BIIA
Business Information Industry Association

Regulatory Monthly Newsletter

Welcome to the fifty seventh monthly newsletter designed to keep BIIA members informed of the significant developments on the policy dossiers being worked on in geographical territories that members operate in.

BIIA would like to thank its fellow industry association, ACCIS (the Association of Consumer Credit Information Suppliers), for allowing us to re-use certain information that they have published on regulatory developments within Europe.

SUMMARY

In this month's newsletter we report on regulatory developments across a wide range of topics including **privacy, digital identity, digital currencies, artificial intelligence** and **anti-money laundering**. As can be seen from this list of topics there continues to be a strong focus by regulators on **'all things digital'** reflecting the significant development of the global digital economy.

A number of the topics we have covered in this month's newsletter will be subjects that we will be discussing at the **BIIA 2022 Biennial Conference** that will be held in **Singapore** from **May 23rd to 25th** next year. The theme for our conference in 2022 is **'The Customer Relationship in a Data-driven Digital World'** with a very strong focus as the title would suggest on the development of the digital economy and the increasing volume of data that is generated.

To find out more about the conference programme click **here**. Discussions on regulatory developments that are happening across the globe will be a key part of the event and we would encourage readers to add the dates for the event to their diaries and register to attend when the registration becomes available in the next couple of weeks.

We are keen to ensure that we cover as many relevant regulatory developments as we can in this newsletter so if you have any items you feel would be worth incorporating please do get in contact with Neil Munroe, Deputy Managing Director and Editor of the Regulatory Newsletter by email @ munroen@biia.com.

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Privacy

Australia - Release of online privacy draft legislation and reform discussion paper

On 25 October 2021, the Australian Federal Attorney-General's department released an exposure draft of the Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021 (the **Online Privacy Bill**), seeking submissions by 6 December 2021. The Online Privacy Bill seeks to implement various reforms to the *Privacy Act 1988* (**Privacy Act**), including providing for an Online Privacy code (the **OP code**), increasing the enforcement powers of the OAIC and penalties applicable under the Privacy Act, providing the OAIC with broader information-sharing powers and expanding the extra-territorial application of the Privacy Act.

The exposure draft legislation was released in tandem with an extensive discussion paper published as part of a broader review of the Privacy Act, which seeks submissions on further reform proposals by 10 January 2022. Both the exposure draft Online Privacy Bill and the Discussion Paper can be viewed at the following link: **https://consultations.ag.gov.au/rights-and-protections/privacy-act-review-discussion-paper/**

New Zealand - Introduction of new Digital Identity Bill

At the beginning of October the New Zealand Government introduced the Digital Identity Services Trust Framework Bill (Bill), which will establish a legal framework for the provision of secure and trusted digital identity services for individuals and organisations.

The core objective of the Bill is to help develop digital identity services that are trusted and people-centric. While the primary obligations in the Bill will be on digital identity service providers, it will also have an impact on individuals and organisations in the digital identity ecosystem, including banks, government agencies, and utility and telecommunications providers.

The Bill defines digital identity services as "*a service or product that, either alone or together with one or more other digital identity services, enables a user to share personal or organisation information in digital form in a transaction with a relying party*". Examples of digital services provided by the Bill are services or products that:

- check the accuracy of personal or organisational information;
- check the connection of personal or organisational information to a particular individual or organisation;
- provide secure sharing of personal or organisational information between trust framework participants.

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The Bill introduces rules in the following five key areas:

- **Trust Framework:** The Bill establishes a trust framework made up of primary legislation, regulations and a set of rules, referred to as the "TF Rules", to apply to the provision of user-authorised digital identity services in New Zealand. The TF Rules will set out minimum requirements for security, privacy and confidentiality, identification management, data management and the sharing of information that providers of accredited digital identity services (TF Providers) must comply with.
- **Opt-in accreditation scheme**: The Bill establishes an opt-in accreditation scheme consisting of minimum requirements for handing personal and organisational information that accredited TF Providers must comply with. TF Providers will be able to upgrade their systems for compliance with the TF Rules before applying for accreditation. If successful, accredited TF Providers may use approved "trust marks" to show their compliance with the TF Rules. Users will not need to be accredited to use accredited digital identity services.
- **Trust Framework Board**: The Bill establishes a Trust Framework Board (TF Board), to provide education, publish guidance, and monitor the trust framework for performance and effectiveness. The TF Board will be responsible for recommending draft TF Rules to the Minister, following consultation with relevant stakeholders such as the Office of the Privacy Commissioner and TF Providers.
- **Trust Framework Authority**: The Bill establishes a Trust Framework Authority (TF Authority), that will be responsible for making decisions on applications for accreditations and renewals, investigating complaints, and issuing penalties for breaches. The TF Authority will also maintain a register of accredited providers.
- **Penalties:** The Bill allows users to lodge complaints with the TF Authority if they believe a TF Provider has breached the TF Rules. The TF Authority will have the power to grant remedies, such as publishing a public warning and suspending or cancelling a TF Provider's accreditation. The Bill also contains offences such as falsifying accreditation.

The Bill is currently undergoing its first reading and, if successful, will be sent to the Select Committee for consideration. The full text of the Bill can be accessed **here**.

Saudi Arabia - Personal Data Protection Law published

The new Personal Data Protection Law (PDPL) was published in the Saudi Arabian Official Gazette on 24 September 2021. It becomes fully effective on 23 March 2022. Data Controllers then have another year in

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which to comply with the PDPL, although this period might be extended. The PDPL will be supplemented by regulations, which should be published by 23 March 2022.

Under the PDPL, the Saudi Arabian Authority for Data and Artificial Intelligence (SDAIA) will be the regulator for at least 2 years. The Central Bank and the Communications and Information Technology Commission (CITC) both appear to maintain their jurisdiction to regulate data protection within their remit.

The PDPL applies to any processing of personal data related to individuals that takes place in the Kingdom, including the processing of such personal data "*by any means by any entity outside the Kingdom*". Foreign data controllers must appoint a representative within KSA to be licensed by SDAIA, to perform the data controller obligations under the PDPL. Unlike most other data protection laws, the processing referred to above includes processing of a deceased's data, if this would lead to identifying him or one of his family members specifically.

The regulations to be introduced are to provide rules regarding the processing of credit data in a manner that ensures the preservation of the privacy of its owners and protects their rights in the PDPL and the Credit Information Law. The regulations will be required to include the following:

- There must be necessary actions to verify the availability of the written consent of the data subject to the collection of the data, or change of the purpose of collection of it, its disclosure or publication in accordance with the PDPL and Credit Information Law; and
- The data subject must be notified if a request for disclosure of his credit data is received from any party.

Business Information

Australia - New director resignation laws preventing illegal phoenixing

Director resignations are no longer effective in Australia if the Australian Securities and Investment Commission (ASIC) is not properly notified of the resignation within 28 days or if the resignation would leave the company with no directors. The *Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2020* was passed to amend the *Corporations Act 2001* and assist regulators and liquidators to combat illegal phoenix activity. Illegal phoenix activity involves creating a new company to continue the business of an existing company that has been deliberately liquidated to avoid paying outstanding debts, including taxes, amounts owed to creditors and employee entitlements.

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ASIC's media release states that the new measures will assist in detecting, deterring and disrupting illegal phoenix activity by preventing directors from backdating their resignations or leaving a company with no directors. While the laws are targeted at hindering illegal phoenix activity, the changes affect all directors.

The new section 203AA of the Corporations Act sets out that a director's resignation will only take effect on the original date of their resignation if ASIC is notified within 28 days. If ASIC is not notified within this period, the effective date of the director's resignation will be the date that ASIC is notified. For example, if a director resigns on 1 July 2021 but ASIC is not notified until 1 August 2021 (more than 28 days after the resignation occurred), the effective date of resignation will be 1 August 2021.

While the previous laws required a company to have at least one director, there were no laws in place to prevent a director from resigning even if they were the last remaining director. The new section 203AB of the Corporations Act provides that a director's resignation will be void if it means that a company will not have at least one director at the end of the day. The 'end of day' test means that if multiple directors resign on the same day and leave the company with no directors, all of their resignations will be void. Directors may only leave the company with no directors if a new director is appointed before the end of the day.
Click on the highlighted text to access the media release on the new Act.

Ireland - Companies (Corporate Enforcement Authority) Bill 2021

The Government in Ireland has approved the publication of the Companies (Corporate Enforcement Authority) Bill, 2021 (the "Bill"). The Bill will make provision for various amendments to the Companies Act 2014 to include amendments relating to the share capital of companies and the corporate governance of companies, as well as other consequential amendments.

The main amendment to the Companies Act 2014 is to establish a body known as the Corporate Enforcement Authority (the "Authority"). This is an independent statutory body, which will replace and perform the functions previously undertaken by the Director of Corporate Enforcement ("ODCE"), namely to encourage compliance with company law and to investigate suspected breaches of the Companies Acts.

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It is anticipated that the Authority will be better able to investigate and respond to larger, more complex breaches of company law than the ODCE, as it will be provided with more autonomy and additional resources. The Authority will have the same functions and powers that the ODCE has with some modifications to reflect the new commission structure. These new functions include encouraging compliance with the Companies Act 2014, investigations of suspected offences and non-compliance under that Act, prosecution of summary offences, referring indictable offences to the Director of Public Prosecutions and the exercise of certain supervisory functions with respect to liquidators and receivers.

Furthermore, with regards to staffing, the Authority will consist of three full-time commissioners and the total staffing level will increase by almost 50% over the existing levels. The Authority will have the autonomy to determine for itself the skills and staff it requires in order to conduct its work. This structure and flexibility is intended to allow the authority to adapt and evolve as is required.

It is anticipated that the Bill will be approved before the end of the year, such that the Authority will be operational in January 2022. Click **here** to access the Bill.

Financial Services

China - Strict bans imposed on virtual currencies

In September 2021, the People's Bank of China, the Cyberspace Administration of China and eight other authorities jointly issued the 'Notice on Further Preventing and Disposing of Risks in Virtual Currency Trading and Speculation', which states that virtual currencies, such as Bitcoin, Ethereum and Tether, are not legal tender and cannot be circulated in the market as legal tender.

The following activities are considered illegal financial activities and will be strictly prohibited:

- conducting a virtual currency exchange between legal tender and a virtual currency or between virtual currencies;
- trading a virtual currency as a central counterparty; and
- provision of matching services for virtual currency transactions.

In particular, the provision of services by overseas virtual currency exchanges to Chinese residents through the Internet is also considered an illegal financial activity. Financial institutions and non-bank payment institutions are prohibited from providing account openings, fund transfers, clearance or settlement

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services for virtual currency-related business. They are also prohibited from accepting virtual currency as collateral, including virtual currency in the scope of insurance liability, or carrying out other insurance business related to a virtual currency.

Internet companies are prohibited from providing an online business environment, commercial display, marketing promotion, payment processing or other online services for virtual currency-related business. If an internet company identifies any clues of violations of illegal virtual currency related activities, it must promptly report this activity to the relevant authorities and provide technical support and assistance for the related investigations.

The notice also bans certain phrases from appearing in the names of registered market entities. The registered names, the business scope of enterprises, and the contents of any advertisements "must not contain words or content", such as virtual currency, virtual asset, encrypted currency or encrypted asset. In addition, financial fraud, money laundering, gambling, illegal fund-raising and pyramid schemes involving virtual currencies will be a focus of enforcement actions of the public security authorities.

UK - HM Treasury consults on Buy-Now-Pay-Later regulation

Her Majesty's Treasury published on 21st October its much-anticipated consultation on regulating the Buy-Now-Pay-Later (BNPL) credit market, following the Woolard Review recommendation that all BNPL products are brought within the regulatory perimeter "as a matter of urgency".

In looking to create a proportionate approach to the regulation of BNPL, the Treasury outlines four objectives in its consultation:

- BNPL activities should be subject to an intervention which is proportionate to the level of risk that they present and is not so burdensome that it inhibits the product being offered or reduces consumer choice;
- Consumers should be adequately and fairly protected from detriment, and can access dispute resolution regarding the conduct of lenders;
- Regulation for BNPL should not adversely impact competition and innovation across the wider consumer credit and payments markets; and
- Any burden on retailers offering BNPL as a payment option would be proportionate and manageable and should not disadvantage SMEs over larger retailers.

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Some of the key changes which the government is considering under the consultation are:

- bringing the advertising and promotion of BNPL arrangements within the financial promotions regime;
- providing for the FCA to supervise lenders' pre-contractual screens to make ensure customers get clear information on the negative consequences of taking out credit, like arrears fees and debt collection;
- requiring lenders to adhere to the lighter touch FCA requirements around adequate pre-contractual explanations, but not applying the full CCA pre-contractual information rules to BNPL products;
- requiring lenders to carry out creditworthiness or affordability assessments to look at the credit risk to the lender plus whether the customer can afford to repay;
- applying the FCA rules on arrears, default and forbearance with requirements on how BNPL providers should treat customers in financial difficulty or communicate with borrowers who have missed payments, along with the CCA information requirements for customers in financial difficulty which give warnings to borrowers that a firm might take action against them and provide an opportunity for them to respond; and
- introducing an equivalent to Section 75 Consumer Credit Act protection which allows customers to claim against the credit provider instead of the supplier in certain circumstances.

The consultation closes on 6 January 2022. Following the consultation, the government will provide a summary of responses and will set out next steps for its work on regulation of BNPL. **Click on the highlighted text to access the consultation.**

USA - Consumer Financial Protection Bureau (CFPB) Orders Tech Giants to turn over information on their Payment System Plans

On 21st October, the Consumer Financial Protection Bureau (CFPB) issued a series of orders to collect information on the business practices of large technology companies operating payments systems in the United States. The information request is to help the CFPB better understand how these firms use personal payments data and manage data access to users so the Bureau can ensure adequate consumer protection.

The orders are issued pursuant to Section 1022(c) (4) of the Consumer Financial Protection Act. The CFPB has the statutory authority to order participants in the payments market to turn over information to help the Bureau monitor for risks to consumers and to publish aggregated findings that are in the public interest.

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The CFPB's work is one of many efforts within the Federal Reserve System to make payments safer, faster, and more competitive. The initial orders were sent to Amazon, Apple, Facebook, Google, PayPal, and Square. The Bureau will also be studying the payment system practices of Chinese tech giants, including Alipay and WeChat Pay.

The CFPB's orders build on the efforts of the Federal Trade Commission's work to shed light on the business practices of the largest technology companies in the world. The orders also seek to illuminate the range of these consumer payment products and their underlying business practices. Specifically, the orders will compel information on data harvesting and monetization, access restrictions and user choice and other consumer protections.

Artificial Intelligence (AI)

UK - Government announces plan to regulate artificial intelligence

At the end of September, the UK government's Department for Digital, Culture, Media & Sport (DCMS) announced its long-awaited National AI Strategy. The strategy paper sets out the government's intended 10-year agenda for making the UK a "global AI superpower" and includes an acknowledgment of the need to introduce new legislation in order to regulate AI technologies.

There are three 'core pillars' to the National AI Strategy. The paper sets out how the UK government intends to invest in the long-term needs of the AI ecosystem, how they can ensure that AI technology benefits all sectors and regions, and what steps can be taken to ensure effective AI governance.

The strategy's section on AI governance sets out the objective of establishing a governance framework that addresses the unique challenges and opportunities of AI, while also emphasising the need to be sufficiently flexible and proportionate. This will be achieved by taking a number of steps:

- **Publication of a white paper in early 2022**, which will set out the key risks identified in connection with the current and future use of AI, alongside detailed proposals for regulating AI at a national level.
- **Developing an ecosystem of AI assurance tools and services**, through work with the UK Centre for Data Ethics and Innovation, which will assist organisations in being able to demonstrate how their systems operate in a safe, fair, and trustworthy manner.

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- **Growing the UK's contribution to the development of global AI technical standards**, in order to support the creation of compliant solutions and address issues such as algorithmic bias and transparency. This could include the piloting of an AI standards hub to expand the UK's engagement and thought leadership at an international level.
- Working alongside the Alan Turing Institute to **build the capacity of UK regulators to be able to use and assess AI technologies**, so they can effectively supervise compliance of new products and services when they come to market.

Anti-Money Laundering (AML)

Singapore - Monetary Authority (MAS) consults on Features & Legislative Framework of Digital Platform for FIs to Share Information for AML/CFT Purposes

In October the Monetary Authority of Singapore (MAS) sought feedback on its proposal to deploy a secured digital platform, to be named COSMIC (Collaborative Sharing of ML/TF Information & Cases) that will allow financial institutions (FIs) to share information to help them detect and disrupt illicit transactions in a timelier manner.

Such information relates to the particulars of a customer (including the beneficial owners and authorised signatories of the customer) and transactions, money laundering (**ML**), terrorism financing (**TF**) and proliferation financing ("**PF**") risk observations or analysis relating to the customer, or the high-risk behaviour exhibited ("**risk information**").

The proposals are set out in MAS' "Consultation Paper on FI-FI Information Sharing Platform for AML/CFT" that was published on 1 October 2021. The consultation ends on **1 November 2021**, with MAS intending to launch COSMIC in the first half of 2023. Under the Singapore anti-money laundering (**AML**) and countering the financing of terrorism (**CFT**) regime, FIs are required to, among other things, file a suspicious transaction report (**STR**) if they have reasonable grounds to suspect that a customer is involved in ML/TF/PF activities. However, FIs are not permitted to warn each other about potentially suspicious activity involving their customers. This creates an information gap to make illicit transactions through a web of entities with accounts in different FIs. As such, MAS is proposing to develop and operate COSMIC to plug this information gap, allowing FIs to query and alert each other on potential illicit behaviours in a timely fashion. It is intended that sharing will be permitted only:

- to address potential ML, TF or PF concerns in key risk areas;
- if the customer's behaviours and transaction activities exhibit multiple red flags that cross risk thresholds to suggest that potential financial crime could be taking place;

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- in the data format specified by MAS, such that only relevant risk information is shared, and in a proportionate manner; and
- via COSMIC.

Click on the highlighted text to access the consultation

UAE - Further strengthening of AML protections with creation of specialist AML court

The United Arab Emirates (UAE) has announced a new division of its court system established specifically to hear cases relating to money laundering and financial crime. This new Court, an integral element of the UAE's National Action Plan to combat offenses of this type, will be overseen by the recently established Executive Office of Anti-Money Laundering & Countering Terrorist Finance and will be staffed by specialist judges.

The new court is one of several initiatives introduced in support of the National Action Plan, which included the introduction of new guidelines relating to anti-money laundering ("AML") and countering terrorist finance ("CTF") in April this year. As part of the consultation process leading up to the new guidelines, the National Committee for Combating Money Laundering also commissioned assessment reports related to terrorism financing, trade-based money laundering, misuse of legal persons, non-profit organizations, lawyers and the gold sector. These risk assessment reports are designed to "*align the legislative and operational frameworks and priorities with the current risks*" according to a press release made by the UAE's Central Bank.

The UAE has been identified by the Financial Action Task Force (FATF) as a "*cash-intensive*" economy in its 2020 country report, with further AML/CTF risks posed by a large expatriate population, frequent cash remittances, and a very active gold and precious stones trade. However, between 2013 and 2018, there were only 50 prosecutions and 33 convictions for money laundering related offenses by the UAE courts. Such low enforcement rates were a concern both domestically and for international investors, and a driving force behind the new guidelines and specialist court.

More information on the latest regulatory developments from across the globe is available on the BIIA website in the Regulatory section

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