign currency instead.
Proposed Amendments to the Banking Act

On 7 February 2019, MAS issued a consultation paper proposing further amendments to the Banking Act to strengthen the licensing and regulation of banks and credit card or charge card licensees, formalise existing supervisory requirements and clarify other technical and administrative issues. The key amendments proposed were in relation to:

- expansion of the grounds for revocation of bank licences, to enable MAS to revoke a bank’s licence for breaches of the MAS Act, if the parent bank of a Singapore-incorporated foreign bank has its licence withdrawn, or when it appears to MAS that it is in the public interest to do so;
- powers for MAS to approve 20% controllers and key appointment holders, and to remove key appointment holders, of credit card or charge card licensees; and
- powers to strengthen MAS’ oversight of banks’ outsourcing arrangements. MAS also intends to issue an Outsourcing Notice setting out the detailed requirements that banks will have to comply with.

MAS also proposed on 21 May 2019 to consolidate the regulation of merchant banks under the Banking Act upon removal of the DBU-ACU divide, and to move merchant banks from the current approval framework under the MAS Act to a licensing regime under the Banking Act.

Proposed Implementation of the Final Basel III Reforms in Singapore

On 7 May 2019, MAS issued a consultation paper on the Proposed Implementation of the Final Basel III Reforms in Singapore, to seek feedback on proposed revisions to the risk-based capital requirements and leverage ratio requirements for Singapore-incorporated banks. The proposed revisions take into account the final Basel III reforms published by the BCBS, namely:

- “Basel III: Finalising post-crisis reforms”, containing revised standards for credit risk, credit valuation adjustment, operational risk, output floor and the leverage ratio, published in December 2017; and

MAS proposed to revise the capital requirements for Singapore-incorporated banks to align with the Basel III reforms, and to implement these revisions from 1 January 2022.

Regulatory Developments

Major amendments to the Securities and Futures Act (SFA)

MAS issued major amendments to the SFA in the second half of 2018, which effected wide-ranging enhancements to MAS’ regulation of the capital markets in the following areas:

- a new regulatory regime for the oversight of key financial benchmarks was introduced through the regulation of administrators and submitters of such key financial benchmarks. Market misconduct provisions have also been extended to subject the following acts to criminal and civil sanctions:
  - manipulative acts occurring within Singapore of any financial benchmark; and
  - manipulative acts occurring in Singapore or overseas of any financial benchmark administered in Singapore;
• MAS expanded its regulatory regime to regulate OTC derivatives markets. Entities which operate platforms which offer trading in or deal in OTC derivatives are now subject to MAS’ licensing/recognition and other regulatory requirements; and
• greater regulatory safeguards have been put in place for investors by bringing more non-conventional investment products within MAS’ regulatory perimeter, refining the definition of non-retail investor classes, enhancing regulations on product advertisements, as well as protection of customers’ monies and assets, as follows:
  o buy-back arrangements involving gold, silver and platinum, have been prescribed as debentures. Offers of such products will thus have to be made with a prospectus registered with MAS, which will provide retail investors better access to information on product features and risks, and help them make more informed investment decisions;
  o the definition of collective investment schemes (CIS) has been widened to remove the requirement for profits and contributions from investors to be pooled. As a result, investment schemes that sell investors sub-divided interests in physical assets such as undeveloped land or plantation plots, will be regulated as CIS as long as the scheme property is managed as a whole;
  o an opt-in regime for accredited investors (AI) has been implemented. Investors who meet the prescribed wealth or income thresholds to qualify as AI must explicitly opt in to AI status before intermediaries can treat them as AIs, and be made aware of the regulatory safeguards they would forego as a result of this decision;
  o New product advertisement regulations require communications with clients that are intended to solicit for or promote capital markets products to present information in a clear manner and provide a fair and balanced view of the product. The advertisements must also be approved by the senior management or an agent or committee appointed by senior management; and
  o Financial institutions are no longer permitted to enter into title transfer collateral arrangements with retail investors.

**Key regulatory updates in relation to listing on SGX-ST and requirements in relation to listed issuers**

On 11 January 2018, SGX released a consultation paper to seek feedback on whether quarterly reporting remained relevant, and if yes, how the framework could be calibrated. SGX had also further consulted the industry on whether there were alternative reporting mechanisms if quarterly reporting was scrapped. MAS is currently engaging SGX on SGX’s final recommendations.

On 6 August 2018, MAS issued the 2018 Code of Corporate Governance, which applies to annual reports of issuers listed on SGX-ST covering financial years commencing on 1 January 2019. Changes effective 1 January 2019 include enhanced disclosures in annual reports on adequacy and effectiveness of issuers’ internal controls and risk management systems. Changes effective 1 January 2022 include a two-tier vote on independence of directors serving more than nine years.
On 29 November 2018, the SGX-ST released a consultation paper on proposed changes to the responsibilities and independence of issue managers, and to the listing review process. The proposed amendments to the rules on issue managers clarified their roles and responsibilities, and included a new requirement that an issue manager should be independent of a listing applicant. Guidance on the factors that SGX RegCo would take into account when assessing an issue manager’s independence were also set out in a new practice note as part of the consultation. Separately, the amendments to the rules on the involvement of the Listings Advisory Committee in the listing review process were made in order to improve the efficiency and reduce uncertainty in the process.

On 7 December 2018, the SGX-ST released a consultation paper on proposed changes to enhance the voluntary delisting regime under the Listing Rules. The proposed changes are intended to accord more protection for minority shareholders. The proposals include requiring the offeror concert party group to abstain from voting on the delisting resolution and that the exit offer to be both fair and reasonable. MAS is currently engaging SGX on SGX’s final recommendations.

On February 2019, MAS launched the Grant for Equity Market Singapore (GEMS), which comprises three components, namely a Listing Grant to facilitate enterprises seeking a listing on SGX-ST by co-funding 20% to 70% of eligible expenses attributable to listing with total grant amount up to SGD 1 million per qualifying issuance, a Research Talent Development Grant to strengthen Singapore’s research coverage of enterprises by grooming equity research talent and a Research Initiatives Grant to support crowdsourced initiatives to propel the development of Singapore’s equity research ecosystem. GEMS is valid for a funding period of three years from 14 February 2019 to 14 February 2022.

Anti-Money Laundering Developments

Payment Services Act (PS Act)

The PS Act was passed by Singapore Parliament on 14 January 2019. This Act provides for the licensing and regulation of payment services providers, the oversight of payment systems and connected matters. Once commenced, the PS Act will enlarge the scope of payment activities covered under MAS’ regulation. MAS will adopt a risk sensitive and forward-looking framework to mitigate the money laundering and terrorism financing (ML/TF) risks posed within the payment ecosystem in Singapore. Payment activities that pose higher ML/TF risks will be subject to the full suite of MAS’ anti-money laundering and countering the financing of terrorism (AML/CFT) requirements, while payment activities that present lower risks will be subject to lesser requirements. The PS Act will also introduce a regulatory framework for digital payment token services which, while still nascent in Singapore, can present significant ML/TF risks due to the anonymous and borderless nature of transactions they enable. MAS issued a public consultation on 6 June 2019 on the proposed AML/CFT Notices for payment services providers, which will come into effect together with the PS Act around January 2020.
Risk priorities - continued Focus on Combating Proliferation Financing, Detection of Abuse of Legal Persons, and leveraging on Data Analytics

Prevention and detection of proliferation financing, as mentioned in the IIB 2018 Singapore Global Survey chapter, continues to be a priority risk area for MAS. MAS had conducted thematic inspections focused on proliferation financing. This allowed the benchmarking of best practices across financial institutions, and pulled together emerging typologies, useful case studies and risk mitigation measures, which are shared with the broader industry through the publication of sound practices paper in August 2018. The industry should review their existing controls against these sound practices, and refine or enhance them as appropriate.

The misuse of legal persons remains a focus area for MAS – legal persons such as companies can and have been misused for illicit purposes. Shell companies, in particular, have come under increased global scrutiny, having been featured in several high profile cases. MAS has also conducted a series of thematic inspections in this area, and will be publishing a guidance paper on our findings and good practices. MAS’ guidance will supplement the existing industry best practice paper that ACIP had published in May 2018.

MAS has encouraged financial institutions to leverage data analytics tools to expediently process large amounts of data and more effectively highlight anomalies in transactions or customer behaviour. Network analysis allows financial institutions to quickly discern linkages from large volumes of transactional data. Data analytics have also been used to identify customers in higher risk countries, or with shared addresses for the banks’ targeted reviews.

AML/CFT Industry Partnership (ACIP)

As referenced in the IIB 2018 Singapore Global Survey chapter, ACIP has published a paper in November 2018 titled “Industry Perspectives – Adopting Data Analytics Method for AML/CFT” with the objective to provide information and perspective on the use of data analytics for AML/CFT purposes, thereby starting or taking forward conversations on the adoption and implementation of such solutions, both within individual financial institutions at varying stages of the analytics journey and across the industry. This is the third paper published by ACIP, which has established itself as an effective platform for open discussions between the industry, law enforcement agencies and MAS as regulator, on typologies, risks areas and possible solutions. Since October 2018, ACIP has also embarked on case specific, investigative collaboration, starting with business email compromise cases, or BEC, as a pilot project. Apart from case specific information sharing, ACIP intends to launch “ACIP advisories” which will share significant cases and typologies that MAS, the Commercial Affairs Department, or ACIP members have observed. Intended to be shorter and more focused than MAS’ guidance papers, the advisories will be developed and disseminated more quickly, to give the industry early warning of emerging risks so financial institutions can be more responsive to new or priority threat areas.

Sanctions Development

Developments in the external environment have heightened sanctions evasion risk. Sanctions imposed by the United Nations (UN) and other countries (e.g. US) on DPRK have
increased significantly in recent years. US’ withdrawal from the JCPOA has resulted in the re-imposition of unilateral sanctions on Iran by the US. Financial institutions thus have to be more alert and aware of the range of sanctions evasions risks – that they may be indirectly or inadvertently facilitating transactions with sanctioned countries.

Singapore is a member of the UN, and MAS’ Regulations give full effect to requirements under the UN Security Council Resolutions. In addition to complying with MAS’ Regulations, financial institutions are also reminded to keep abreast of unilateral sanctions imposed by other jurisdictions, and take appropriate action to manage potential reputational, operational and legal risks that may arise from infringing such unilateral sanctions. MAS continues to remind the industry to remain vigilant to sanctions evasion typologies, which include the use of front or shell companies, co-mingling of sanctions-related transactions with legitimate business activities, and illegal ship-to-ship transfers. Financial institutions should continually review and strengthen their controls to adequately mitigate these risks.

Addressing Cybersecurity Threats to Financial Institutions

The Singapore authorities continue to build on the momentum to strengthen the cybersecurity posture of the critical sectors.

Cybersecurity Code of Practice

Following the enactment of the Cybersecurity Act in February 2018 and the designation of critical information infrastructure (CII) in the financial sector in Q4 2019, the Cybersecurity Agency issued the Cybersecurity Code of Practice (CCoP), which stipulates the minimum protection policies that a CII Owner shall implement to ensure the cybersecurity of its CII. The code of practice covers a broad range of security practices such as (a) governance and compliance, (b) technology and vendor management, (c) protection of technology assets, (d) cyber security incident monitoring, response and recovery, and (e) cybersecurity awareness and information sharing.

Notice on Cybersecurity Hygiene and revision of Technology Risk Management and Business Continuity Management Guidelines

Similarly, the MAS continues to raise the cybersecurity waterline for Singapore’s financial sector. In January 2019, MAS conducted a cybersecurity table-top exercise for some of the most critical banks operating in Singapore. In addition, MAS planned to issue a Notice on Cyber Hygiene in Q2 2019 and the revised Technology Risk Management Guidelines and Business Continuity Management Guidelines by Q4 2019. The Notice on Cybersecurity Hygiene covers basic security practices that all financial institutions are required to comply with, failing which they would be subject to regulatory action. The requirements include implementing network perimeter firewall, anti-malware and multi-factor authentication, as well as securing administrative accounts, establishing security configuration standards and patching system vulnerabilities in a timely manner. The revision of Technology Risk Management guidelines is a ground-up initiative, where member banks of the Association of Banks in Singapore contributed and proposed the security requirements in the new iteration of the guidelines for MAS'
consideration. The revised guidelines are expected to cover new areas such as cloud computing, agile development and DevOps, and cyber surveillance and security operations.

As financial services embrace digital transformation, the more open digital economy and financial services are expected to create more business opportunities and at the same time, increases the risk of fraud and other financial crimes. While it is imperative that financial institutions continue to strengthen their cyber resiliency in tandem with technology and product innovations, financial institutions need to manage the risks posed to the broader partner ecosystem and supply chain.

**Significant Market Developments**

No major mergers or privatisations were noted amongst banking, securities and insurance companies in Singapore during the period under review.

Private securities market operators continue to gain traction, with MAS recognising one entity as a recognised market operator to operate an organised market for securities in November 2018. MAS continues to see interest by the industry to establish new organised markets which aim to provide private companies with alternatives to capital raising and market liquidity beyond that offered by traditional securities exchanges.

**Key Developments in Payments**

*PayNow*

In August 2018, PayNow Corporate was successfully launched. PayNow Corporate bridged the e-payment gap between consumers and businesses; previously, PayNow focused only on P2P. In September 2018, MAS launched the Singapore Quick Response Code (SGQR), combining multiple payment QR codes into a single SGQR label that have been adopted by 27 different schemes.

*E-Payments User Protection Guidelines*

MAS released the E-Payments User Protection Guidelines which took effect in June 2019. With the rise of e-payments, the new guidelines establish a common baseline protection offered by financial institutions to individuals and sole proprietors from losses due to unauthorised or erroneous e-payment transactions. It also specifies the respective duties of the account holders and financial institutions, and the liability of losses from unauthorised transactions.

*Payment Services Act*

The Singapore Parliament passed the Payment Services Act in January 2019. The Act streamlines the regulation of payment services within a single piece of legislation and is intended to facilitate innovation and growth in the payment landscape. It broadens the regulatory regime to better safeguard consumers’ money, mitigate ML/TF risks and boost cyber-security measures. Implementation of the Act will be around January 2020.
Other Key Developments

Unsecured credit industry-wide borrowing limit

In June 2019, the industry-wide borrowing limit (borrowing limit) made its transition from 18 to 12 times monthly income. MAS put in place the borrowing limit since June 2015 to help prevent highly indebted individuals from accumulating excessive debts. The limit, which is based on the proportion of an individual’s aggregated outstanding unsecured debts across financial institutions over his/her monthly income (balance to income), is phased in over 4 years to give affected individuals time to gradually lower their debts. The limit was first introduced at 24 times monthly income in June 2015. Under the borrowing limit, individuals will not be able to use their existing unsecured credit facilities or apply for new unsecured credit facilities if their balance to income exceeds the borrowing limit for three consecutive months. Those with annual incomes of at least SGD 120,000, net personal assets exceeding SGD 2 million, or financial assets exceeding SGD 1 million are excluded from the borrowing limit.

MyInfo

MyInfo is a national platform launched in 2017 to help the public auto-fill their government-verified personal information retrieved from across various government agencies on public and private sector e-services upon the individual’s consent. SingPass users (3.3 million) were auto enrolled into MyInfo in late 2017. This feature allows banks and other institutions to develop integrated services (such as account opening) which allow for straight-through processing. Where MyInfo is used, financial institutions will not be required to obtain physical documents to verify a customer’s identity and will also not be expected to separately obtain a photograph of the customer.

SOUTH AFRICA

Significant Developments

Financial Sector Regulation Act 9 of 2017

The Financial Sector Regulation (FSRA) Act 9 of 2017 established two new authorities with dedicated mandates which became operational on 1 April 2018. The two new authorities are the Prudential Authority (PA) which manages prudential risk and the Financial Sector Conduct Authority (FSCA) which manages the market conduct risk across all financial institutions.

In an effort to ensure that our financial sector provides consumers and businesses with good-value products to receive, make payments, save, borrow, insure against daily risks and ensure strong market conduct policy the FSRA also created a platform for the Conduct of Financial Institutions (COFI) Bill. The draft COFI Bill was published by the National Treasury on 11 December 2018 and introduced for comment in 2019.

The FSRA provides consumers and financial institutions an indication of what to expect of financial sector regulators, while the COFI Bill will outline what customer and industry players can expect of financial institutions.
The Financial Matters Amendment Act 18 of 2019

Previously referred to as the Financial Amendment Matters Bill, the Financial Matters Amendment Act 18 of 2019 came into effect on 23 May 2019. The act made amendments to two Acts which were of interest in the banking industry namely the Insolvency Act of 1936 and the Banks Act of 1955. Additionally, the Financial Matters Amendments Act made amendments to the Military Pensions Act of 1976 as well the Government Employees’ Pension Law of 1996. The National Assembly Standing Committee on Finance and the National Council of Provinces (NCOP) Select Committee adopted the Financial Matters Amendment Bill in order to facilitate the implementation of the act.

1. The Insolvency Act 24 of 1936: The amendments to the Insolvency Act of 1936 were in relation to the regulation of over-the-counter derivative markets, in line with G20 commitments. The amendments are to ensure that creditors who enter into derivative contracts and exchange collateral will be able to keep the proceeds during insolvency. Domestic banks will continue to enter into over-the-counter derivative transactions with their foreign counterparts and systemic risk will be reduced and financial stability maintained. The amendments also provide for a process when creditors realise security in terms of a master agreement and for a power for the Master of the High Court to deal with disputes about trustees’ preferences.

2. The Banks Act 94 of 1990: The amendments to the Banks Act 94 of 1990 provides for state-owned companies, meeting the requirements of the Banks Act, to apply for authorisation to establish a bank. This requires such a state-owned company first to get approval of the Minister of Finance, acting in concurrence with the Minister for the state-owned company. It also requires that the assets of the state-owned company, its holding company and, if applicable, the holding company of that holding company, must exceed its liabilities. Municipal-owned companies may not apply for authorisation to establish a bank

The Conduct of Financial Institutions (COFI) Bill

The COFI Bill aims to significantly streamline the legal framework for the regulation of the conduct requirements of financial institutions, and to give legislative effect to the market conduct policy approach, including implementation of the Treating Customers Fairly (TCF) principles. The proposed COFI Bill will not only replace conduct provisions in existing sector laws, but it will also build consistent, strong and effective market conduct legislative framework for all institutions performing financial activities. Improving market conduct and customer protection in the South African financial sector extends beyond the establishment of a new regulator. The 2014 discussion document (published along with the Financial Sector Regulation Bill) “Treating Customers Fairly in the Financial Sector: A Draft Market Conduct Policy Framework for South Africa” sets out the following pillars for improving market conduct and customer protection:

- Structural reform of regulatory agencies;
- Revised legal framework for market conduct (significantly streamlining the current range of different laws applicable to the financial sector);
- Responding to poor conduct practices in the financial sector;
- Better empowered customers (including through improved consumer education initiatives, and improved dispute resolution channels through which customer complaints can be resolved).

In developing the COFI Bill, which intends to replace the conduct requirements in existing financial sector laws, the underlying principles have been considered. The COFI Bill is designed to be:
• Principles-based

A principles-based approach seeks to set principles that specify the intention of regulation, rather than set rules for financial institutions. A focus on principles should see a shift in both industry and the regulator toward ensuring that their actions are geared toward driving the attainment of certain principles in the financial sector, not only on technical compliance with the law.

• Outcomes-focused

A strong market policy conduct framework should support the delivery of desired outcomes in the financial sector, enable the monitoring of the extent to which those outcomes are being achieved and to ensure preventative action is taken to mitigate the risk of poor outcomes. Linked to the abovementioned principle, outcomes-focused supervision allows the supervisor to test financial institutions on their delivery of the actual outcomes. Testing the financial sector’s effectiveness not only provides the correct customer outcomes, it also enables the supervisor to establish remedial actions of poor outcomes. This in turn supports the real economy.

Furthermore, an outcomes-focused approach is also a mechanism to hold the regulator accountable for ensuring its supervisory and regulatory practices are effective in producing outcomes required in the financial sector. The outcomes-focused approach will therefore also require the FSCA to align its supervisory approach to monitoring outcomes, including building the required skill set and making effective use of information

• Activity-based rather than institutionally driven

The new legal framework of the COFI Bill will shift away from the institutionally driven approach/sectoral approach and provide for an activity-based approach. This means that the COFI Bill will define the activities undertaken in the financial sector. The same regulation will apply to similar activities, regardless of the institution performing the activity, and consistent requirements will be set out in one law. This will close gaps in the current legal framework, where some activities that otherwise should constitute as financial services, can escape regulatory oversight because the entity providing the service does not fit into institutional definitions. Consequently, this will create a level regulatory playing field amongst stakeholders.

• Risk-based and proportionate

A proportional approach is important in ensuring that the outcome-focused approach is appropriately applied to the different levels of risk arising from different types of activities being supervised. The new framework will enable the regulator to monitor the financial sector, identify areas that pose the greatest market conduct risks, and use proportionate regulatory capacity to address these risks.

Proportionality will influence the regulator’s supervisory approach, the standards it sets, and the enforcement action it takes in respect of different categories of financial institutions. Chapter 1 (clause 7) of the COFI Bill sets out guidelines for what the FSCA should consider in applying a proportionate approach. Proportionality can then be used as an effective tool for reducing regulatory barriers to entry and supporting transformation in the sector.

Furthermore, the Bill will better support the participation of black businesses in the provision of financial products and services and strengthen the protection of vulnerable consumers. Because it will apply to all financial institutions, it is well placed to support the Financial Sector Code issued under the Broad Based Black Economic Empowerment (BBBEE) Act, by requiring financial institutions to comply with that Code.
The Bill aims to establish a consolidated, comprehensive and consistent regulatory framework for the conduct of financial institutions that will:

- Protect financial customers;
- Promote the fair treatment of financial customers by financial institutions;
- Support fair and efficient financial markets;
- Promote innovation and the development of and investment in innovative technologies, processes and practices;
- Promote competition;
- Promote financial inclusion; and
- Promote transformation of the financial services sector.

Financial Sector Levies Bill

The Financial Sector Levies Bill seeks to provide for the imposition and collection of levies for the funding of the Prudential Authority, the Financial Sector Conduct Authority, the Financial Services Tribunal, the Ombud Scheme, the Office of the Pension Funds Adjudicator and the Office of the Ombud for Financial Services Providers. The financial industry continues to engage with National Treasury as the Bill has resulted in a significant increase in License Fees.

Resolution Framework

The framework for the resolution of banks, systemically important non-bank financial institutions and holding companies of banks or systemically important non-bank financial institutions will be incorporated into the FSRA through the Financial Sector Laws Amendment Bill. The amendments seek to, inter alia, strengthen the ability of the South African Reserve Bank (SARB) to manage the orderly resolution or winding down of failing a financial institution, to ensure that the impact or potential impact of a failure of a bank or a systemically important financial institution on financial stability is managed appropriately, as well as to establish a deposit insurance scheme. Additionally, the amendments will ensure that depositors’ funds are protected in the event of a bank failure, and that depositors’ funds will be paid out speedily to protect the most vulnerable customers.

The SARB is in the process of developing a blueprint, whose purpose is to provide the industry with information, setting out the resolution strategy, criteria to be applied and other elements which would be addressed in the Standards, once the resolution bill has been passed. The SARB will draft discussion papers which will include, but not limited to; coverage rules, reporting requirements, funding approach and public awareness obligations.

Southern African Development Community (SADC) Payment Systems

The regional real time gross settlement system previously known as the SADC Integrated Regional Electronic Settlement System (SIRESS) – now known as the SADC-RTGS continues to evidence steady transacting with an average of 28,000 transactions each month.

Work underway to include the US Dollar in the system is requiring additional effort in order to address all regulatory matters. As indicated in the previous survey, by and large African intra-regional transactions are still primarily transacted in US Dollars and the inclusion of dollar transactions in the SADC-RTGS could double the number and value of transfers processed via this infrastructure. This initiative should assist several banks in the region who are subject to the issues around de-risking in correspondent banking.
On the retail payment front, participants in the Low Value Credit Transfers Scheme where transactions are cleared on an immediate basis, have now completed the three phases of Proof of Concept (POC) testing. A small number of participants are now in a soft launch phase to be ready for go live. Upon successful final testing the scheme will be open to all other participants who wish to partake in this initiative.

As indicated in the previous survey, this scheme aims to ensure these low value transfers are done in a well-regulated, safe, secure and efficient manner which should provide the opportunity for such payments to be made at a low cost thereby benefitting end clients, particularly those that are un-banked. SADC is now working with the Association of African Central banks (AACB) on a framework for intra-African regional payment transacting.

National Payments System Act Review

The National Payment System (NPS) Act 78 of 1998 is approximately 20 years old. Meaning, the NPS Act has become outdated and does not provide for an adequate framework for the effective regulation of the National Payment System (NPS). This may be problematic as payment systems are a gateway to economic activity between consumers and businesses and contribute to the well-being of South Africans. Hence, the first comprehensive review of the NPS Act was initiated, with the following objectives:

- Examining the robustness and resilience of the NPS legislative and regulatory framework;
- Highlighting the shortcomings (gaps) of the current regulatory and legislative frameworks; and
- To make policy proposals aimed at addressing the shortcomings and ensuring appropriate regulation of the NPS in line with international standards, best practices, and applicable domestic law.

Summary of recommendations of the review of the NPS Act:

- Adoption of overarching principles;
- Adoption of international and domestic financial sector regulatory standards;
- Inclusion of public policy objectives;
- Clarification of the role of the SARB as a payments regulator, supervisor and overseer;
- Specification of the mandate and objectives of the SARB;
- Provide for powers and functions of the SARB;
- Designation, regulation, supervision and oversight of systemically important financial institutions (SIFIs), systemically important payment systems (SIPSs - also known as systemically important FMIs) and non-systemically important payment systems (also known as prominent payment systems - PPSs);
- Designation of critical service providers;
- Providing clarification on the regulatory approach, including the consideration of delegation and outsourcing;
- Provide for functions of operators of payment, clearing and settlement systems (including SIPS and PPS operators)
- Provide for settlement in central bank money;
- Clarify conduct regulation in the NPS;
- Provide for transformation of the payment, clearing and settlement services;
- Provide requirements for regional or international payment, clearing and settlement services;
• Provide for regulation of new or unregulated service providers, services, systems and instruments (e.g. virtual currencies, distributed ledger technologies and fintech companies);
• Prescribe settlement finality and value date;
• Provide for risk management provisions;
• Enhance clearing provisions;
• Provide for enforcement dispute resolution powers;
• Provide for resolution, recovery, curatorship, judicial management or liquidation (section 8 of the NPS Act); and
• Prescribe various forms of regulatory instruments.

The SARB and the National Treasury are currently reviewing the public comments received on the NPS Act policy paper. Once this process is concluded, the drafting of the NPS Bill will commence. The NPS Act policy paper is available on the National Treasury and SARB websites.

**Regulation of Derivatives and Securities Products**

*Financial Markets Act (FMA)*

The following regulatory instruments were published during the reporting period:
• Criteria for Authorisation of Over-the-Counter Derivatives Providers (ODPs) - FMA Conduct Standard 1 of 2018 published on 27 July 2018;
• Conduct Standard for Authorised Over-the-Counter Derivatives Providers – FMA Conduct Standard 2 of 2018 published on 11 October 2018;
• The reporting obligations in respect of transactions or positions in over-the-counter derivatives – FMA Conduct Standard 3 of 2018 published on 11 October 2018; and
• The FSCA and Prudential Authority published a Joint Standard on the Requirements and Additional Duties of a Trade Repository on 15 August 2018 - FMA Joint Standard 1 of 2018

The FSCA and the Prudential Authority, acting with the concurrence of the South African Reserve Bank, on 8 April 2018 published the draft FSRA Joint Standard 1 of 2019: Margin requirements for non-centrally cleared over-the-counter (OTC) derivative transactions for comment. The comment period ended on 20 May 2019.

In November 2018, the Prudential Authority (PA) published a Guidance Note stipulating proposed implementation dates for several regulatory reforms which will come into effect on 1 October 2019. These include:
• Capital requirements for equity investment into funds
• Capital requirements for banks’ exposure to central counterparty clearing (CCPs) houses
• Standardised approach for measuring counterparty credit risk

Subsequent to this, a set of draft regulations have been published for comment and industry workshops have been scheduled to address the proposed regulatory implementation roadmap

**New Exchange and Central Securities Depository (CSD)**

As of 21 May 2019, the FSCA has authorised the following exchanges:
• JSE Limited (granted an exchange licence on 27 November 2007)
• 4 Africa Exchange (Pty) Ltd (4AX) (granted an exchange licence on 31 August 2016)
• ZAR X (Pty) Ltd (ZARX) (granted an exchange licence on 31 August 2016)
A2X (Pty) Ltd (granted an exchange licence on 6 April 2017)
Equities Express Securities Exchange (Pty) Ltd (EESE) (granted an exchange licence on 11 September 2017)

As of 21 May 2019, the FSCA has authorised the following CSDs:
- Granite (Pty) Ltd (granted a CSD license on 18 May 2018)
- Strate Limited (granted a CSD license on 15 April 2014)

Market Developments

Previously known as “Draft Code of Conduct for Parties to Securities Financing Transactions in South Africa” the name of the draft code conduct has changed to the “Draft Code of Conduct Standard for Securities Financing Transaction in the Financial Market. As previously stated in the 2018 survey, the draft Code was published on 19th October 2017 for public comment until 20th November 2017. However, the Registrar decided to extend the comment period until the 31st December 2017. The FSCA considered all the comments received and engaged with the South African Reserve Bank and the Prudential Authority. The amended draft Conduct Standard will be published again in due course (date has not been determined).

Draft Conduct Standard for Exchanges

A draft Conduct Standard has been prepared taking cognisance of comments received from the exchanges on market fragmentation. The FSCA will in due course publish the draft Conduct Standard for further public comments (date has not been confirmed)


The Discussion Paper was published on 20 November 2018 until 15 January 2019 for public comments. The FSCA has considered all the comments and is planning to engage with commentators on some of the comments received.

Draft Joint Standard on Requirements for Recovery Plans for Market Infrastructures

The draft Joint Standard has been developed and is in the process of being finalised, after which the draft Joint Standard will be published for public comment.

Anti-Money Laundering

The Financial Intelligence Centre (FIC) Act, No. 38 of 2001 was amended by the Financial Intelligence Centre Amendment Act, No. 1 of 2017. The Minister of Finance signed and gazetted the coming into operation of various provisions of the Amendment Act. The dates were 13 June 2017, 2 October 2017 and other dates are to be determined. The minister further announced the date of 1 April 2019 as the date that the sections of the FIC Act relating to targeted financial sanctions came into effect. The Financial Sector Conduct Authority (FSCA) sent out a general communication to accountable institutions supervised by it on 6 April 2018, reminding the institutions of the supervisory approach in the ‘Roadmap on implementation of the amendments’. In the communication, FSCA also afforded accountable institutions until 2 April 2019 to fully implement the provisions of the Amendment Act. The FSCA initiated several guidance and awareness opportunities during this period. The FSCA’s supervisory approach, post 2 April 2019, regarding the implementation of the Amendment Act was
issued on 25 April 2019. The FSCA is currently preparing for inspections on accountable institutions to test compliance with the Amendment Act.

An Interdepartmental Committee on Anti-Money Laundering (AML)/Combating the Financing of Terrorism (CFT) has also been established. The committee is made up of senior officials from various government departments i.e. National Treasury, Financial Intelligence Centre, FSCA, Prudential Authority, South African Reserve Bank, Department of Home Affairs, State Security Agency, Department of Justice and Correctional Services, National Prosecuting Authority, South African Police Service etc. The purpose of the Committee is, inter alia, to identify gaps in the AML/CFT regime and to propose legislative amendments as well as to harmonise and align approaches to financial intelligence, prosecution and asset forfeiture in AML/CFT matters. Sub-working groups on Illicit flow of funds, National Risk Assessment and Mutual Evaluation report to this committee.

South Africa has also started to conduct a national risk assessment on money laundering and Terrorist Financing (TF). It is anticipated that the risk assessment will be completed before the end of this year. The FSCA and the Prudential Authority have also conducted sector risk assessments on money laundering and terrorist financing. The results of these assessments will soon be published. The sector risk assessments will feed into the national risk assessment.

A joint Financial Action Task Force (FATF), Eastern and Southern African Anti-Money Laundering Group (ESAAMLG) and the International Monetary Fund (IMF) mutual evaluation has started. South Africa has already submitted its reply on the technical compliance questionnaire and is awaiting feedback and follow up questions from the assessors. South Africa is currently preparing the reply on the effectiveness questionnaire.

Cyber

Cybercrime Bill

The Cybercrime Bill was initially referred to as the Cyber Crimes and Cyber Security Bill. However, the name was changed to more appropriately reflect the purpose of the Bill after the removal of the provisions dealing with cybersecurity. The Cybercrime Bill was adopted by the Portfolio Committee for Justice and Correctional Services in November 2018 and sent to the National Assembly for debate.

The objectives of the Cybercrime Bill essentially include the codification and imposition of penalties on cybercrimes wider than the offences contained in the Electronic Communications and Transactions Act.

Insurance Regulatory Framework

Insurance Act 18 of 2017

The Insurance Act No.18 of 2017 became effective on 1 July 2018. The Insurance Act along with the prudential standards made under this Act forms the prudential regulatory framework for insurers, reinsurers and micro insurers.
Amendments to Regulations and Policyholder Protection Rules (PPRs)

The regulatory reform of the market conduct regulatory framework for insurers was given effect to in two phases, by way of amendments to the Regulations and the PPRs made under the Long-term Insurance Act, 1998 (LTIA) and Short-term Insurance Act, 1998 (STIA).

1. Tranche 1 of the amendments to the Regulations made under the LTIA and STIA were promulgated on 15 December 2017 in the Government Gazette No. 41334, effective 1 January 2018 with certain regulations subject to transitional arrangement. The tranche 2 amendments to the Regulations made under the LTIA and STIA were published on 28 September 2018 in Government Gazette No. 41946 (Government Notices 1015 and 1018) and came into effect on 1 October 2019.

2. The replacement of the Policyholder Protection Rules (PPRs) made under the LTIA and STIA, giving effect to several conducts of business regulatory reforms, were promulgated on 15 December 2017 in Government Gazette No. 41321 and 41329, effective 1 January 2018 with certain Rules subject to transitional arrangement. The tranche 2 amendments to the PPRs were published in Government Notice No. 996 and 977 on 28 September 2018. The notices came into operation on 1 October 2018. This included the Microinsurance product standards applicable to all micro insurers licensed under the Insurance Act.

FAIS Fit and Proper Requirements

On 16 November 2018 the FSCA and the Prudential Authority (PA) released a draft Joint Standard on Fit and Proper Requirements for Significant Owners, in terms of section 159 of the FSRA, for public comment. The Authorities have carefully considered the comments received, many of which provided valuable insights into the potential impact of the draft Joint Standard in its initial form.

In order to meaningfully address the comments received and to ensure that the draft Joint Standard properly gives effect to the objectives sought to be achieved in section 159 of the FSRA, the FSCA and PA are working closely together to revise the draft Joint Standard. The revised Joint Standard will be published for another round of public consultation. Chapter 11 of FSRA came into effect on 1 January 2019. Taking into consideration the previous status of the draft Joint Standard, changes in Significant Ownership will be considered on a case by case basis in line with the relevant provisions of the FSRA until the Joint Standard becomes effective.

Draft Code of Conduct standard of the requirements for third party cell captive insurance business

The FSCA released, for public comment, the draft Conduct Standard setting out requirements for the conduct of cell captive insurance business in relation to third party risks on 20 July 2018. Comments were due by 31 August 2018. An industry consultation workshop was held on 29 October 2018. Comments and presentations from industry at the workshop were taken into consideration and further data analysis is underway focused on the current status of the cell captive insurance industry and prevailing practices. The PA and FSCA established a joint working group to finalise proposals on the outstanding regulatory issues around third-party cell captive insurance business which will inform future regulatory developments applicable to this industry.
Regulatory requirements relating to premium collection

On 14 December 2018, the FSCA published FSCA Communication 2 of 2018 which provided an update on the future of the premium collection regulatory framework under the Short- and Long-term Insurance Acts. The purpose of the Communication was to provide a status update on the technical work underway which is aimed at further refining the premium collection regulatory framework for short and long-term insurers.

On 9 April 2019 the FSCA published a Position Paper setting out proposals on the future regulatory framework for the collection of insurance premiums along with FSCA Communication 3 of 2019. Written comments on the proposals outlined in the Position Paper were invited as public consultation on the paper with a due date of 10 May 2019. Industry engagements are underway on the proposals to finalize the proposed framework, which will inform any proposed regulatory changes in this regard.

Payments Systems
Project Future

Project Future was initiated to establish the target state architecture for the electronic payments landscape and to ensure that the future Electronic Payment System is more agile and flexible as well as to streamline the payments landscape to ensure a consistent manner in which payments are processed, irrespective of the value, volumes or end user channel.

Enhancing the flexibility and adaptability will enable electronic payments to be a viable and desired payment type to be used for various use-cases thereby providing additional options for end users and consumers. In creating additional electronic options to accept or make payments, it is envisaged that end users and consumers, especially previously excluded or underserved consumers, will have a far more compelling reason to not use or rely on cash, thereby reducing the direct and indirect costs associated with cash usage.

While it is not possible to determine all the use cases that would need to be enabled, specific use-cases were prioritised primarily in their ability to promote electronic payments and ultimately reduce the reliance on cash. Based on this, a set of core functions or capabilities have been prioritised that would provide immediate benefit to the payments industry and enable the most desirable and obvious use-cases, namely:

- A low-cost Instant Payments capability providing immediate notification to both the payer and payee and ensuring together with immediate posting of funds that are both final and irrevocable;
- An addressing or proxy capability to enable a more seamless payment experience without the need to register a beneficiary with a bank name, bank account number or branch code while at the same time providing the payer with confirmation of beneficiary’s details.
- A Request to Pay (RtP) capability that allows the beneficiary of the payment to send a request with the payment information (invoice, bill etc) to the payer for payment of an invoice or bill to further promote a seamless payment experience and to enable an additional payment acceptance options for merchants other than card or cash based payments.

Furthermore, the use of standards that are interoperable both regionally and globally will enable broader application for each of the use cases. Whilst numerous compelling reasons exist for a substantive investment in payments modernisation, it is also difficult to make the business case for an
investment to improve any of the current systems as there are, at least initially, no obvious benefits coupled with the fact that South Africa’s National Payment System is quite advanced when compared to other emerging economies. The immediate focus is therefore to qualify and quantify the micro and macro-economic benefits of the new capabilities through new value propositions, products and services and how they will, in the long term, contribute to new revenue streams while also driving usage away from highly inefficient and low yielding businesses such as cash and cheques.

Authenticated Collections

After broad consultation and engagement with industry, the National Payment System Directive (NPSD) has deemed it necessary to amend the Directive for conduct within the National Payment System in respect of the collection of payment instructions for authenticated collections (Directive No. 1 2017). A proposed transition approach was then presented to the SARB and resulted in a new AC Directive being issued by the SARB which was published 14 December 2018, with the following changes:

- 31 October 2019 has been specified as the Implementation Date. This is the date by which the AC payment infrastructure should be implemented to facilitate the collection of randomised debit orders through the AC system in the early processing window.
- The sunset date for the exiting of authenticated early debit orders (AEDO) and non-authenticated early debit orders (NAEDO) has been extended to 31 October 2020.
- No new, extended or renegotiated AEDO and NAEDO collection agreements may be concluded after 1 May 2020. The Directive has specifically referenced 1 May 2020 to 31 October 2020 as the dates on which existing AEDO and NAEDO payment instructions are to be phased out.
- From 1 November 2019 until the sunset date, AC (which includes migrated payment instructions) and AEDO debit orders will be given processing priority in the early processing window. NAEDO will be given a second priority processing priority in the early window.

PASA and industry participants must prepare an implementation plan, for approval by the SARB, to give effect to the Directive, and monitor compliance and take suitable actions, where necessary, through an appropriate compliance and enforcement framework. PASA and industry participants have finalised the requirements of an implementation plan, which was approved by the SARB during April 2019. The following key barriers to adoption have been identified and are being addressed in the Implementation Plan:

- Stabilisation of the production environment.
- On-boarding of Users.
- Ramping up User and consumer awareness and education.
- Finalising the technical development to enable migration and prioritisation to meet the requirements of the new Directive.
- Exploring alternative solutions for the remote and non-face-to-face challenges.

Debit Order Abuse

Measures to standardize and operationalize processes at PASA to better perform participant management were approved by the Steering Committee for implementation during 2019 in order to work towards reducing Debit Order Abuse to an acceptable level and comprise of the following key components:
1. Pre-onboarding: PASA is currently in the process of conducting additional checks before sponsoring banks take on users. Since implementation of the PASA Pre-onboarding process on the 25th of March 2019, close to 400 prospective Debit Order processing companies’ applications were screened by PASA and various entities that have previously been exited, were prevented from re-entering the NPS.

2. Onboarding: This included issuing of unique identifying codes to all participants including TPPPs and Ultimate Creditors. A detailed process is now being documented by PASA with the aim of initiating the intended clean-up of the entire existing Users base, with the aim to create visibility of all Users at a central place, in order to better manage their behaviour as participants in the National Payment System.

3. Monitoring: This will be done by pro-actively identifying entities and individuals introducing risk into the NPS and appropriately addressing such risk. Since May 2018, 270 Users introducing unacceptable risk to the NPS, have been identified and are being investigated. PASA has appointed a permanent MI resource to interpret and better analyse all data in the debit order payment system to pro-actively identifying Users introducing unacceptable risk into the NPS. In addition, a collaborative effort with BankservAfrica was launched to utilize their existing data to aid this process.

4. Exit of entities and related actions: PASA currently has record of 228 Users that were exited from the NPS due to unacceptable risk and, through the new Pre-onboarding process, they will be prevented from re-entering.

As the first half of 2019 draws to a close, PASA is pleased with the progress made with the implementation of the abovementioned components in order to reduce Debit Order Abuse. Other key achievements of the Debit Order Abuse Project include:

- A collaboration with the FSCA has commenced with regards to current Consumer Education initiatives and a link to developed educational content will be shared on the relevant FSCA consumer education platform.

Common Monetary Area (CMA) Low value Cross Border Payments

The CMA Directive 01 of 2018 is a revision of Directive 01 of 2017 both of which are purposed to regularise the processing of cross-border low value EFT credit transactions. The project is governed through the CMA Cross-border Payments Oversight Committee (CMA CPOC) which is set up by Central Bank governors with the aim to oversee all cross-border payments in the region.

As per the Directive, the South African project is managed by PASA with a reporting line to the CMA programme office under the leadership of the NPSD on behalf of the CMA CPOC. The project has multiple regulators in each jurisdiction as well as critical project within each jurisdiction. Consequentially, this presents numerous challenges to the program.

The challenges in implementing Directive 01 of 2018 has resulted in several engagements between SA banks and SA regulators, similar engagements were held between all regional regulators and regional payment associations including regional banks. Notwithstanding that the Directive 01 of 2018 is still in force, the project is undergoing an ongoing review.
Included in the scope of this Directive is the requirements to comply with the Financial Action Task Force Recommendation 16, which is aimed at ensuring that South African regulators and banks processing credit transfer can identify and report on both the sender and beneficiary of the transaction. The recommendations must be implemented ahead of the Mutual Evaluation scheduled for October 2019, which will be testing for effectiveness supported by the track record on historic transactions. The South African project office has initiated processes, in alignment with CMA countries, to implement an interim solution that focuses on Directive 01 of 2015.

**SPAIN**

Following are the main legislative changes during the period under review:

- Organic Law 3/2018, of 5 December, on Personal Data Protection and guarantee of digital rights, which aims to realign the Spanish legal regime with the Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, with regard to the processing of personal data and on the free movement of such data. Some of the most significant points brought in by the newly adopted Act are the following: accuracy of personal data; more transparency and information from the controller to the data subject; data blocking; a new penalty regime or the inclusion of digital rights.

  Previously, new Royal Decree-Law 5/2018 came into force. This norm, with legal force, was adopted due to the urgency of adapting the national legal system to certain issues foreseen in the EU Regulation on Data Protection. It was approved without waiting for the coming into force of the new data protection organic law.

- Law 11/2018 amending the Commercial Code, the revised Capital Companies Law approved by Legislative Royal Decree 1/2010, of July 2, 2010 and Audit Law 22/2015, as regards non-financial information and diversity. This Law stems from Royal Decree-Law 18/2017 of November 24, with important new additions, and brings into Spanish law Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information.

- Organic Law 1/2019, which amends the Spanish Criminal Code with regards to financial and terrorism areas. It transposes the EU Directives in the financial and terrorism areas and includes issues of an international nature.

- Mortgage Credit Law 5/2019. The most significant novelties of the new law, which transposes the Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property, are the following:
  
  - The banks have to pay the expenses, except for the valuation.
  - Early repayment fees are reduced.
  - The eviction process is delayed. The bank will not be able to start a foreclosure process on a property until the client’s default exceeds 12 monthly payments or the amount due exceeds 3% of the loan during the first half of the mortgage’s life. After that time, the term
is 15 monthly payments or 7% of the loan’s principal. Up until now the bank was able to initiate the process prior to eviction if the client had not paid three instalments.

- The bank and the buyer will now be able to incorporate into the contract the possibility of a dation in payment or acceptance in lieu.
- “Green mortgages” are rewarded.
- Linked products are prohibited but combined offers accepted: banks are still able to offer products which represent an improvement on the loan conditions.
- Buyers receive a draft before signing the final loan.
- The change from variable to fixed mortgage is facilitated.
- Mortgages can be subrogated and novated without incurring in any commissions.

- Royal Decree 309/2019, which develops certain key areas of Law 5/2019. Although the main purpose of these new rules is to regulate consumers’ rights in connection with mortgage loans and similar arrangements, they also set out a new regulatory licensing framework for non-financial entities that provide credit, mortgage loan brokerage, and mortgage loan advisory services.

- Order ECE/482/2019, that amends Order EHA/1718/2010 on regulation and control of advertising of banking products and services and Order EHA/2899/2011 on transparency and protection of clients of banking services. This Ministerial Order is amended according to Law 5/2019 (Mortgage Credit Law).

- Royal Decree-law 14/2018, amending the Consolidated Text of the Securities Market Law, implementing into Spanish law the provisions of Directive 2014/65/EU of 15 May 2014, on the markets in financial instruments (“MiFID II”) which were pending of being implemented following publication of Royal Decree-law 21/2017 of 29 December, which had partially transposed MiFID II in the area of market infrastructures.

- Royal Decree 1464/2018 also completes the transposition of the Markets in Financial Instruments Directive (MiFID II) into Spanish law. For that purpose, this Royal Decree completes the regulatory development of the revised text of the Securities Market Law and makes amendments to Royal Decree 217/2008.

- Royal Decree-law 17/2018 modifying the Stamp Duty Law. It sets out that, for all mortgages signed (as taxable event) once the Royal Decree-law has entered into force, the lender will be liable for the stamp duty without the possibility of claiming relief in their corporate income tax return.

- Royal Decree-Law 19/2018, of 23 November, on payment services and other urgent financial measures, which partially transposes into Spanish law Directive 2015/2366 on payment services in the internal market. Its main objectives are to facilitate and improve security in the use of payment systems over the internet, further protect users against fraud and potential abuse and promote innovation in payment services through mobile phones and the internet. It grants a transitional period of 3 months for most of its provisions.
• Royal Decree-Act 5/2019, covering Spain’s Brexit contingency measures, by which contingency measures are taken before the withdrawal of the United Kingdom from the European Union in a “hard Brexit” scenario.

• Royal Decree 102/2019 creating the Financial Stability Council Macroprudential Authority, establishing its legal regime and implementing certain aspects related to macroprudential instruments. The purpose of this Royal Decree is the creation of the Financial Stability Council Macroprudential Authority as the national macroprudential authority in charge of identifying, preventing and mitigating the development of systemic risk. In tandem with the three financial sector supervisors, it will facilitate the financial system’s sustainable contribution to economic growth.

• Royal Decree 164/2019 ruling basic payment accounts to help vulnerable people and those at risk of financial exclusion. The regulation is a consequence of the requirements in Directive 2014/92, the transposition of which began with Royal Decree 19/2017, which sets out two fee bands: a general one and another less costly rate (for vulnerable groups and those at risk of financial exclusion). In the case of the first fee band, Ministerial Order ECE/228/2019 sets the maximum fee per month to cover the most common transactions. And this Royal Decree regulates the second fee band (free of charge) that vulnerable population can access, as long as they meet certain requirements.

Other developments included the following:

• Guidelines of the Spanish Securities and Exchange Commission regarding the criteria that shall be used by the Nomination and Remuneration Committees.

• Circular 2/2018, of 12 June, of the Spanish Securities and Exchange Commission, that modifies Circular 5/2013 that established the templates for the Annual Corporate Governance Report for listed companies, savings banks and other entities that issue securities traded on official securities markets, and Circular 4/2013, that established the templates for the annual report on the remuneration of directors of listed companies and of the members of the Board of Directors and of the control commission of the savings banks that issue securities traded on official securities markets.

• Circular 2/2019, of 29 March, of the Bank of Spain on the requirements of the Fee Information Document and the Statement of Fees, as well as comparison websites, and amending Circular 5/2012, of 27 June, to credit institutions and payment service providers, on transparency of banking services and responsibility in granting loans.

**SWEDEN**

**Banks Results and Key Figures**

The four major commercial banks in Sweden jointly represent about 70 per cent of the market. These major banks have considerable activities in markets outside Sweden. The following
is mainly based on reports from the National Institute of Economic Research (NIER) and Finansinspektionen (the Swedish FSA).

Market Developments

Sweden’s GDP increased by 2.3 percent in 2018 according to Statistics Sweden. The household consumption contributed with 0.5 percentage points to the total GDP growth and public consumption contributed with 0.2 percentage points. Gross fixed capital formation increased by 3.3 per cent and added to the GDP growth by 0.8 percentage point. The residential construction is an important factor behind the gross fixed capital formation in 2018 as well as in 2017, however due to lower construction in 2018 the growth was lower compared to 2017. Changes in inventories added to the GDP growth by 0.4 percentage points. Export increased more than import and therefore net exports added to the GDP growth with 0.4 percentage points.

Market production of goods and services increased by 3.0 percent in 2018. Production of goods rose by 2.6 percent and service-producing industries rose by 3.2 percent. The number of employed in the economy increased by 1.8 percent. The employment, measured as the total number of hours worked, increased by 2.1 percent. The unemployment rate fell to 6.3 per cent in 2018 from 6.7 per cent in 2017. Unemployment has fallen in recent years as the economy has strengthened. The combination of major shortages of workers with the required skills and a very large number of vacancies indicates considerable matching problems in the labour market, according to the NIER (National Institute of Economic Research).

The inflation has increased slightly during 2018 and was 2.0 per cent in the end of the year. The same development has been observed for the core inflation which was 2.2 percent in the end of 2018.

Government debt as a percentage of GDP was 26 percent in 2018, down from 29 percent in 2017, according to the Swedish National Debt Office. The Swedish central government showed a budget surplus of SEK 80.0 billion in 2018, compared with a surplus of SEK 61.8 billion in 2017. A strong economy and labour market led to high tax incomes in 2018 from wages, consumption and corporate profits according to the Debt Office.

Household and Corporate Borrowing

A high demand in housing in Sweden for several years has increased house lending. However, falling house prices during 2018 has cooled off the market somewhat. Lending to the Swedish public increased by 5.7 % in 2018 and deposits from the public increased by 6.7% in 2018.

In a survey among managers of local bank branch offices, business volumes indicate that lending to SME:s has increased since 2013. In the same survey the managers believe that lending will continue increasing in 2019, however slightly slower than in 2018. According to an OECD report 40 per cent of outstanding business loans in Sweden are loans to SMEs. In a survey by an organisation for SMEs it shows that bank loans are among the most common form of financing by SMEs. According to the survey 13 percent of the Swedish SMEs used bank loans to finance investments and 9 percent used corporate revolving credits.
Sustainable finance has high priority in Sweden. Initiatives in the area have started or are planned by both banks and government.

The Swedish banking market underwent a major change when Nordea, which was previously Sweden’s largest bank, moved its head office to Finland on 1 October 2018, writes Finansinspektionen in its Stability Report. Even though Nordea has chosen to move its legal domicile to Finland, the bank’s operations continue to be large and of importance for the financial system in Sweden.

According to Finansinspektionen in its Stability Report, the three major Swedish banks have been losing market shares to smaller companies and foreign branches for a long time in mortgages and lending to corporates. Following Nordea’s move, the three remaining major banks represent approximately 60 per cent of the banking system’s total lending to the public in Sweden. The major Swedish banks thus still play a central role, according to Finansinspektionen, in how well the Swedish banking system functions.

**The Swedish Mortgage Market**

Residential mortgage lending grew by 5.8 percent in 2018 compared to 7.1 percent in 2017. The growth rate of residential loans has now been declining for three years in a row.

The mortgage lending has cooled off in the last years, but from comparably high figures. During a comparably long period the mortgage lending growth has been higher than the GDP growth and has increased the households’ debt levels. Several factors, which have been unchanged for many years, explain the increasing residential lending. The Swedish population is growing in record numbers due to high immigration and relatively high birth rates. The internal migration in Sweden towards larger cities has driven the housing markets in expanding areas. This in combination with a long period of comparably low residential housing construction has created a severe lack of housing and housing imbalances. Another factor is the dysfunctional rental markets in the growth regions due to a general rent control, which results in many years of queuing to get a rental apartment with a first-hand contract. If you move to a city in a growth region in Sweden, you normally have to buy an apartment or rent a second-hand apartment to a cost usually far higher than rents on the regulated first-hand market. An additional factor is historically low mortgage interest rates. Also, the high construction figures the last years of above all tenant-owned apartments, have added to financing needs by mortgage loans.

A number of measures have been taken in recent years for the purpose of counteracting high indebtedness. In 2010 the Swedish Financial Supervisory Authority introduced a mortgage cap, whereby home loans may not exceed 85 percent of the value of the home. The Financial Supervisory Authority has also introduced a risk weight floor for Swedish mortgages in order to tie up more capital in relation to banks’ mortgage lending. The risk weight floor for mortgages is currently 25 percent.

Another measure to tackle high indebtedness is the introduction of amortisation requirements. In June 2016 the Financial Supervisory Authority’s regulation on amortisation requirements entered into force and from March 2018 stricter amortisation requirements entered into force.
Mortgage interest rates have been relatively stable the last four years. The variable (3-month) mortgage interest rate has varied between 1.4 and 1.6 percent during 2018, which is about the same level as from 2015 to 2017. The initial fixed mortgage interest rates, 1-5 years, have varied between 1.6 and 1.7 percent in 2018, which is also the same levels as previous years. Initial fixed mortgage interest rates over 5 years were low also in 2018 and reached levels below 2 per cent in the end of 2018.

Finansinspektionen, publish an annual report on the mortgage lending market. Finansinspektionen writes in the latest report that the percentage of households that amortise their mortgages has increased over a period of several years partly due to the stricter amortisation requirement. The size of the amortisation payments increased as well, and more new borrowers with a high loan-to-income ratio amortised in 2018. The share of households with new loans that amortise was 87% in 2018. The average LTV for new mortgage loans is 65% in 2018, which is slightly higher than in 2017.

The credit loss ratio on mortgage loans has been close to zero for several years in Sweden, including 2018. An explanation for the low credit losses is high credit standards in Sweden, but also that the housing prices have been almost continuously increasing the last 25 years.

**Profitability in the Swedish Banking Sector**

Despite the low interest rate environment, where the Riksbank has kept negative repo rates from 2015, the Swedish banks have managed to maintain satisfactory earnings. In addition the Swedish banks’ NPL-ratio is the lowest in Europe. According to the Stability Report from Finansinspektionen the resilience among the major banks in Sweden is satisfactory because of high capital and liquidity requirements, but also because the major bank’s strong profitability.

In the Stability Report it says that the major banks’ net interest income, which is their largest source of income, continues to increase as a result of increased lending and stable interest rate margins. Even net commissions increased since activity on the capital markets has been relatively high. This is largely due to the high economic growth over the past few years, which has resulted in high demand for financial services. The fact that the major banks have high earnings means that their conditions for absorbing losses in a stressed economic scenario are better than if this had not been the case.

The favourable economy also contributed to the low level of credit losses, according to Finansinspektionen. This is also evident in that the banks have a low percentage of non-performing loans. In Sweden, the percentage of non-performing loans in the banking sector is 1 per cent, which is one of the lowest levels in the EU, where the average is 3.6 per cent. The major Swedish banks also have lower costs in relation to income compared to the average for the major banks in the EU. A high degree of automation and digitalisation in the operations means that the major Swedish banks may have fewer offices and employees in relation to the business volume. This, combined with low credit losses, is a key reason for why the return on equity is higher than the average for the major banks in the EU. This high return on equity has been part of the reason why the vulnerability indicator for solvency has been demonstrating low vulnerability for a long time.
Bank Capital

In addition to sustainable business models with good earnings, the level and design of the banks’ own funds is a key factor for their resilience, writes Finansinspektionen in its Stability Report. Well-capitalised banks face better conditions for handling losses and thus being able to continue to provide critical services even during periods of high or drawn-out stress on the market.

Finansinspektionen decided to change the method for applying the risk weight floor for Swedish mortgages as of 31 December 2018. This change was important from a financial stability perspective since it ensures the same capital requirements for Swedish mortgages even after Nordea’s move to Finland. However, as a result of the change, the banks’ capital and capital requirements will be lower when measured in relation to the risk-weighted assets. The change therefore brings the Swedish banks’ capital ratios more in line with those of the banks in the rest of the EU.

The major banks meet the risk-based capital requirements by a good margin. Over the past six months, the capital requirement has increased by on average almost SEK 5 billion per major bank.

SWITZERLAND

Introduction

Swiss banks, insurers and financial institutions are the backbone of the Swiss financial centre. Gross value added of our 250 banks and 200 insurance companies amounts to CHF 60 billion in 2017. That is 9.2% of the country’s total GDP.

An important issue is digitalisation, which is viewed as an opportunity for the financial sector. According to the latest fintech study by the ‘Institute of Financial Services’ of the Lucerne School of Business, the number of fintech companies grew by 62% to a total of 356 in 2018. Swiss fintech companies are active in a wide range of technology-driven areas like distributed ledger technology and analytics or artificial intelligence. The regulation of digital financial innovation is among the most advanced globally. According to the ‘Global Fintech Hub Report 2018’ by the Universities of Zhejiang and Cambridge, Switzerland ranks second in terms of policies and regulations. Being a highly internationally interconnected market, legal, capital and liquidity requirements such as those established by the Financial Action Task Force (FATF) and the Basel Committee on Banking Supervision are rigorously complied with. In 2018, the supervising authorities continued to enforce Basel III standards. Switzerland exchanged data under the automatic exchange of information for financial accounts (AEOI) for the first time in 2018.

Capital and Liquidity Requirements

In autumn 2018, the Federal Council adopted an amendment to the Capital Adequacy Ordinance stating new capital requirements for domestic systemically important banks (D-SIBs). Since 1 January 2019, the three Swiss D-SIBs have likewise to hold additional gone concern capital for their possible restructuring and resolution. The corresponding requirements for the two
global systemically important banks (G-SIBs) had already been implemented in 2016. In general, the level of the new requirements reflects the current going concern capital requirements. However, and in contrast to the G-SIB regulation, only 40 percent of the going concern capital requirements are reflected, as the domestically focused banks are less interconnected internationally. Eventually, the corresponding requirements for the parent entities of the two Swiss G-SIBs were subject to a consultation held by the Federal Council in spring 2019.

Also in spring 2019, the Federal Department of Finance (FDF) and the Swiss Financial Market Authority (FINMA) initiated a consultation on the legal implementation of the so called “small banks regime”. A corresponding pilot phase with 68 institutions from the supervisory categories 4 and 5 had been launched in July 2018. The new “regime” seeks to ease the regulatory burden on small and particularly solid banks and securities firms, without jeopardizing their stability and safety. Participating institutions must therefore be extremely well capitalised and enjoy high liquidity. In return, they will benefit from a regulatory regime with significantly reduced complexity both in quantitative and qualitative terms. The implementation of the “small banks regime” requires another amendment to the Capital Adequacy Ordinance and the revision of several FINMA circulars. The regime is due to come into effect on 1 January 2020.

Eventually, FINMA revised its provisions on interest rate risks, disclosure and capital held by banks in accordance with changes to Basel III rules and international financial reporting standards. The corresponding circulars entered into force on 1 January 2019. It is noteworthy that the principle of proportionality has been consistently applied and the new provisions have been implemented in a differentiated manner.

Anti-Money Laundering

In December 2016, the FATF published the fourth country report on the evaluation of Switzerland, in which the FATF acknowledged the generally good quality of the Swiss system for combating money laundering and terrorist financing, but also identified a number of weaknesses. The report therefore contains a number of recommendations for improving Swiss legislation and its implementation.

As a result, Switzerland is in the middle of a follow-up process in which various adjustments to the Swiss legal situation are necessary. Since the last Global Survey, the following has been achieved:

- The AMLO-FINMA and the CDB have been revised and will enter into force in 2020. The AMLO-FINMA has specified the requirements for the global monitoring of corresponding risks. This concerns Swiss financial intermediaries with branches or group companies abroad. The necessary risk management measures have also been specified if domiciliary companies or complex structures are used or there are links to high-risk countries. In addition, FINMA and the CDB have lowered the threshold for identification measures for cash transactions to the FATF level of CHF 15,000.

- The AMLA revision runs for updating client data and verifying the identity of the beneficial owner. The dispatch (explanatory note) is expected in the first half of 2019.
Financial Market Legislation

Over the last few years, Switzerland has been updating its financial market architecture. As part of this large-scale legislative effort, almost all of the elements relating to modern financial market legislation are being revised or drafted from scratch. The final building block was the introduction of the new Financial Services Act (FinSA) and the new Financial Institutions Act (FinIA). Under FinIA, independent wealth managers will come under the remit of newly created supervisory organisations, which will in turn report to FINMA. FinSA introduces standardised rules of conduct and distribution rules for all financial services providers and establishes a general securities prospectus requirement. With FinSA and FinIA, solid, modern and practicable investor protection has been established. Customers’ rights are now clearly consolidated in one place only, which increases transparency for customers. Particularly important was also that independent asset managers be subject to appropriate supervision. In turn, under the new laws, financial services providers have greater legal and planning certainty. Both FinSA and FinIA have been passed into law last year and will presumably come into force at the beginning of 2020. Currently the process of the public hearing for the related ordinances still on-going.

Access to Foreign Markets

Swiss banks are strongly committed to maintaining their leading position in wealth management for private clients. In this context, access to foreign markets is of strategic importance for ensuring the Swiss financial centre’s ability to remain competitive and to act in the best interests of customers. In order to preserve, and where clients’ interests call for it, to improve market access, political agreement must also be reached with the various partner states, also to ensure free movement of capital. In this context, market access into the EU is particularly key, given that a substantial proportion of assets under management come from customers domiciled in the EU. Within the discussion around an institutional framework agreement between the EU and Switzerland the Swiss banking sector has requested clear improvements. The focus must be on the positive conclusion of specific equivalence processes which are pending in the area of finance, a fundamental improvement in the current EU equivalence regime, and agreements on sensible and practicable market access solutions with the EU and/or of individual European states.

Tax Matters

Domestic tax reforms

Switzerland is one of the most attractive locations for multinational companies, including banks and other financial services providers.

On May 19, 2019, Swiss voters accepted the Federal Act on Tax Reform and AHV Financing (TRAF Act). This means that an urgently needed tax reform can finally be implemented. For years, Switzerland had been under international pressure to abolish the tax privileges for legal entities. It can now honor its pledge to do so in the nick of time and avoids becoming a prominent name on the EU/OECD black list. The tax reform eliminates significant legal uncertainties for foreign corporations in Switzerland. Among other topics the TRAF enables the implementation of the following elements:
Lowering of corporate tax rates: On the one hand, ordinary corporate tax rates will be lowered to an average of 14.4%, down from the current 19.5%.

Abolition of tax privileges: On the other hand, privileged taxation status of holding, mixed, domiciliary, and principal companies as well as Swiss finance branches will be abolished. Companies that lose their privileged status are given the option, if cantonal practice allows it, to disclose their existing hidden reserves tax-neutrally (step-up) or are granted a special tax rate for a limited transition period that will cushion the effects of the abolition.

Patent box system - Introduction at cantonal level of a mandatory patent box in line with the OECD standard: Under this system, net profits derived from patents and comparable rights will be taxed at a discount of no more than 90%. The term “comparable rights” encompasses supplementary protection certificates, topographies, plant varieties, data protection in accordance with the Therapeutic Products Act, and the corresponding foreign rights. Not included in the patent box are inventions by SMEs that are not protected by a patent as well as proprietary (copyrighted) software.

Deductions for research and development: The cantons can introduce an additional deduction for R&D costs. The total deductions may not exceed 150% of the actual costs incurred and are limited to staff costs plus a flat-rate allowance. The measure applies only to domestic research and development activities.

In addition, the domestic withholding tax (WHT) on interest is expected be changed from a levy at source to a paying agent system. This will allow companies and financial services providers to issue bonds, investment funds or structured products in Switzerland free from WHT at source. For dividends, the WHT rate is expected to be lowered from 35% to 15%. In the future, Swiss bonds, shares, investment funds and structured products will be very attractive to foreign investors, as there will be no more WHT on interest earnings, and WHT on dividends will be lowered directly to the treaty rate. A more ambitious project is the abolishment of stamp duties on the issuance of shares and trading in securities. The Swiss Federal Council will issue proposals for the WHT reform and the abolishment of stamp duties later in 2019.

International automatic exchange of information on financial accounts (AEOI)

The international AEOI standard governs how tax authorities in participating countries exchange data relating to taxpayers’ bank accounts. Its primary objective is to prevent cross-border tax evasion. Members of the G20, the OECD as well as a significant number of other countries totalling over 100 jurisdictions, have committed to implementing the AEOI.

Compared to other jurisdictions, Switzerland was prompt to establish the legal framework required for collecting and exchanging data within the scope of the AEOI. In addition, with a current AEOI network consisting of more than 80 partner jurisdictions that is still being expanded, Switzerland is internationally well positioned in this respect.

In line with Swiss legislation, Swiss banks began to implement the AEOI in 2017. Switzerland successfully exchanged information in 2018 for the first time and is set to exchange information with many more jurisdictions in autumn 2019.
Swiss banks keep being fully committed to implementing the AEOI. As almost one-quarter of the world’s cross-border private wealth is managed in Switzerland, the country is particularly concerned about the proper implementation of the AEOI. In this context, the issue of data protection and data security during the effective exchange of information, as well as in the respective recipient states, is of major importance for Swiss banks.

**Framework Conditions for Digitalisation**

Digitalisation is driving the structural realignment in the banking sector. As an important factor for the competitiveness of the Swiss financial centre, Switzerland requires innovation-friendly framework conditions: The Swiss legislature introduced several measures in a short period of time to face the increasing digitalisation of the financial centre. Switzerland is doing pioneering work by lowering the entry barriers for fintech companies to assure increasing competitiveness. The quality of the Swiss financial centre and its competitiveness are to be strengthened and the growth of the economy as a whole shall be supported. Therefore, the Swiss legislature reacts fast and target-oriented to the developments within the financial industry.

**ICOs, blockchain and digital assets**

One of the key issues in Switzerland over the past years was the rapid increase in the number of initial coin offerings (ICOs) as a new method for raising capital. Digital tokens based on blockchain technology are issued in return for crypto currencies such as bitcoin. However, the legal qualifications and consequences of ICOs in terms of existing market legislation have long remained unclear. In a bold move, FINMA published respective guidelines in February 2018. It was one of the first supervisory authorities worldwide to do so. The guidelines were well received both nationally and internationally.

The new guidelines set out how the authorities intend to apply existing financial market legislation, especially anti-money laundering and securities regulations. Money laundering risks are especially high in a decentralised blockchain-based system in which assets can be transferred anonymously and without any regulated intermediaries. Securities regulation, on the other hand, is intended to ensure that market participants can base their decisions about investments on a reliable minimum amount of information. The guidelines also define the information FINMA requires to deal with such enquiries and the principles upon which it will base its responses, creating clarity for market participants.

Accordingly, the guidelines categorise tokens into three categories: payment tokens, asset tokens and utility tokens. Whereas payment tokens require compliance with anti-money laundering regulations, they will not be treated as securities. Asset tokens, on the other hand, are treated as securities and must comply with securities law requirements for trading in such tokens, as well as civil law requirements under the Swiss Code of Obligations (e.g. prospectus requirements). Finally, utility tokens are only treated as securities if they function solely or partially as an investment in economic terms.

In December 2018, the Swiss Federal Council published a report on the legal framework for blockchain and distributed ledger technology (DLT) in the financial sector. It shows that
Switzerland’s legal framework serves well as a basis for a safe use of new technologies like the blockchain. The Federal Council concludes that there is no need for fundamental adjustments to the Swiss legal framework but proposes specific legal amendments.

Switzerland’s stock exchange SIX was also responsible for big news by announcing on 6 July 2018 a fully end-to-end and fully integrated blockchain-based SIX Digital Exchange (SDX). SDX will be the first market infrastructure globally to offer a fully integrated end-to-end trading, settlement and custody service for digital assets. The first services are expected to be available in the second half of 2019.

Fintech licence, sandbox and settlement accounts

Switzerland is one of the first countries to introduce a specific Fintech licence. From 1 January 2019, companies that operate beyond the core activities characteristic of banks will be able to accept public funds of up to a maximum of CHF 100 million on a professional basis subject to simplified requirements. During its meeting on 30 November 2018, the Federal Council brought into force a corresponding amendment to the Banking Act to promote innovation (fintech).

In July 2017 already, the Federal Council adopted a new fintech framework with an authorisation-exempt area (regulatory sandbox) and has extended the timeframe for settlement accounts to 60 days. The regulation thereby aims to reduce unnecessary regulatory obstacles for innovative business models. In connection with this new regulation, FINMA set these points out in its amended circular and adopted the new timeframe for settlement accounts in September 2017.

The sandbox concept defined in the revised Banking Ordinance allows for public deposits to be accepted without a license up to a limit of CHF 1 million, provided they are not invested and do not bear interest, even if such deposits come from more than 20 depositors. Depositors must be informed that the sandbox is not subject to FINMA supervision and that the deposits are not covered by the deposit protection scheme. Deposits may be invested and interest-bearing if they are intended to fund a main commercial or industrial activity. Crowdlending should be possible also for private consumption within the regulatory sandbox.

The Federal Council has additionally set the maximum period for which deposits may be held in settlement accounts at 60 days. Prior to this, FINMA applied a timeframe of seven working days in accordance with the old legal provisions.

UNITED KINGDOM

Banking Competition Remedies

As a result of the state-aid measures granted to Royal Bank of Scotland Group plc (RBS) in 2009, the European Commission approved a number of actions based on commitments made by the UK government and RBS. These were subsequently amended in 2014 to include the divestment of a part of RBS’s branch-based retail and small and medium-sized enterprise (SME) business, which later became known as Williams and Glyn. In response to challenges completing
this divestment, the Commission formally approved an Alternative Remedies Package in September 2017.

The package consists of two elements:

- a £425 million Capability & Innovation Fund to provide grants to help eligible bodies improve their banking capabilities for SMEs; and
- up to £275 million to incentivize RBS’s Williams and Glyn SME banking customers to switch their business current accounts to eligible bodies.

Banking Competition Remedies Limited (BCR) was established to implement this Alternative Remedies Package. The Capability & Innovation Fund was split into four pools, from which the BCR is responsible for making awards. In February 2019, it made its first (Pool A) awards to Metro Bank (£120 million), Starling Bank (£100 million) and Clearbank (£60 million). In May 2019, the winners (Pool B) were announced as Nationwide (£50 million), Investec (£15 million) and the Co-operative Bank (£15 million).

**British Business Bank**

The British Business Bank (BBB) was established in 2014 as a UK government economic-development bank. In the last financial year, it reported:

- around 75,000 SME businesses were receiving loans or investment through BBB programs;
- an additional £678 million was committed to increase the supply of finance through market delivery partners;
- the development of a new British Patient Capital program, providing up to £7.5 billion of finance and designed to support high-growth-potential innovative UK businesses in response to the government’s Patient Capital Review; and
- a £250 million Midlands Engine Investment Fund to support businesses across the region.

Adjusted return on capital employed rose to 4.7 per cent, higher than the government target for spending of taxpayers’ money.

**Scottish National Investment Bank**

Proposals for a Scottish National Investment Bank to be capitalized by the Scottish Government continued to progress, with an intention to invest £2 billion over 10 years. The Scottish National Investment Bank Bill is working its way through the Scottish Parliament.

**Competition in SME Banking**

Many of the requirements of the Competition and Markets Authority’s (CMA) Retail Banking Market Investigation Order 2017 came into effect in 2018, including a new mass survey to assess recommendation levels for major brands across personal and SME customers. On August 15, 2018, the first results of the survey went live online, on mobile and in all relevant bank branches. The results featured existing customers’ willingness to recommend a provider to friends
and family or to other SMEs, based on factors such as overall service quality and online, mobile, lending and branch services. The results of these surveys will be published every six months going forward.

**Regulation and SME Protections**

On April 1, 2019, the eligibility criteria for businesses to be eligible for the Financial Ombudsman Service (FOS) rose to an annual turnover of less than £6.5 million and a balance-sheet total of less than £5 million or fewer than 50 employees. The expansion saw around 99 per cent of SMEs covered by the option to have their complaints assessed by the FOS if they are dissatisfied by the outcome of their provider’s response to a complaint.

The seven largest SME banks in the UK committed in December 2018 to establish a voluntary Dispute Resolution Service to go beyond the extended eligibility of the FOS, covering SMEs with turnover of £6.5 million to £10 million and a balance sheet up to £7.5 million. The establishment of this is being overseen by an Independent Steering Group comprising a balance of participating banks and business representatives. It will also have a historic element for some eligible complaints.

The Financial Conduct Authority (FCA) consulted toward the end of 2018 on proposed changes to the regulatory framework for peer-to-peer platforms. The proposals centered on better information provision and better explanations of credit risk with regard to loans. The consultation also made proposals for strengthened rules on the wind-down of peer-to-peer platforms. Final proposals are expected later in 2019.

**Mortgages Market Study**

In March 2019, the FCA published the final report of its Mortgages Market Study. This confirmed the FCA’s earlier findings that the mortgage market is working well in many respects and for the majority of customers but falls short of the FCA’s vision in some specific ways. The remedies package includes:

- encouragement to speed up wider participation by lenders in innovative tools to help customers more easily identify the mortgages for which they qualify;
- a proposal for the Money and Pensions Service to extend its existing retirement-adviser directory (currently under the Money Advice Service brand) to include mortgage intermediaries to help customers make a more informed choice of broker; and
- further, in-depth analysis to understand more about those customers who do not switch mortgage to inform any necessary intervention.

The FCA is consulting on:

- changes to lending rules to make it easier for customers to move between one lender and another, provided they are up to date with payments and are not looking to borrow more and the mortgage to which they will be moving is cheaper than their existing mortgage;
- communicating with customers in closed books to make them aware that they may be able to move to a better deal; and
changes to mortgage-advice rules and guidance to help remove potential barriers to innovation.

Final rules on these areas are anticipated toward the end of 2019.

**Cybersecurity**

As a result of the Bank of England (BOE) and UK Finance co-chaired Cross Market Operational Resilience Group’s drive to improve the cyber resilience of the sector, UK Finance has established the Financial Sector Cyber Collaboration Centre, which aims to bring together industry, government and law enforcement to develop a greater understanding of the global cyber challenges the sector and wider society are currently facing. By working with UK regulators, government, the National Cyber Security Centre and the National Crime Agency, UK Finance believes that the sector can more effectively detect, deter, disrupt and protect against cyber threats.

**Resolvability Assessment Frameworks**

Banks are working with BOE, including the Prudential Regulation Authority (PRA), to ensure that if they fail, they do so in an orderly manner by complying with the UK authorities’ proposed Resolvability Assessment Framework (RAF) by 2022.

BOE has identified eight barriers to resolvability. These include having sufficient Minimum Requirement for own funds and Eligible Liabilities, being able to value assets and liabilities accurately, ensuring continuity of access to financial-market infrastructure and having an appropriate crisis communication plan in place.

In-scope banks must submit their biennial self-assessments to the PRA starting in September 2020 and make public disclosure by the following May, with BOE’s public statement on a bank’s resolvability following in 2022.

The RAF will be applicable to all banks that have been notified by BOE that they would be subject to a bail-in or partial transfer strategy in resolution, i.e. banks that have either £50 billion of UK retail assets or 40,000-80,000 transaction accounts. The disclosure of a bank’s own self-assessment of its resolvability only applies, initially at least, to banks with more than £50 billion of UK retail assets, not to those above the transaction-account threshold. Nonetheless, banks that are not subject to public-disclosure requirements will probably take into account BOE’s approach to resolvability. Indeed, those with a preferred resolution strategy of bail-in or partial transfer will be required to undertake an assessment, although it will not be publicly disclosable.

**IRB repair program**

The PRA is implementing the European Banking Authority’s (EBA) IRB repair program, which aims to introduce comparability and consistency to the supervisory oversight, and use by banks, of internal ratings-based (IRB) credit-risk modelling for estimating capital requirements.

Currently, some of the largest UK mortgage lenders use a 180-days-past-due (dpd) test for the definition of default (DoD), but the PRA has indicated that they should introduce a 90dpd DoD
test (as recommended by the EBA) for their mortgage exposures by the end of 2020. Many other significant but highly technical changes to the way banks assess the nature, severity and duration of a downturn and its impact on loss-given default estimation, materiality thresholds and loss allocation on refinancing are also being introduced. These are likely to impose a significant implementation burden on banks and the PRA alike as they authorize the necessary model changes.

Following UK Finance intervention, the PRA has confirmed that banks should prioritize model changes to residential mortgage portfolios and other most-material asset classes by the end of 2020 but that it is open to the possibility that changes to less-material could extend into 2021. This would helpfully shift implementation closer to the point at which additional supervisory-model authorizations will be required as the finalized Basel 3 framework is introduced.

**Stress-testing**

The results of the 2018 stress test – the fifth in the sequence of annual stress tests that were introduced for the first time in 2014 – again confirmed that the UK banking system and the largest UK banks are resilient to deep simultaneous recessions in the UK and global economies that are more severe overall than the global financial crisis and that are combined with large falls in asset prices and a separate stress of misconduct costs.

Alongside the results of the 2018 stress test, the PRA also released its assessment of the effectiveness of model risk-management frameworks, recognizing that banks have improved their model development and validation standards. This supports improved quality of modelling and a greater level of consistency in documentation, which in turn give greater confidence in stress-test outputs.

In addition, the PRA observed that banks are developing governance and control requirements for non-model calculation mechanisms and judgement-based approaches that, when fully implemented, should ensure appropriate level of oversight.

**Open Banking**

The development of open banking in the UK has been driven by two major pieces of legislation. The first, the revised EU Payment Services Directive (PSD2), imposed a number of requirements on account-servicing payment-service providers (ASPSPs) regarding the sharing of data and services. Before this, the CMA’s Retail Banking Market Investigation Order had mandated nine UK financial institutions to deliver, among other requirements, a set of services related to personal and small-business current accounts. To develop the standards required to operate these services, an Open Banking Implementation Entity (OBIE), was established.

The majority of PSD2 and CMA deliverables have been met by standards developed by OBIE, and the market is broadly looking to use these technical data-sharing and payment-initiation API standards (or similar) in order to avoid adjusting their existing consumer interfaces. The industry is now turning its attention to how these standards can be made available to the wider UK market. Looking ahead, there is appetite for ensuring that the continued development of industry
standards can occur commercially, alongside suitable integration with wider European standardisation initiatives. This would go beyond the legal requirements of PSD2 and the CMA and enable a wider competitive landscape in which additional customer services could be developed. Alongside this industry appetite, the FCA is beginning to hold discussions on “open finance” initiatives.

Although the requisite standards have been developed according to the legal requirements, the UK has yet to see widespread adoption of the standards by third-party providers (TPPs) and, ultimately, UK businesses and consumers. ASPSPs and TPPs are currently implementing the technical standards and enabling account-information data sharing through APIs.

UNITED STATES

As directed by Congress in regulatory reform legislation enacted in 2018 (the Economic Growth, Regulatory Relief and Consumer Protection Act), the Federal Reserve Board issued separate but similar proposed rulemakings in 2018-19 to more closely align enhanced prudential regulation of U.S. domestic banks and the U.S. operations of foreign banking organizations with their risk profiles. The domestic tailoring proposal was issued on October 31, 2018, followed by the FBO tailoring proposal on April 8, 2019. In another revision of the Dodd-Frank Act, a final rule to simplify and tailor the Volcker Rule prohibitions on proprietary trading and certain fund activities by banking entities was approved in late summer by four of the five federal Volcker agencies – the OCC, FDIC, CFTC and SEC. The Federal Reserve Board is expected to approve the final rule in the fall. In the tax area, the Treasury Department on December 13, 2018 issued proposed regulations under the Base Erosion and Anti-Abuse Tax provision of the 2017 tax code overhaul.

Following is a review of key developments that are of particular importance to foreign banking organizations operating in the United States.

Tailoring of Enhanced Prudential Standards

The Federal Reserve Board on April 8, 2019 issued for public comment a proposed regulatory framework that would more closely match the prudential regulation of foreign banks with the risks they pose to the U.S. financial system. The changes would maintain the most stringent requirements for firms with the most risk, while reducing compliance requirements for firms with less risk. Under the proposed framework, foreign banks with $100 billion or more in U.S. assets would be sorted into categories of increasingly stringent requirements based on several factors reflecting a bank’s complexity and risk to the financial system, including asset size, cross-jurisdictional activity, reliance on short-term wholesale funding, nonbank assets, and off-balance sheet exposure. The framework is substantially the same as the framework proposed in October 2018 for large domestic banks, with some adjustments reflecting structural differences in foreign banks’ U.S. operations.

The Federal Reserve Board also approved on April 8th an interagency notice of proposed rulemaking that would (i) modify the application of capital and liquidity requirements to the U.S. operations of a foreign banking organization, and (ii) modify the application of standardized
liquidity requirements to certain U.S. depository institution holding companies with $50 billion or more in weighted short-term wholesale funding. The interagency proposal requested comment on whether the Fed should impose standardized liquidity requirements on foreign banking organizations with respect to their U.S. branches and agencies, including possible approaches for doing so. In addition, the Fed approved a resolution plan proposal issued jointly with the FDIC.

On June 21, 2019, the Institute of International Bankers (IIB), which represents the interests of internationally-headquartered financial institutions operating in the United States, submitted three comment letters with respect to the tailoring proposal, the proposed resolution plan requirements, and potential branch liquidity requirements. The IIB expressed support for the two main goals of the proposals: tailoring requirements for international banks based on the size and risk of their U.S. footprints, and making the U.S. regulatory framework for international banks more efficient, transparent, and effective. However, the IIB said the proposals still failed to take into account, as directed by Congress, the principles of national treatment and equality of competitive opportunity and the extent to which international banks are subject to comparable home-country regulation. Specifically, the IIB pointed to the proposals’ use of attributes of an international bank’s branches to calibrate enhanced prudential standards (such as the liquidity coverage ratio) that apply to an international bank’s U.S. intermediate holding company (IHC), even though the attributes of branches are external to the U.S. IHC. U.S. bank holding companies are not subject to any similar extraneous measures of size and riskiness, the IIB noted.

In a July 30th letter, all 13 Republican members of the Senate Banking Committee urged federal banking regulators to support economic growth by taking further steps to tailor regulations of the U.S. operations of foreign banks. "We encourage your agencies to continue to examine whether the regulations that apply to the U.S. operations of internationally headquartered banks are tailored to the risk profile and organizational structure of the relevant institutions and consider the existence of home country regulations that apply on a global basis, in connection with the pending proposals and any other potential regulatory changes," the Senators said. Regulators should also consider indexing dollar-based thresholds in the tailoring proposals to grow over time in line with growth in the financial system, they said. "If an institution grows organically in a way that reflects growth in the financial system without a material change to the business model of the firm, it is unlikely the systemic risk profile of such institution would change materially," the Senators stated.

With respect to potential additional liquidity requirements for U.S. branches and agencies of international banks, the IIB told regulators that any such proposal should be coordinated through a cross-jurisdictional process to maintain an appropriate balance of home-host considerations.

[The Federal Reserve Board is scheduled to vote on the final rulemakings on October 10th]

Volcker Rule Revisions

In late summer 2019, the OCC, FDIC, CFTC and SEC approved a final rule to simplify and tailor the Volcker Rule prohibitions on proprietary trading and certain fund activities by banking entities. (As of the Global Survey’s publication date, the Federal Reserve Board had not yet voted on the final rule.) Among other provisions, the final rule tailors Volcker's compliance
requirements based on the size of a firm's trading assets and liabilities, and it replaces the rebuttable presumption that instruments held for fewer than 60 days are prohibited under Volcker with a rebuttable presumption that instruments held for 60 days or longer are allowable. With respect to issues specifically affecting FBOs, the final rule responded favorably to the IIB's October 17, 2018 comment letter and numerous follow-up meetings with the agencies. As advocated by the IIB, the final rule adopts the TOTUS (trading outside the United States) exemption in the proposed rulemaking issued on May 30, 2018, while reversing the proposed expansion of the CEO attestation requirement. In addition, the SOTUS (solely outside the United States) funds exception was modified to eliminate restrictions on financing from U.S. branches or affiliates. Further changes to covered fund rules, including treatment of foreign excluded funds, will be made in a separate rulemaking later in 2019, the agencies said. Meanwhile, the agencies on July 17, 2019 extended relief for qualifying foreign funds that might otherwise be subject to the Volcker Rule for two more years as they continue to consider how to amend the funds portion of Volcker. Certain foreign funds that are organized and offered outside of the United States are excluded from the definition of covered fund under the agencies' original implementing regulations. However, these foreign funds could become subject to other restrictions under the Volcker Rule because of governance arrangements with or investment by foreign banking entities.

Derivatives

The SEC on May 10, 2019 proposed a package of rule amendments and interpretive guidance for the framework for regulating cross-border security-based swaps transactions and market participants. The SEC said the proposals are intended to improve the regulatory framework by pragmatically addressing implementation issues and efficiency concerns, and in some cases further harmonizing the regulatory regime governing security-based swaps administered by the SEC with the regulatory regime governing swaps administered by the CFTC. The proposals address four key areas: i) the use of transactions that have been "arranged, negotiated, or executed" by personnel located in the United States as a trigger for regulating security-based swaps and market participants; ii) the requirement that non-U.S. resident security-based swap dealers and major security-based swap participants certify and provide an opinion of counsel that the Commission can access their books and records and conduct of onsite inspections and examinations; iii) the cross-border application of statutory disqualification provisions; and iv) the questionnaires or employment applications that security-based swap dealers and major security-based swap participants must maintain with regard to their foreign associated persons.

The IIB and the Securities Industry and Financial Markets Association (SIFMA) on July 23rd filed a joint comment letter on the proposals, specifically those relating to: i) transactions connected with a non-U.S. person's dealing activity that are arranged, negotiated or executed by personnel located in a U.S. branch or office of the non-U.S. person or its agent (ANE transactions); ii) certifications and legal opinions from non-resident SBS dealers relating to Commission access to books and records and conduct onsite inspections and examinations; and iii) background checks for associated persons of SBS dealers. The letter expressed concern that even as modified by the proposal, the SBS requirements seem likely to result in significant and undue operational burdens, risk management and execution challenges, and unwarranted competitive distortions in the global SBS markets. To address these issues, the IIB and SIFMA urged the SEC to revise its proposed treatment of ANE transactions, consistent with the parallel
Title VII rules adopted by the CFTC. The letter also makes recommendations concerning compliance dates.

The SEC on June 21st adopted a package of new security-based swap rules and rule amendments to establish capital, margin, and segregation requirements under Title VII of the Dodd-Frank Act. The rules address four key areas:

- They establish minimum capital requirements for security-based swap dealers and major security-based swap participants for which there is not a prudential regulator (nonbank SBSDs and MSBSPs). They also increase the minimum net capital requirements for broker-dealers that use internal models to compute net capital (ANC broker-dealers). In addition, they establish capital requirements tailored to security-based swaps and swaps for broker-dealers that are not registered as an SBSD or MSBSP to the extent they trade these instruments.
- They establish margin requirements for nonbank SBSDs and MSBSPs with respect to non-cleared security-based swaps.
- They establish segregation requirements for SBSDs and stand-alone broker-dealers for cleared and non-cleared security-based swaps.
- They amend the Commission's existing cross-border rule to provide a means to request substituted compliance with respect to the capital and margin requirements for foreign SBSDs and MSBSPs, and provide guidance discussing how the Commission will evaluate requests for substituted compliance.

CCAR

The Federal Reserve Board on February 5, 2019 released the scenarios banks and supervisors will use for the 2019 Comprehensive Capital Analysis and Review (CCAR) and Dodd-Frank Act stress test exercises. The Fed also said it will be providing relief to "less-complex firms" from stress testing requirements and CCAR by effectively moving the firms to an extended stress test cycle for 2019. The relief applies to firms generally with total consolidated assets between $100 billion and $250 billion, including U.S. Intermediate Holding Companies (IHCs) of Foreign Banking Organizations deemed less complex. As a result, these firms will not be subject to a supervisory stress test during the 2019 cycle and their capital distributions for this year will be largely based on the results from the 2018 supervisory stress test, the Fed said. At a later date, the Fed will propose for notice and comment a final capital distribution method for firms on an extended stress test cycle in future years.

Also on February 5th, the Fed finalized a set of changes that it said will increase the transparency of its stress testing program for the nation's largest and most complex banks. The changes are intended to improve public understanding of the program while maintaining its ability to independently test large banks' resilience. The first change, which will begin for the 2019 stress test cycle and expand in subsequent years, will provide "significantly more information" about the models used by the Fed in its annual CCAR review. That information will include: i) ranges of loss rates, estimated using the Board's models, for actual loans held by CCAR firms; ii) portfolios of hypothetical loans with loss rates estimated by the Federal Reserve Board's models; and iii) more detailed descriptions of the Fed's models, such as certain equations and key variables that influence the results of the models. Using this additional information, a firm would be better able to evaluate the risks in its own portfolio or compare the losses from its own models to losses from
the Fed's models. In response to comments received on the proposal from December 2017, the Fed said it will provide additional information on a number of models, including those used to project operational-risk losses and pre-provision net revenue. The model disclosure will be updated each year and published in the first quarter of the year.

The Federal Reserve Board on March 6, 2019 announced that it will limit the use of the "qualitative objection" in its CCAR exercise, effective for the 2019 cycle (click here for amendments to the Fed's capital plan rule). "Firms that are newer to the CCAR exercise and as a result may have capital planning capabilities that are less established will remain subject to a possible objection on qualitative grounds," the Fed said. Five U.S. Intermediate Holding Companies (IHCs) of large foreign banks fall into that category, according to the Fed. Specifically, the Fed said a firm must participate in four CCAR exercises and successfully pass the qualitative evaluation in the fourth year to no longer be subject to a potential qualitative objection. For firms still subject to the qualitative objection, their fourth year will generally be the 2020 CCAR cycle, the Fed said.

The Fed on March 6th also released the instructions for this year's CCAR exercise. The instructions confirm that 18 firms will be subject to this year's CCAR exercise, with five of those firms subject to a possible qualitative objection. Eleven firms with large trading operations will be required to factor in a global market shock as part of their scenarios. Thirteen firms with substantial trading or processing operations will also be required to incorporate a counterparty default scenario.

Control Rules

The Federal Reserve Board on April 23, 2019 voted to approve a notice of proposed rulemaking intended to simplify and provide transparency for the Fed's control rules under the Bank Holding Company Act and the Home Owners' Loan Act. "Providing all stakeholders with clearer rules of the road for control determinations will responsibly reduce regulatory burden," Fed Chairman Jerome H. Powell said. In particular, the proposal lays out several factors and thresholds that the Fed Board will use to determine if a company has control over a bank. The key factors include the company's total voting and non-voting equity investment in the bank; director, officer, and employee overlaps between the company and the bank; and the scope of business relationships between the company and the bank. The proposal describes what combination of those factors would and would not trigger a presumption of control. "The Board's control framework has developed over time through a Delphic and hermetic process that has generally not benefited from public comment," Vice Chairman for Supervision Randal K. Quarles said. "This proposal would place substantially all of the Board's control positions into a comprehensive public regulatory proposal and allow public comment on those positions to improve their content and consistency." A Fed staff memo on the proposal included a chart that shows how different combinations of the factors would or would not result in control.

The IIB on July 15 filed a comment letter on the proposal. In its letter, the IIB welcomed the increased transparency and predictability that the proposal is intended to achieve, but said it needs to be meaningfully improved to achieve its stated objectives and to address issues that present unique challenges for international banks. For example, the IIB argued that the final rule should revise the presumptions framework to include safe harbors under which
non-controlling investments could be made, particularly with respect to investments made outside the U.S. Among other recommendations, the IIB said the final rule should not include consolidation under U.S. GAAP or any other financial accounting standards in other jurisdictions as a rebuttable presumption of control. The IIB further argued that the proposed methodology for calculating a company’s equity investment is "fundamentally flawed," and emphasized that the final rule should only apply to prospective investments made after the rule's effective date.

**BSA/AML/Beneficial Ownership**

The Treasury Department's Financial Crimes Enforcement Network and the federal financial regulatory agencies issued a joint statement on December 3, 2018 encouraging financial institutions to take innovative approaches to combating money laundering, terrorist financing and other illicit financial threats. The joint statement notes that innovative pilot programs in and of themselves should not subject banks to supervisory criticism, even if the pilot programs ultimately prove unsuccessful. Likewise, pilot programs that expose gaps in a BSA/AML compliance program will not necessarily result in supervisory action with respect to that program, according to the statement.

The House Financial Services Committee on June 12th passed bipartisan legislation (H.R. 2513) sponsored by Reps. Carolyn Maloney (D-NY) and Peter King (R-NY) that would require corporations and LLCs to disclose their beneficial owners to the Financial Crimes Enforcement Network (FinCEN). The bill passed by a vote of 43 to 16. A bipartisan group of Senate Banking Committee members released similar draft beneficial ownership legislation on June 10th.

**Cybersecurity**

The two-year implementation timeline of the New York State Department of Financial Services’s cybersecurity regulation ended on March 1, 2019. The final step in the implementation timeline requires regulated entities that use third-party providers to put in place policies and procedures ensuring the security of information systems and nonpublic information accessible to, or held by, such providers.

**Tax**

The Treasury Department on December 13, 2018 issued proposed regulations under the Base Erosion and Anti-Abuse Tax provision of the Tax Cuts and Jobs Act, enacted in December 2017. The proposed regulations provide guidance regarding which taxpayers will be subject to the BEAT, the determination of base erosion payments, and the calculation of the base erosion minimum tax amount.

In a comment letter dated February 19, 2019, the IIB said the proposed regulations’ treatment of interest on “internal TLAC” and their treatment of effectively connected income of U.S branches as amounts that are not base erosion payments properly balance the anti-base erosion objectives of the BEAT, with the recognition of the regulatory framework that governs FBOs, the other U.S. tax rules applicable to FBOs and the importance of FBOs to the U.S. economy and financial system.
However, the proposed regulations also raise new issues with respect to the application of the BEAT to FBOs, which may give rise to arbitrary differences between different FBOs and penalize FBOs and other financial institutions that carry out certain kinds of normal banking activities.

The most critical issues for a number of FBOs are (i) the branch interest expense provisions, (ii) the internal TLAC rules, (iii) the lack of similar rules for other regulatory debt issued by FBOs and their affiliates, (iv) the exclusion of foreign currency losses incurred on transactions with third parties from the denominator of the base erosion percentage, which severely and adversely affects banks that are dealers in foreign currency derivatives and foreign currency-denominated bonds, and (v) restrictions on the utilization of pre-enactment NOLs. Other important issues are (a) the treatment of repos and securities loans for purposes of the “qualified derivative payment” rules, (b) the interaction between the global dealing regulations and the proposed BEAT regulations, (c) the definition of “gross receipts” for BEAT purposes, and (d) whether section 15 should apply to fiscal year taxpayers.

The final BEAT regulations are expected to be issued in the fall.