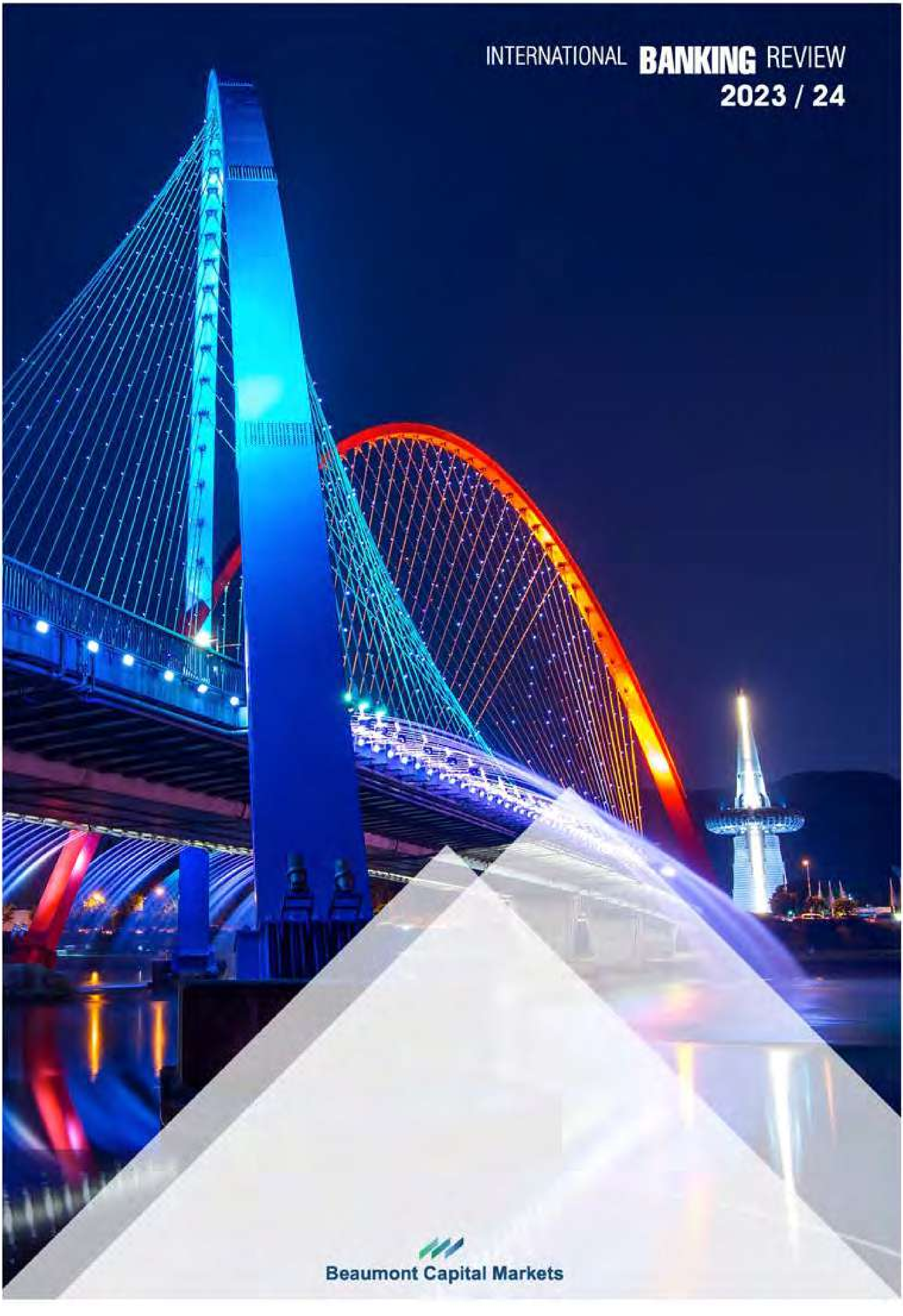
INTERNATIONAL **BANKING** REVIEW 2023 / 24



Beaumont Capital Markets

The International Banking Review 2023/24

Content

THE WORLD BANK

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He engages with policymakers to build stable, efficient and inclusive financial systems, and foster private sector development and job creation. Ilias is a Ph.D. macro-financial economist with World Bank experience spanning multiple regions - including Europe and Central Asia, Latin America and the Caribbean, and South Asia - and has served as advisor to the Vice-President of Finance and Private Sector Development.

He received his Ph.D. from the University of Nottingham, focusing on financial crises, and studied economics at LSE.

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Of overload and coordination

While the shocks keep coming, a global financial crisis has yet to materialise. Nevertheless, financial stability risks are high, while the long-term challenges from climate change and digital advances persist. Can financial sector policymakers handle the overload?

Polycrisis, a relatively unknown term until recently, is an apt characterisation of the past year. It is also a catch-all for our inability to elegantly capture uncertainty and the complex interplay among current global forces. Oversimplifying, the COVID-19 pandemic compounded with the Ukraine war to further destabilise the global economy. We witnessed growing debt burdens, stubbornly high inflation, and rising costs of finance that challenged growth strategies and climate change response plans. The sense of stability vanished abruptly, demanding a recalibration of the 'normal'.

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> While most chief risk officers recently refocused on cybersecurity, the digital revolution may soon be fundamentally affecting money,

Financial sector policymakers are likely to be further challenged on several fronts in 2023. Banks' asset quality is under stress, with indebted sovereigns, firms, and households facing high inflation, recession risks, and tighter financial conditions. As the need for fiscal stimulus intensified and (re-) financing options faded, some sovereigns and banks got trapped in dangerous feedback loops – a continuing global trend as economic policy reacts to energy and supply chain security concerns. Lastly, the ongoing uncertainty fuels concerns about disorderly financial market adjustments and the unwinding of shadow risks in the non-bank sectors.

At the same time, the pressure on financial sector policymakers to confront the all-enveloping climate change challenge is rising. While the debate on the central bank and supervisory mandates dominates headlines, financial sector authorities are hectically preparing for policy adjustments. Most will agree on the need to understand the problem, recognise the risks, and mitigate them. International sustainability standards under IFRS will be finalised, new Pillar 3 environmental, social, and governance disclosure requirements will be rolled out, and authorities will heighten their supervisory expectations for the management of relevant risks and likely turn to Pillar 2 capital requirements. Yet, this is the year where one can expect that the controversial discussion on the prudential treatment of climate risk exposures under Pillar 1 will also heat up.

Finally, challenges from technological advancements have not abated. While most chief risk officers recently refocused on cybersecurity, the digital revolution may soon be fundamentally affecting money, payments, competition, and financial inclusion. While cryptocurrencies now face headwinds, the stablecoin challengers set policymakers on a one-way journey toward Central Bank Digital Currencies (CBDCs). The number of countries researching, developing, piloting, or introducing CBDCs is growing fast. And this may indeed be the year when we see more leaps of faith in central bank money innovation… risks cast aside.

So, can financial sector policymakers handle the overload? The challenges have multiplied, the trade-offs have sharpened, and the costs of policy mistakes have heightened. Yet, one thing is clear. The confluence of challenges will be better dealt with if confronted in a coordinated manner. Acting unilaterally will undoubtedly have unintended consequences that will be hard to contain in a world that is still highly interconnected. The role of the multilateral coordination system – encompassing the international, public, and private sector domains – has never been more vital.

China

The Greater Bay Area, a powerhouse connecting China and the world

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Natalie has worked in mainland Greater Bay Area (GBA) cities for four years, serving banks on audit, IPO and advisory projects. She was founding chair of the ACCA Greater Bay Area Advisory Board in 2019 and is currently a board member advising on GBA matters. Natalie recently graduated from the Inaugural Cohort of the Financial Leaders Programme organised by the Hong Kong Academy of Finance. She sits on HKICPA's Securities and Investment Fund regulatory advisory panels, where she shares best practices with the industry and regulators. Globally, Natalie is an ACCA Council Member and Vice-chair of its Remuneration Committee.

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Kim is a partner at Deloitte China mainly serving financial institutions in Hong Kong. He specialises in providing audit and assurance services to banks and licensed corporations in Hong Kong. His banking clients range from local banks, Chinese banks to large foreign investment banks operating in Hong Kong. He has also advised his banking clients across a wide range of topics including license application, credit risk management and regulatory compliance. Apart from banking clients, he also has considerable experience in providing audit services to clients in the securities brokerage and investment management businesses.

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Cyril Chan is a Deloitte consulting partner specialising in financial services, enterprise technology and operate practice in Hong Kong. He has more than 30 years of solid consulting, banking and financial industry experience. He specialises in IT strategy formulation, mission-critical IT systems implementation, core banking modernisation and fintech, interbank settlement and real-time gross settlement, securities systems implementation and technology risk management, etc. Prior to joining Deloitte Consulting, Cyril was CIO and Head of Technology of two major banks in Hong Kong. Cyril has extensive experience in strategising technology development for banks, driving cost-to-income ratio improvement, orchestrating and executing fintech journeys, enabling API open banking, cross-border wealth management scheme, digital account opening and servicing, as well as delivering in-sourcing and out-sourcing workforce transformation.

Background of Greater Bay Area

The Greater Bay Area (GBA) concept was first introduced in 2015 as part of China's strategic plan to open itself up to the world. In 2017, the Framework Agreement on Deepening Guangdong-Hong Kong-Macao Cooperation in the Development of the Greater Bay Area was signed, which provides a more directive framework on the development of GBA. In 2019, the *Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area* sets a new milestone in the GBA. According to the plan, Hong Kong is to consolidate and enhance its status as an international financial centre, to strengthen its status as a global offshore RMB business hub and its role as an international asset management centre and a risk management centre, and to promote the development of highend and high valueadded financial, commercial and trading, logistics and professional services.

The GBA comprises eleven cities in the Southern China region covering the Hong Kong Special Administrative Region, the Macao Special Administrative Region, Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen and Zhaoqing in the Guangdong Province.

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Covering 56,000 square kilometres, the GBA has a population of over 86 million and generated a combined gross domestic product (GDP) of RMB13.1 trillion as of 2022. According to a preliminary estimation released by the National Bureau of Statistics of China on 28 February 2023, China's GDP in 2022 was RMB121 trillion, up by 3.0 percent over the previous year. When we focus on the GBA economic growth, the combined GDP of the nine municipalities and the two SARs in the region (i.e. RMB13.1 trillion) contributed around 10.8% to the national GDP in 2022. Hong Kong, Shenzhen and Guangzhou accounted for 66.5 per cent of the total GDP contributed by GBA, and ranked 4th, 9th and 25th respectively in the latest Global Financial Centres Index (GFCI 32). These achievements, with the GBA having one of the largest populations of high-net-worth individuals in the world,[1] have made it one of the world's most robust and sustainable financial industry clusters.

As one of the most open and economically vibrant regions in China, the GBA plays a significant strategic role in the overall development of the country and serves as a new attempt to break new ground in pursuing its opening up on all fronts. A number of initiatives tailored to the special circumstances of the GBA were introduced to connect the people and business in the region. In particular, the Cross-boundary Wealth Management Connect Scheme in the Guangdong-Hong Kong-Macao Greater Bay Area (WMC) is one of the key initiatives that is relevant to the banking and capital markets sector.

Wealth Management Connect

The WMC pilot scheme was launched in September 2021. The pilot WMC refers to a scheme where eligible residents in Mainland cities in the GBA, Hong Kong and Macau invest in wealth management products distributed by banks in each other's market through a closed-loop funds flow channel established between the banking systems of the three jurisdictions. The WMC consists of the Northbound Scheme and the Southbound Scheme. The Northbound Scheme refers to eligible residents in Hong Kong or Macau investing in wealth management products distributed by Mainland banks via designated channels, while the Southbound Scheme refers to eligible residents in Mainland cities in the GBA investing in wealth management products distributed by banks in Hong Kong or Macau.

There is an aggregate quota of RMB150 billion for each of the Northbound and Southbound schemes. Although on an increasing trend, as of February 2023, the utilisation of quota for WMC remained low compared to the Stock Connect and the Bond Connect which we are going to discuss below.

1. Yi Tsai-Hurun China Wealth Report 2022, published on March 10, 2023. https://www.hurun.net/en-US/Info/Detail?num=VXF1Q91WF5AF

Connecting China and overseas financial markets

Apart from the WMC, China also gradually opened up its stock and bond markets to investors from overseas through the Stock Connect and the Bond Connect since 2014 and with the Swap Connect in the pipeline for activation in the near future. Hong Kong plays a significant role in all these "connects" to bridge the Mainland China market with Hong Kong and, through Hong Kong, with many overseas financial markets.

Stock Connect

The Stock Connect scheme was launched in November 2014, enabling mutual market access between the Shanghai Stock Exchange (SSE) and the Stock Exchange of Hong Kong Limited. The programme allows Hong Kong and international investors to access the Shanghai stock market (northbound trading), and qualified Mainland investors to tap the Hong Kong stock market (southbound trading). It accelerated the integration of Mainland markets with the world and underpinned Hong Kong's evolving role in the Mainland's capital market liberalisation and opening up.

Mutual market access was expanded when Shenzhen-Hong Kong Stock Connect was launched in December 2016 where Shenzhen Stock Exchange (SZSE) is also accessible by Hong Kong and international investors. In July 2022, the Stock Connect was expanded to include eligible exchange-traded funds (ETFs), allowing Hong Kong and foreign investors to trade ETFs listed on the SSE and SZSE, and investors from Mainland to invest in Hong Kong-listed ETFs.

In 2022, the total trading value of northbound trading at the Hong Kong Exchange to the Shanghai Stock Exchange amounted to over RMB11 trillion while the value of trade with the stock exchange in Shenzhen reached almost RMB13 trillion.

In December 2022, the China Securities Regulatory Commission (CSRC) and Hong Kong's Securities and Futures Commission (SFC) announced to further expand the scheme, providing foreign investors access to an additional 3,000-odd eligible companies listed in Shanghai and Shenzhen via Hong Kong. In turn, Mainland investors will have the opportunity to invest in foreign firms that are listed in Hong Kong.

Bond Connect

The Bond Connect scheme, established in July 2017, is a breakthrough in China mutual market access allowing investors from mainland China and overseas to trade in each other's bond markets through a market infrastructure linkage in Hong Kong. Northbound trading commenced on 3 July 2017, offering China Interbank Bond Market (CIBM) access to a broader group of international investors, and Southbound trading was launched 24 September 2021, providing a convenient and efficient channel for Mainland institutional investors to invest in offshore yuan-denominated debt, known as "dim sum" bonds, through the Hong Kong bond market. The total monthly trading volume of Northbound Bond Connect reached a new record high of RMB823.9 billion in December 2022. Chinese government bonds and policy financial bonds remained as the most popular bond types, accounting for 49 per cent and 37 per cent of the trading volume respectively in January 2023.

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Swap Connect

The Swap Connect scheme was announced in July 2022 and the related rules and guidelines are still under consultation and development. The Swap Connect scheme is an arrangement to allow investors in Mainland China to access the financial derivatives market in Hong Kong, and for Hong Kong and overseas investors to access financial derivatives markets in Mainland China.

The Swap Connect scheme is regarded as the next significant milestone in progressing the further development and connectivity between the financial markets of Mainland China and Hong Kong. The access to onshore derivatives in Mainland China gives foreign investors new risk management tools to manage their Chinese bond investments, allowing them to manage their onshore interest rate exposure better. This also creates synergies with the Bond Connect.

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Looking forward

These connect schemes have facilitated the further opening up of Mainland China's financial market reform. With the integration of Hong Kong and Macau into the GBA as a strategic long-term development direction, more connectivity can be expected across channels such as financial markets and talent pools. An influx of opportunities for banks and multinational corporations to tap into the GBA market can be expected.

On 23 February 2023, the China policy makers rolled out a package of 30 detailed measures, allowing qualified financial institutions in Hong Kong to set up subsidiaries in the Qianhai cooperation zone to expand their businesses on the Mainland. The goal is to further promote China's financial opening-up and innovation, and to deepen financial cooperation between Mainland China, Hong Kong and Macau. In early March 2023 Hong Kong has fully reopened its border with Mainland China and it is bracing itself for a rapid increase in cross border activities.

In addition, China was also off to a good start in 2023 after fully reopening its borders to international and cross-border travel. This measure has signalled not only a full-fledged resumption of normality after enduring three years of COVID-19 pandemic, but also an excellent opportunity to boost the development of the GBA to form an integrated economic powerhouse by 2035. With some of the highest levels of opening-up and economic vitality in China, the GBA is set to play a leading role in China's economic advancement for the next decade. This leaves little doubt that the GBA will continue to offer plenty of opportunities for the banking sector and financial institutions in general.

Greece

Greek banking market – Recent regulatory developments and market trends

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He is acting for major Greek and international clients, such as banks, payment institutions, issuers, service providers, large corporates, investors and international institutions on complex and innovative transactions and projects, advisory work as well as filings and representation before public and regulatory authorities.

Through his carrier, he participated in law-making committees as an expert on his practice. He is a regular speaker in conferences and events and contributes occasionally to legal publications.

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Theodore Rakintzis is a Partner of the firm with significant expertise on Banking, Finance & Capital Markets, M&A and Real Estate.

During the last decade, he worked as a lead partner in breakthrough transactions with transnational elements and has also advised international and domestic groups in high profile restructurings as well as IPOs, rights issues and take over bids.

Theodore is also a member of KG's Private Wealth Structuring Practice Group having long established experience in advising family offices and individuals on various private law aspects, such as inheritance and succession planning, wealth structuring, asset transfer and asset protection and establishment of trusts and is further involved in many art-related projects. He is a member of the Athens Bar (2001) and read law in Athens and Cambridge (University of Cambridge).

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Athanasios is a member of the Athens Bar since 2018 and of the New York Bar since 2019. He studied law at the Democritus University of Thrace and earned his LL.M. at the New York University Law School.

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Introduction

In the wake of the 2009 Greek fiscal crisis the strengths of the Greek banking system were severely tested, while during the following decade the banking system faced abrupt consolidation and recapitalisation through EU funding. The Hellenic Financial Stability Fund (HFSF) was established for this purpose and became the major shareholder in all four systemic banks resulting from such consolidation phase (Alpha Bank, National Bank of Greece, Eurobank and Piraeus Bank). In parallel, the Greek banks had to deal with the mounting stocks of non-performing loans (NPLs), reaching their historical height in March 2016 (€90.3 bn).

> "Several systemic banks have already participated in the issuance of 'green' bonds, and in general support projects that promote the environmental footprint of Greece.

Nonetheless, since 2019 the country started to turn page and the first signs of return to the pre-crisis normality is being noted supported by the impressive improvement of the fundamental macroeconomic indices of the Greek economy. According to the Annual Report of the Governor of the Bank of Greece, the NPL ratio to total loans reached at the end of 2021 its historic lower position since the beginning of the fiscal crisis (12.8%), albeit higher to the European average of 2.1%, continuing its further de-escalation due to the effective management of the stocks by the systemic banks and the continuing growth of the Greek economy despite the Covid-19 pandemic and the geopolitical challenges Europe (and the globe) continues to face in 2022 and further.

During the crisis period, the HFSF, through its participation in the governance and management of the Greek systemic banks, played a key role to the stabilization of the Greek banking system. Now HFSF's objective is to progressively implement the divestment phase in order for the Greek systemic banks to fully return to the private sector. Currently, HFSF has significantly reduced its interests held in the systemic banks and the banking landscape starts changing with new entries. The country is one step away to regaining its investment grade, which is highly probable to occur by the end of this year following the general elections anticipated to take place within the first half of 2023.

In terms of regulation and supervision, Greece follows consistently European rules and trends, a fact that contributes even more to the stability of the overall system.

It should be noted though that in addition to the regulatory changes taking place in the banking sector, the Greek banks have started adapting to the digital era challenges and the competition that they are facing from international fintech companies by adopting many initiatives such as electronic platforms and mobile applications through which clients can apply for loans or just manage their bank accounts, e-wallets as well as establishing i-shops, which provide all banking services that conventional shops offer, but without the physical presence of employees.

Further to the digital transformation, Greek banks are also embracing the Environmental, Social and Governance (ESG) criteria for the provision of financing to corporate and non-corporate clients. Several systemic banks have already participated in the issuance of 'green' bonds, and in general support projects that promote the environmental footprint of Greece. Moreover, as part of the ESG initiative most of Greek banks have incorporated environmental and climate factors in their strategy and their operational framework, in order to comply with their new regulatory obligations.

Most importantly, Greek banks have now been able to focus in resuming and expanding their credit role offering in many instances significantly competitive financing terms compared to international banks, thus contributing in the turnaround of the economy.
For illustration purposes, we have compiled below selective information on recent developments regarding regulation of the Greek banking sector.

Recent regulatory developments

a) Whistleblowing Law (Greek Law 4990/2022)

Among the most significant regulatory developments in 2022, is the enactment of Greek Law 4990/2022 on the protection of persons who report breaches of Union law, transposing Directive (EU) 2019/1937 (the 'Whistleblowing Directive') into Greek law. Although taking place one year later than what the Whistleblowing Directive provided, the enactment of Greek law 4990/2022 is a welcome step towards the harmonisation of the Union law on whistleblowing, that will also safeguard the public interest and uphold fundamental rights, such as freedom of expression, the right to fair and just working conditions, and the protection of personal data. The objective of the above Law is the establishment of an internal and external reporting system for violations of the European Union law, while also providing protection to reporting persons through the imposition of stricter controls and sanctions.

It is estimated that the importance of the Greek Law 4990/2022 will be paramount for the operation of the banking and financial sector, since it also applies to breaches of the Union law on financial services, products and markets, and prevention of money laundering and terrorist financing are specifically within the scope of the law. More specifically, the above Law applies to any reporting persons (including self-employed persons, shareholders and persons belonging to the administrative, management or supervisory body of an undertaking, volunteers, paid or unpaid trainees, any persons working under the supervision and direction of contractors, subcontractors and suppliers, individuals whose employment agreement has ended, candidate employees as well as intermediators and third persons who are connected with the reporting persons and who could suffer retaliation in a work related context), working in either the public or private sector, that have become aware of potential breaches in a work-related context, and who have reasonable grounds to believe that the matters reported by them were true at the time of reporting.

To enable the above internal reporting, companies shall set in place internal reporting channels, and companies that have 50 or over employees shall also designate an Officer who will be responsible for receiving and monitoring the reports. As far as the external reporting is concerned, reporting persons shall approach the National Transparency Authority (in Greek "E.A.D."), who will be responsible for the handling of such reports.

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In order to enforce the provisions of Greek Law 4990/2022, the latter ensures the protection of the whistleblowers against any form of retaliation and provides for the imposition of sanctions for persons who (a) obstruct or attempt to obstruct reporting, (b) retaliate or bring vexatious proceedings against reporting persons, and (c) infringe the obligation to maintain the confidentiality of the identity of whistleblowers, persons concerned and any other person mentioned in a report. Sanctions can take the form of criminal enforcement or monetary fines. Accordingly, the above Law provides for criminal and monetary sanctions to whistleblowers that knowingly report or publicly disclose false information.

b) Rules for facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences (Greek Law 4920/2022)

Part B (arts 34-55) of Greek Law 4920/2022 transposed Directive (EU) 2019/1153 on laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences. Transposition of the above Directive will enhance the ability of designated Member States' authorities competent for the prevention, detection, investigation or prosecution of criminal offences to have direct access to information held in centralised bank account registries. It also lays down measures to facilitate access to law enforcement information by Financial Intelligence Units for the prevention and combating of money laundering, associate predicate offences and terrorist financing and measures to facilitate cooperation between Financial Intelligence Units and Europol.

> "The segregation of the cover assets from the rest of the assets is achieved from a legal point of view by the creation of a pledge over the cover assets.

The Law provides the right to several Greek authorities to have access to bank account and other financial information through the Registry System of Bank and Payment Accounts. Furthermore, in order to ensure the confidentiality and the safety of the bank account information that is shared through the system, the above Law provides for several qualifications for the persons that may have access to such information. It should be underlined though, that such access is granted subject to the provisions applicable for the lifting of banking secrecy rules, which continue to apply.

Greek Law 4920/2022 establishes also an information disclosure mechanism with the corresponding authorities of other EU Member countries and provides for the cooperation of the Greek authorities with Europol. It remains to be seen how the new provisions will affect in practice the way criminal investigations are conducted within the EU, but it is for sure an important development impacting on the operational aspects of the AML regime.

c) Covered Bonds (Greek Law 4920/2022)

Part A (arts 1-33) of Greek Law 4920/2022 transposed into the Greek legislation Directive (EU) 2019/2162 on the issue of covered bonds and their regulatory supervision. This Law replaces the previous regime introduced in 2014 aiming to set a clearer legal framework for the issuance and supervision of covered bonds in order to ensure a high-level protection for the investors and adopt a solid framework for a financing and re-financing option used widely by all four Greek systemic banks.

Covered bonds are debt instruments, in the form of bond loans, issued by credit institutions as defined in the Regulation 575/2013 upon prior authorisation by the Central Bank of Greece ("BoG").

Covered bonds and the financial obligations deriving therefrom shall be at any time secured by high quality assets including indicatively public sector debt securities, loans secured by residential or commercial immovable property. Pursuant to the "nominal principle", upon assessment of the value of the required coverage by independent appraisers, the aggregate principal amount of all cover assets should be ensured to exceed at least by 5% the aggregate principal amount of outstanding covered bonds, unless the BoG determines otherwise.

The cover assets constitute a separate group of assets, distinctive from the other assets of the issuer, a fact that is important especially in cases of commencement of insolvency proceedings. Pursuant to the "dual recourse principal", in case the priority claim related to or arising from the covered bond cannot be fully satisfied, bond investors shall have a claim against the rest of the insolvency estate of the issuer, which ranks pari passu with the claims of the issuer's ordinary unsecured creditors.

The segregation of the cover assets from the rest of the assets is achieved from a legal point of view by the creation of a pledge over the cover assets. The cover assets may be replaced by other assets of an equal value or new assets may be added to the cover assets, a fact which demonstrates the dynamic nature of the cover and that it is in fact a form of floating security.

d) EBA Guidelines of the Limited Network Exception (BoG Executive Committee Act 214/12.12.2022)

Another worth noted recent regulatory development is the issuance of BoG Executive Committee Act 214/12.12.2022 (the Act), which transposed into the Greek legal framework the European Banking Association (EBA) Guidelines on the limited network exclusion (LNE) under PSD2 (EBA/GL/2022/02). Since the enactment of PSD2, the application and implementation of the LNE has been significantly diverging in the EU member countries, impeding the single EU market for payment services and allowing regulatory arbitrage opportunities. Furthermore, entities trying to make use of the LNE were not able to ensure a uniform approach to their payment instruments, since some regulatory authorities granted the relevant exceptions, while others did not. Moreover, consumers making use of excluded payment instruments were not aware that they did not benefit from the PSD2 provisions.

Thus, the EBA arrived at the view that it should issue guidelines aiming at harmonising various of aspects in relation to the application of the LNE. These include, inter alia, the use of payment instruments within a limited network, the criteria and indicators to qualify a limited network of service providers or a limited range of goods and services as such, the application of the LNE by regulated entities, and the notification requirements. Accordingly, the BoG is now responsible for reviewing and deciding on whether to grant the LNE to the applying entities. It is worth mentioning that the BoG has already provided two LNEs before the formal issuance of the above Act.

According to Greek Law 4537/2018 and the above Act, issuers of payment instruments under the LNE shall submit a notification to the BoG, if, in any 12-month period, the total value of payment transactions executed exceeds €1,000,000. The Act further specifies the content of the notification and the assessment rules for the quantitative criterion.

The BoG maintains on its website a public register disclosing the name of the entity that has received the LNE and a summary of the services performed.

Market prospectives

New landscape: In terms of market players the four systemic banks together with the *quasi* systemic Attica Bank continue playing a central role while new significant entries are noted (Optima bank, Pancreta Bank, Vivabank). In parallel, new players have emerged in the adjacent field of financing, payment institutions and fintech providers. The HFSF has already reduced its holdings in the systemic banks with the exception of National Bank of Greece where it still retains a robust 40.39%. HFSF's ongoing divestment plan aims at achieving full exit by 2025 from the systemic circle. The lower interests held in Eurobank, Alpha Bank and Bank Piraeus resulted through capital increases of developmental nature (as opposed to recapitalisations up until 2015), which permitted the banks to further diversify their shareholder base and secure strong capital ratios for the coming years.

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Further in response to structural market changes, the banks proceeded in hive-down processes to separate the core banking assets and activities from the holding vehicle retaining residual activities and assets. Such moves were necessary to provide operational flexibility to the banking groups and make them more attractive targets for investors on the stock exchange.

Steps towards innovation: With the increasing importance of technology in banking business and due to pressures from competitive fintech and payment service market players, systemic banks have entered into complex innovative deals (joint ventures and long-term outsourcing arrangements) with strategic partners in the fields of merchant acquiring, card management and related payment businesses. Along with providing capital benefits and cost efficiencies, such transactions primarily aimed at addressing new market needs and providing know-how and solutions with the support of global players such as EVO/Global Payments, NEXI, Worldline and others.

The turn of the Greek market towards innovation is further evidenced by the establishment of a program called "Regulatory Sandbox" run by the BoG. The aim of the program is to provide entities that have been authorised by the latter with a controlled environment to test their innovative financial propositions for a specified period . Participants will have the opportunity to test their innovative products and services in mini-scale and in a safe environment, in alignment with the supervising authority, and ensure their functionality, before launching them in a broader market. Soon the BoG intends to expand the program to unauthorised entities.

NPLs: Following the significant clean-up of the banks' balance sheets from NPL exposures , the first examples of restructured loan portfolios returning to the banking system are observed. This is a reverse process signifying a return to a long awaited normality. The first example is the recent acquisition by Optima bank of a portfolio of performing loans in the secondary market (from the 2020 Galaxy securitisation).

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The turn of the Greek market towards innovation is further evidenced by the establishment of a program called "Regulatory Sandbox" run by the BoG.

Bancassurance: Finally, as the diverse insurance sector is starting to consolidate to address market challenges, it is expected that there will be a consequential impact on the Greek bancassurance sector. Recent deals such as the sale of National Insurance by National Bank of Greece to CVC Capital, the acquisition of AXA Greece by Assicurazioni Generali and the acquisition of European Reliance by Allianz SE through a tender offer, are reshuffling the cards in the market and bound to shape a new landscape in the related bancassurance sector.

Hong Kong

The Future of Banking in Hong Kong: Resilient, risk-centric and tech-empowered

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Reginia Chan is a partner of Deloitte Advisory (HK) Limited specialising in Fintech and Blockchain. Reginia has more than 14 years of experience in the Banking and Finance Industry.

Reginia has a solid track record of structuring, orchestrating FIRST in the city pioneer projects with banks and financial institutions solving business problems for revenue growth and improving cost efficiency within tight timeline and budget. She has extensive experience in communicating with C-levels to envision the end state by applying the right technologies in business transformation to achieve concrete business outcomes. She has led, masterminded many transformational projects, collaborated with senior key stakeholders of customers to deliver the Fintech, digital, data, process, open banking strategies achieving New-To-Bank, Asset-Under-Management, Net-Promoter-Score and Member-Get-Member business KPIs. She is experienced in strategising and planning front to back office transformation and improvement programs all the way from design to execution and implementation.

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Nick Conlon is a partner within our Banking practice and has a wealth of experience in leading large scale banking transformation programmes across multiple geographies. His specialty is within Digital, and in Commercial and Corporate Banking, but also has a range of experience in Retail Banking, Credit and Insurance.

He started his career with HSBC, working in North America, UK and Asia as part of their international programme, and moved to Hong Kong in 2014. Since then he has led various digital transformation programmes, including designing, delivering and launching market leading banking journeys and applications in Hong Kong; introducing machine learning to credit decisioning for commercial banks globally; and running Customer Websites across Asia Pacific. Most recently he also led a 1,900 people consulting practice for commercial and Corporate Banking across Asia Pacific, Middle East and Latin America.

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Banks undoubtedly play a central role in any economy. As an international financial centre, Hong Kong sees its financial services industry as a core pillar of its economy, and well-functioning banks as vital engines that drive healthy business activities and economic growth. Building resilience in the banking sector is thus a critical mission, especially at a time when the economy is trying to recover from the aftershock of the pandemic, and navigate through a long list of macroeconomic challenges including geopolitical conflicts, high inflation, and more.

During the COVID-19 pandemic, the city's principal banking industry regulator, the Hong Kong Monetary Authority ("HKMA"), focused their work in three main areas, namely, promoting and facilitating prudential resilience, digital transformation, and green banking. Recent data released by the HKMA shows the city's banking sector remained resilient in 2022. The development of the Greater Bay Area, a region consisting of eleven cities in Southern China including Hong Kong, along with other Connect schemes will further strengthen Hong Kong's role as a major financial services hub.

"During the COVID-19 pandemic, the city's principal banking industry regulator, the Hong Kong Monetary Authority ("HKMA"), focused their work in three main areas, namely, promoting and facilitating prudential resilience, digital transformation, and green banking.

With pandemic restrictions eased, and the Mainland China reopening its border, it is imperative that the Hong Kong banking industry puts the right strategies in place to seize the opportunities ahead. To be successful in the new normal, the Hong Kong bank of the future will need to embrace technology and cultivate a risk culture to transform boldly as both business models and regulatory landscape continue to evolve.

I. Prudential Resilience:

Continued increase in expectation in credit risk management

Banks in Hong Kong face a unique set of opportunities and challenges because of the city's status as a special administrative region of the People's Republic of China, its well-established connection to the international markets, and its function as a "super-connector" between Chinese and international businesses. This special position demands banks to comply with domestic and global regulatory standards amidst immense cultural differences and political stances. Over the years, the regulators and the market have come to expect banks in Hong Kong to take a stricter, more timely and proactive approach towards credit risk management. In 2022, HKMA has stepped up examinations focusing on asset quality and provisioning to ensure healthy bank books, and these efforts are to be continued in 2023, with health checks on exposures to non-bank financial institutions to be conducted as well. Anticipating tightening measures, it is high time for banks to do a thorough clean-up of their loan books and continue to strengthen their credit risk management systems.

Ability to cope with prolonged stress

Before the pandemic, the Hong Kong economy had not experienced any material slowdowns since the global financial crisis in 2008. In the good times, the market's attention on the quality of credit risk management was somewhat overshadowed by how profitable the banks were and how they could be more profitable. However, the unprecedented shock from the pandemic and the subsequent global economic slowdown put a spotlight on how well banks are managing their higher risk – or potentially problematic – exposures, or industry sectors, and mitigating related losses. While banks in Hong Kong have substantially elevated their loss-absorbing abilities to ensure business continuity since 2008, HKMA have also applied more pressure in their monitoring of banks' management of market and liquidity risk in 2022; conducted in-depth assessment of impacts of monetary tightening on banks; and introduced new scenarios to assess banks' resilience to cope with a prolonged liquidity stress. As Hong Kong prepares for post-pandemic economic recovery, banks will be expected to take a more risk-centric approach when dealing with market and liquidity risks.

Operational and cyber resilience

In 2022, HKMA introduced a new module on Operational Resilience in its Supervisory Policy Manual ("SPM", the manual which sets out the regulator's latest supervisory policies and practices that authorised institutions are expected to satisfy). The regulator also implemented the Cyber Resilience Assessment Framework (C-RAF) 2.0, a risk-based framework for authorised institutions to assess their own risk profiles and benchmark the level of defence and resilience that would be required to accord appropriate protection against cyberattacks[1]). Going forward, boosting banks' operational resilience through better cyber security and third-party risk management (including cloud service providers) will be one of the regulator's key focuses.

II. Digital Transformation:

From Regtech to artificial intelligence, digital technology is transforming many aspects of how Hong Kong banks operate and grow, and digitisation is becoming a key pathway to realising cost efficiency and customer satisfaction.

During the early period of the pandemic, the first virtual bank in Hong Kong officially launched its service to the public, and since then seven more have commenced operations in Hong Kong. As part of its "Fintech 2025 Strategy", the HKMA completed a Tech Baseline Assessment in 2022 which took stock of banks' current and planned adoption of Fintech in the coming three years. The assessment shows that banks in Hong Kong are committed to greater Fintech adoption and most of them expect to make good progress by 2025[2]. It is expected that the regulator will continue to promote and support Fintech adoption in Hong Kong, particularly in the areas of WealthTech, InsurTech, AI and blockchain.

Furthermore, HKMA sees Regtech playing a pivotal role in revolutionising risk management and compliance. As part of its two-year Regtech promotion roadmap that aims to promote Regtech adoption in the Hong Kong banking sector, the regulator launched the Regtech Knowledge Hub in 2022 which enabled knowledge sharing among players in the Regtech ecosystem[3].

Regtech adoption is encouraged by the regulator as a way to strengthen banks' capabilities to combat money laundering and protect customers from fraud and financial crime losses. According to the second Hong Kong Money Laundering and Terrorist Financing Risk Assessment Report published by the Financial Services and the Treasury Bureau ("FSTB") in July 2022, money laundering ("ML") threats to the banking sector remained high in Hong Kong, with bank accounts being the most common vehicles exploited for ML[4]. While the pandemic had accelerated information technology, online commerce and financial services adoption as people's movement were limited by social distancing measures and widespread adoption of work-from-home arrangements, those not previously familiar with these technologies have become more vulnerable to online fraud and related ML risks. The regulator has set priorities in 2023 to support the protection of consumers with regulatory updates and data-driven supervision; maximise public-private partnerships and bank-to-bank information sharing, leverage mule account network analytics and AML Regtech Labs.

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During the early period of the pandemic, the first virtual bank in Hong Kong officially launched its service to the public, and since then seven more have commenced operations in Hong Kong.

1. Deloitte. 2021. Cyber Resilience Assessment Framework (C-RAF) 2.0. https://www2.deloitte.com/cn/en/pages/risk/articles/cyber-resilience-assessment-framework.html [Accessed on 24 February 2023]
2. Hong Kong Monetary Authority. 2022. Tech Baseline Assessment - Key Observations and Way Forward. https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2022/20220623e1a1.pdf [Accessed on 24 February 2023]
3. Hong Kong Monetary Authority. 2023. Regtech Knowledge Hub. https://www.hkma.gov.hk/eng/key-functions/banking/regtech-knowledge-hub/ [Accessed on 27 February 2023]
4. Financial Services and the Treasury Bureau. July 2022. Hong Kong Money Laundering (ML) and Terrorist Financing Risk Assessment Report. https://www.fstb.gov.hk/fsb/aml/en/doc/2nd%20HK%20ML%20TF%20Risk%20Assessment%20Report_e.pdf

As AI technology becomes more mature, AI-based Regtech solutions and applications in other areas of banking can be more widely used for internal processes and risk management. Effective AI-based applications will need to be built based on reliable data, infrastructure support and AI talent that have deep knowledge in the banking and financial domains. Such talent with cross-domains knowledge are hard to find, and given the talent shortage Hong Kong currently faces, the banking sector might have an even tougher time finding the talent to support AI development. Therefore, the HKMA has also set capacity building as a priority in 2023 to help banks upskilling their workforce and attract new talent.

III. Green & Sustainable Banking

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As AI technology becomes more mature, AI-based Regtech solutions and applications in other areas of banking can be more widely used for internal processes and risk management.

Banks have an important role to play in driving forward the sustainability agenda in their own businesses, as well as in businesses they lend to through channelling finances towards building a climate-resilient, sustainable economy.

In 2022, the HKMA issued the Climate Risk Management SPM, which sets the basics of the regulator's expectations on a bank's governance, strategy, risk management, and discloses on climate risk. In 2023, the HKMA continues to step up supervision of climate risk management by introducing a new round of climate risk stress test and providing thematic examinations on climate risk governance. The regulator is also leveraging on Pillar 2 (the framework set out for determining any additional capital that any authorised institution should hold principally to cover risks not captured, or risks not adequately captured by the Pillar 1 regulations) to drive banks to go greener by incorporating climate considerations into the supervisory review process undertaken by the HKMA. Furthermore, the HKMA will build a physical risk assessment platform, and explore initiatives and technology solutions to support the banking industry in identifying, measuring and monitoring their exposures to climate risks. Data availability will also be important to support such risk assessments.

The Future of Banking: Connecting the Dots

Be it tightening prudential regulations, encouraging digitalisation and Fintech, or promoting green finance, they all translate to addressing risks that threaten the overall health of banks, the Hong Kong banking system and the economy as a whole: credit risks, market risks, liquidity risks, operational risks, cybersecurity risks, climate risks, and the list goes on. The underlying theme connecting them all is a strong emphasis on the need for better risk management fit for this digital age to build resilient Hong Kong banks. The next generation of banking therefore relies on having a strong risk-centric culture and talent who have the understanding and all-round ability to identify risks, apply technologies and data capability to provide solutions, and push forward the green finance agenda to achieve sustainability. Banks and regulators in Hong Kong share this clear vision, and ambitious work is underway to deliver a resilient, risk-centric and technology-empowered future of banking.

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BIO

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Key developments & the latest trends in Liechtenstein – from a legal perspective

GASSER PARTNER
RECHTSANWÄLTE

Introduction

Liechtenstein is a small but versatile financial centre in the heart of Europe. It is known for its high economic stability, innovative solutions and "short ways". With a population of around 39,000, Liechtenstein is the fifth smallest economy in Europe and has by far the highest level of prosperity among the EU/EFTA states, as measured by gross national income per capita.[1] At 43%, the share of industry in Liechtenstein's total economic value added is exceptionally high by international standards.[2] Liechtenstein is also a centre for private banking and wealth management, as well as for private label funds. The volume of client assets managed by Liechtenstein banks has risen steadily to over CHF 360 billion in 2021 (net new money of CHF 37.5 billion in 2021) and that of asset managers to around CHF 59 billion in bankable assets.[3]

"One of the biggest trends in recent years has undoubtedly been the digitalisation of businesses, but also of administrative and regulatory processes.

The political and economic stability of the country, evidenced by an AAA- rating by Standard & Poor's and a capitalisation of Liechtenstein banks, with an average tier 1 ratio of 21.74%,[4] is one of the most important pull factors for managers, fund promoters and family offices when it comes to selecting the most suitable domicile for their structures. Another attractive factor is the proximity and connection to both the EU and the Swiss financial market. On the one hand, Liechtenstein is historically closely linked to Switzerland through a dense network of bilateral treaties, a customs union and a common currency. On the other hand, Liechtenstein is a member of the EEA and the EU Financial Services Regulation applies in Liechtenstein after its implementation into the EEA Agreement, which provides Liechtenstein service providers and products with access to the European market through passporting.
One of the country's greatest assets has always been its openness to innovation, not least on the part of the government. This begins with the company law, which is quite flexible and offers many corporate forms and high regard to the principle of private autonomy in structuring. As an early example of this innovative strength, Liechtenstein is still the only continental European jurisdiction with a tradition of trust law dating back as early as 1926. Registering a company is quite easy and the local company register has fast turnaround times. Similarly, regulatory licensing procedures in Liechtenstein are relatively straightforward, reflecting a general reluctance to engage in regulatory gold-plating. Time to market for financial products and intermediaries is notoriously short, and applicants benefit from expeditious administrative procedures and a responsive and well-resourced financial markets authority, the FMA.

Digitalisation

One of the biggest trends in recent years has undoubtedly been the digitalisation of businesses, but also of administrative and regulatory processes. Liechtenstein has built a strong reputation as an early promoter of innovative business models, but also as a first mover in their regulation. Regulation, and in particular the creation of legal certainty, is crucial to facilitate the development of new innovative business models. At the same time, it is important to monitor how existing regulation and market conditions may affect them. The Liechtenstein FMA has proven to be a reliable partner in the implementation of various ambitious projects, helping companies to navigate through legal uncertainties. This is despite the fact that the implemented EU regulation and the anticipation of legal developments at the EU level often strongly influence the path.

1. Government of the Principality of Liechtenstein, Economic and financial data on Liechtenstein Data as of: 24 June 2021, https://www.liechtenstein-institut.li/application/files/3316/3058/6915/Economic-and-financial-data-2021-1-.pdf, (02.04.2023).
2. Government of the Principality of Liechtenstein, 9, 10.
3. FMA Liechtenstein, Liechtenstein Financial Centre 2022, https://issuu.com/fma-li/docs/liechtenstein_financial_centre_2022?fr=sYmY3ZDQ4NTg3NTk (02.04.2023).
4. FMA, 6.

The digitalisation of insurance services and products, so-called Insurtech and other areas of financial markets law have been developing fast in recent years. However, blockchain-based services have been a particularly powerful trend in banking and asset management. Liechtenstein was a first mover in their regulation with the enactment of the Blockchain Act and the creation of a blockchain ecosystem, and has created necessary and much sought-after legal certainty with the local Blockchain Act "TVTG". The law, based on the "token container model", has proven to foster innovation while providing a reliable framework for businesses. The clearest indication of its success is that registration under the TVTG has not only been applied for by start-ups and early adopters of the technology, but established market participants have also registered as service providers in relation to digital assets. The register currently shows registrations by 28 firms and among them some of the biggest and most renowned local banks. Market participants offer banking, custody solutions and asset management, but are also active in tokenisation, infrastructure and trading.

The next important steps in this area of law are Regulation (EU) 2022/858 (the DLT Pilot Regime) and the European regulation on markets in crypto-assets (MICAR). The DLT Pilot Regime will create new opportunities for Liechtenstein market participants, especially at the product level, and is expected to facilitate the realisation of the full potential of tokenised securities. MICAR will provide a passporting regime and thus access to the EEA single market for digital asset service providers and is eagerly awaited by firms operating in a cross-border context. Both regulations are to be incorporated into the EEA Agreement.

Better Regulation for Banks and Asset Managers

At the regulatory level, the government intends to overhaul the framework for investment firms under Directive 2014/65/EU (MiFID II), on the one hand, and credit institutions under Directive 2013/36/EU (CRD) and Regulation (EU) No 575/2013 (CRR), on the other. The initiative comes on the heels of the adoption of Directive (EU) 2019/2034 (IFD) and Regulation (EU) 2019/2033 (IFR) at an EU level, which create a new regulatory framework for the supervision of MiFID II investment firms and asset managers. The new regime is designed to better reflect the specificities of investment firms and asset managers, as opposed to credit institutions and to take much greater account of the principle of proportionality. The first step in this process has already been taken with the publication of the draft bill for the revision of the Asset Management Act (AMA). The draft also contains further modifications and tidies up a number of points that market participants have highlighted in the past. Particularly noteworthy are the proposed clarifications regarding services provided on the basis of reverse solicitation in Art. 37 (2) to (4) AMA and the proposed abolition of the licence requirement for the mere intermediation of asset management services. Finally, and most importantly, the revised law provides for the possibility to apply for a licence only for certain services regulated under MIFID II, such as investment advice or the reception and transmission of orders, rather than for a full asset management licence. This allows for greater consideration of the principle of proportionality with respect to service providers with a narrower range of services and lower risk associated with their business model.

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> Blockchain-based services have been a particularly powerful trend in banking and asset management.

Compliance with International Standards

Anti-money laundering and anti-terrorist financing regulations are always a key factor in the choice of domicile for institutional investors as well as for large family structures. Since the proclamation of the so-called "White Money Strategy" in 2009, Liechtenstein has committed itself to transparency and international cooperation and has increasingly expanded its anti-money laundering measures and has achieved an impressive transformation. Of particular note in this context is the newly published evaluation report by MONEYVAL (the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism), which examined Liechtenstein's compliance with the recommendations of the Financial Action Task Force (FATF) on combating money laundering.[5] The report finds that Liechtenstein's legal and institutional framework allows effective investigation and prosecution of all types of money laundering.[6] As a result, the country is subject to the regular MONEYVAL reporting process, along with only five other jurisdictions that have achieved this status to date.

"One of the most important regulatory and market-driven trends is sustainable finance, which affects both products and processes.

Sustainable Finance

Last but not least, one of the most important regulatory and market-driven trends is sustainable finance, which affects both products and processes. Even before the EU's Sustainable Finance Framework initiative, sustainability was a high political priority in Liechtenstein. Both, the Financial Centre Strategy of the Government and the Roadmap 2025, issued by the Liechtenstein Bankers' Association, place great emphasis on growth through sustainability and innovation and on the contribution of the sector to the sustainable transformation of the economy.[7] The initiative at the European level to increase the transparency and comparability of sustainable investments and to combat greenwashing on a large scale is quite complex, and many steps still need to be taken in this area, both at the regulatory level and at the level of service providers. One of the most important aspects will be the availability of relevant information and data. However, sustainable finance has a lot of potential and we expect market participants to seize the opportunities with innovative solutions and contribute to the further development of this market.

5. MONEYVAL, Anti-money laundering and counterterrorist financing measures: Liechtenstein: Fifth Round Mutual Evaluation Report, May 2022 https://rm.coe.int/moneyval-2022-6-mer-liechtenstein/1680a71000 (02.04.2023).
6. MONEYVAL, 6.

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Despite the various geopolitical events in 2022, deal count remained stable in Luxembourg, which remains one of the prime jurisdiction for foreign investors, notably attracted by the Grand Duchy's stable economy, its AAA rating and practical regulation.

The extensive Luxembourg legal toolbox provides businesses in needs of funding with the most appropriate instrument to raise money. Such legal solutions have benefited from a revamp in the recent past to address the need for alternatives to traditional bank financing and debt instruments.

1. Lending in Luxembourg

The conditions for a company to provide loans were clarified in June 2021 by the Luxembourg financial sector supervision authority, the Commission du Secteur Financier (the "**CSSF**").

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The granting of loans to the public and on a professional basis is usually an activity regulated under the Luxembourg law dated 5 April 1993 relating to the financial sector, as amended (the "**1993 Law**"), and is subject to the issuance by the CSSF of a license for credit institutions or for professionals in the financial sector carrying out lending activities under article 28-4 of the 1993 Law. The licensing requirement applies regardless as to whether the granting of loans is made on a primary basis (i.e. originations of loans) or on a secondary basis (i.e. acquisition of loans).

More generally, any Luxembourg based person carrying out financial services having a regular occupation or business activity of the financial sector falls within the scope of the 1993 Law and is subject to the CSSF's authority and authorisation as a result of its residual competence under article 14 of the 1993 Law.

This being said, a person may still act as loan provider without holding a license in case it does not act on a "professional basis", meaning that it will not make a living out of the activity or the scale of the activity in question compared to the other activities exercised and does not carry out such activity on a regular basis, thereby excluding one-off lending operations.

In addition, the CSSF clarified that a loan should not be considered as being made to the public and therefore out of the scope of article 28-4 of the 1993 Law in circumstances where :

- it is granted to a restricted circle of persons determined in advance (as opposed to a multitude of non-identifiable persons), without specifying any maximum; or
- whose nominal value amounts to at least EUR 3,000,000 (or the equivalent amount in another currency) and which is exclusively granted to professionals, as defined in the Luxembourg Consumer Code.

Finally, the CSSF highlighted the non-application of the article 28-4 of the LFS to professionals carrying out activities whereby the taking up and pursuit thereof are governed by special laws, including notably undertakings for collective investments (UCIs), specialised investment funds (SIFs), pension funds, investment companies in risk capital (SICARs) and securitisation undertakings.

2. New opportunities for the Luxembourg securitisation market

As an alternative to the traditional bank financing, market players may turn to securitisation vehicles which may grant loans and acquire loans without being licensed under the 1993 Law, as long as the operation qualifies as a securitisation transaction within the meaning of the Luxembourg securitisation law of 22 March 2004, as recently amended (the **Securitisation Law**) (and the securitisation vehicle does not issue securities to the public on a continuous basis) and which propelled the Grand Duchy among one of the leading jurisdiction for securitisation transactions.

Among the features of the Securitisation Law, market players are in particular taking full advantage of the compartment asset ring fencing, whereby the assets allocated to a certain compartment of a securitisation vehicle are segregated from the assets of others compartments and only available to satisfy the investors and creditors of such compartment, and the express legal recognition of limited recourse and non-petition principles ensuring the bankruptcy remoteness of the securitisation vehicle and statutory recognition of contractual arrangements in that context.

However, securitisation transactions structuration have evolved over time. Following the adoption of the bill of law 7825 which came into force on 8 March 2022, the Securitisation Law features have been modernised, enhancing thereby Luxembourg's attractiveness for collateralised debt obligations' (**CDOs**) and collateralised loan obligations transactions (**CLOs**) and meet investors' needs.

The new regime provides securitisation vehicle with broader choices with respect to the corporate form that a vehicle may adopt and with respect to the means of funding its securitisation activities. A securitisation vehicle may now raise monies by issuing all sort of financial instruments, while issuance was before limited to the sole financial instruments qualifying as securities. Furthermore, a securitisation vehicle may now contract any type of borrowing, which is no longer limited to specific situations and on a transitional basis.

In order to attract a greater share in the CDOs and CLOs market, the management of the securitised debt exposures is no longer limited to passive management. The securitisation vehicle or a designated third party may take an active role in the management of the securitised debt exposures, as long as those have not be financed by way of financial instruments offered to the public.

To further address any legal certainty issue, the criterions of offer to the public have been expressly laid out in the Securitisation Law, which states that financial instruments are deemed to be offered to the public when their issuance is not directed at professional clients, their denomination is less than EUR 100,000, and they are not distributed by means of a private placement.

Another welcomed feature of this modernisation consists in the faculty for the securitisation vehicle to grant security interests over its assets to any party in relation to the securitisation transactions, thereby offering greater flexibility in terms of deal structuring. An investor in a securitisation transaction may hence obtain funding from a third party which in turn would benefit from a pledge over the securitisation vehicle's corresponding assets.

As a result, we are observing a renewed interest in the possibilities offered by the Luxembourg securitisation regulatory framework and consequently a shift of CDOs transactions which may previously have been set up in jurisdictions other than Luxembourg, reaffirming the Grand Duchy status as a prime securitisation destination.

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3. Crowdfunding

Since the regulation 2020/1503 on European crowdfunding service providers for businesses (the **Crowdfunding Regulation**) came into force on 10 November 2021, businesses in need of financing may now also turn to the general public, by using the services of European crowdfunding service providers (**ECSPs**) either located in Luxembourg or in other EU member states.

ECSPs are legal persons licensed by the national authority of their member state to offer crowdfunding services[1] in their home member state, and which, following certain administrative steps, may passport their services to project owners or investors located in other EU members states, without the necessity to establish a physical presence thereto. The CSSF is in charge of licensing and supervising the ECSPs having Luxembourg as home member state.

1. i.e. the matching of business funding interests of investors and project owners through the use of a crowdfunding platform and which consists of the facilitation of granting loans or the placing of transferable securities and admitted instruments for crowdfunding purposes issued by a project owner or a special purpose vehicle.

Although the Crowdfunding Regulation only applies to crowdfunding services provided to non-consumer project owners (i.e. the relating to offers for an amount of up to EUR 5,000,000 calculated over a period of twelve months per project owner, such conditions are likely to be met by businesses in needs of funding, triggering therefore some obligations for them to comply with).

For example, project owners shall draft and maintain up to date a standardised information sheet (consisting of 6 pages maximum) known as a Key Investment Information Sheet, addressed to investors or prospective investors.

The harmonization of the crowdfunding regulatory framework offers new opportunities to companies which may reach a larger number of investors throughout the European Union, while minimizing the marketing and legal costs.

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> A professional being licensed under the 1993 and/or the 2009 Law and willing to extend its offer of services to virtual assets related services is not exempted from having to register as a VASP.

4. Latest developments for virtual assets

Is the crypto winter over? Financing taking the form of virtual assets, including crypto assets, i.e. virtual assets which may be transferred and stored electronically using distributed ledger technology (**DLT**), have become the object of a renewed interest from both investors and funding seekers.

Although the concept of DLT has been given legal certainty through the amendment to the Luxembourg law of 1 August 2001 on the circulation of securities, as amended by the Luxembourg law dated 1 March 2019, the Grand Duchy has not yet adopted a comprehensive set of rules regulating all aspects of virtual assets related activities.

Depending on the characteristics of the virtual assets to which relate their activities and on the nature of their activities, Luxembourg-based actors may, before starting their activities, need to obtain a license from the CSSF, (i) as a payment institution or electronic money institution under the Law of 10 November 2009 on payment services, as amended (the "**2009 Law**"), should the virtual assets qualify as electronic money (within the meaning of the 2009 Law), or (ii) the 1993 Law, should the virtual assets meet the criterion of financial instruments (within the meaning of the 1993 Law).

In addition, and regardless of whether or not a license is necessary under the 2009 Law or the 1993 Law, any person or non-person providing one or more of the following services, whether on its client's behalf or on its own accounts:

- exchange between one or more forms of virtual assets or between virtual assets and fiat currencies, including the exchange between virtual currencies and fiat currencies;
- transfer of virtual assets;
- safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets, including custodian wallet services; and/or
- participation in and provision of financial services related to an issuer's offer and/or sale of virtual assets;

shall register as a virtual asset services provider ("**VASP**") subject to the Luxembourg law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended (the "**AML Law**").

A professional being licensed under the 1993 and/or the 2009 Law and willing to extend its offer of services to virtual assets related services is not exempted from having to register as a VASP, if applicable, and shall update beforehand the information provided to the CSSF as part of its licensing.

Conscious that this meander of legal provisions and the upcoming regulation on Markets in Crypto-Assets (MiCA) may constitute a challenge for market players, the CSSF has set up a dedicated contact point for anyone contemplating to launch a project involving financial innovation (including distributed ledger technology or virtual/crypto assets) and will provide guidance with respect to any license or registration requirements which may be necessary.

5. Listing on the Luxembourg Stock Exchange ("LuxSE")

Keeping pace with new trends and market participants' expectations, the LuxSE has updated some of its listing processes and confirmed its ambitions to remain the global number one in terms of debt securities listings.

5.1. Virtual asset listing

In January 2022 the conditions under which virtual assets may be listed on the Securities Official List ("**SOL**"), without admission to trading on one of the markets operated by the LuxSE, have been clarified. Are admitted to the SOL the virtual assets operated under the DLT or similar technology, either DLT native securities or tokenised securities (i.e. initially dematerialised or book record securities which have been later tokenised) to the extent the following cumulative conditions are met:

(i) They qualify as financial instruments within the meaning of the Directive 2014/65/EU of 15 May 2014 on markets in financial instruments, as amended (also known as MiFID II);
(ii) They are debt financial instruments;
(iii) They are offered exclusively to Qualified investors in the meaning of the Regulation (EU) 2017/1129 of 14 June 2017 on the prospectus, as amended or issued in a denomination per unit that amounts to at least EUR 100,000; and
(iv) Their pricing is expressed in fiat currency.

The possibility to list crypto assets on the SOL is however limited to issuers having previously issued securities in capital markets or applicants having a proven track record in capital market transactions. In addition, the LuxSE may request the applicant to provide an opinion confirming that an issuance under the DLT or similar technology has legal certainty under the governing law of the securities.

5.2. Fastlane admission process

In addition, since October 2022, the LuxSE has implemented a new alleviated "fastlane" admission process for the listing on its exchange-regulated Euro MTF market of, inter alia, non-equity securities and equity convertible bonds issued by issuers whose shares are already admitted to trading on an EU regulated market or equivalent.

The eligible issuer is required to file an application form as well as a simplified admission documentation containing the terms and conditions of the securities for which an admission on the Euro MTF is sought, instead of having to produce an otherwise prospectus in accordance with the requirements of the LuxSE rules and regulations thereby considerably accelerating the listing admission process.

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Macroeconomics & Geopolitics – From the Covid-19 pandemic to the war in Ukraine

After a stellar 2021 came a turbulent 2022: Following on from supply chain issues juxtaposed to a strong pick-up in demand after the Covid-19 pandemic, global recovery saw a significant setback as a result of the outbreak of war in Ukraine in February 2022. It lead to an escalation of geopolitical tensions, a rise in volatility and a fall in global share prices with the astronomic increase in energy costs and commodities prices now encouraging record rates of inflation.

> “With traditional lenders exercising caution in this environment, private debt funds became a viable alternative.

Whereas the Eurozone and the UK (and temporarily also the US) were hit by double-digit figures, inflation rates in Switzerland remained comparatively low but, in February 2022, exceeded the Swiss National Bank (SNB)'s inflation target of 2% for the first time since the 2008 credit crisis. As far as economic growth is concerned, the Swiss State Secretariate for Economic Affairs expects a growth of Swiss GDP in 2023 of just 1.1%, down from 2.2% in 2022 and 4.2% in 2021. At the moment, it is not possible to say whether a recession is indeed likely in Switzerland rather than just a slowdown in growth.

In the acquisition and leveraged finance space, primary issuances slowed down significantly with declines of almost 50% in the first half of 2022 from record highs in the same period in 2021. With traditional lenders exercising caution in this environment, private debt funds became a viable alternative. However, such funds also seem to have become more selective with a greater focus on safer sectors less exposed to supply chain issues. This has already led to an increase in pricing, less leverage and a move away from covenant light financing documentation towards more conservate terms and more protection for lenders.

Private and foreign banks in Switzerland with their strong focus on investment business were particularly affected by the negative performance of global stock markets which led to an 11% decline in their assets under management. The challenging market environment, together with a considerable number of new regulations and additional disclosure obligations both in Switzerland and the EU (see below) have also shifted the focus of many banks from growth and innovation to cost-cutting, risk and compliance.

Interest rates – From LIBOR to SARON & from free money to a renewed margin business and the March bank failures

The London Interbank Offered Rate (LIBOR) for Swiss francs was replaced, as of 1 January 2022, with alternative risk-free rates, the most common of which being the Swiss Average Rate Overnight (SARON). The transition of banks' loan portfolios from LIBOR to SARON in Switzerland seems to have gone relatively smoothly and certain particularities in the calculation methodology used in the Swiss market in the early stages of the transition seem to have given way to the international standard suggested by the Loan Market Association (LMA).[1]

Another development linked to the replacement of Swiss Franc LIBOR by SARON (or an alternative risk-free rate) is the changing concept of break costs, the rationale for which does not really apply in the case of risk-free rates which are calculated on a daily basis and are not an approximation of the costs to a bank of maintaining a loan over a certain interest period. The standard that appears to have developed in the Swiss market is a combination of a limitation on permitted prepayments and a fee payable upon prepayment.

1. In the early stages of the transition from Swiss Franc LIBOR to SARON, the calculation methodology frequently used, as recommended by the Swiss National Working Group on Swiss Franc Reference Rates, was "cumulative compounded SARON" which differed from the daily non-cumulative compounded rate recommended by the LMA and reflected in its form of rate switch documentation. However, by now the LMA recommended calculation methodology is being applied not only where there are non-Swiss participants in the lending syndicate or in multicurrency facilities but even in purely domestic new lending transactions.

While the rapidly increasing rates of inflation at the beginning of 2022 were initially considered by many as a temporary base effect following the re-opening of the global economy after the COVID-19 pandemic, inflation continued to rise in Q1 and Q2 of 2022 and central banks were eventually obliged to increase their interest rates. The Swiss National Bank (SNB) ended its negative interest rate regime after more than seven years in summer 2022 with the current SNB interest rate (set on 24 March 2023) being 1.50%.

This means that money again has its price and banks might be able to return to higher margins in the extremely important interest margin business.

However, the risks of rising interest rates have become very palpable with the collapse of Silicon Valley Bank (SVB) on 10 March 2023, the largest U.S. bank failure since the 2008 financial crisis. SVB held large portfolios of US government bonds which had significantly lost in value due to interest rate rises. Despite SVB's collapse, central banks continued to hike interest rates in March 2023, albeit by only 0.25% in the case of the US Fed and the Bank of England and 0.50% by the ECB and the SNB.

SVB's collapse was preceded by that of Silvergate Bank on 8 March and followed by that of Signature Bank on 12 March, both of which were heavily focused on crypto assets. On 16 March, a group of big US banks injected USD 30 billion into First Republic Bank which was seen as at risk of failure.

A little closer to home, Credit Suisse's share price dropped by as much as 30% on 15 March following an announcement by its largest shareholder, Saudi National Bank, that it would not make any further investment in the bank after Credit Suisse revealed that it had identified "material weaknesses" in its financial reporting. A statement of support from the SNB later that day and the announcement by Credit Suisse overnight that it would borrow up to CHF 50 billion from the SNB only temporarily succeeded in calming stock markets and so, over the weekend of 18/19 March, the Swiss government, the Swiss Financial Market Supervisory Authority (FINMA) and the SNB together with the two banks involved negotiated the takeover of Credit Suisse by its long-term rival UBS based on emergency legislation and backed by further liquidity assistance from the SNB and government guarantees.

Whether the risk of contagion in the banking sector has been successfully contained remains to be seen.

The rejection of the Swiss withholding tax reform - A missed opportunity

Contrary to many other countries, there is no withholding tax in Switzerland on interest payments in respect of private and commercial loans (including arm's length intragroup loans). However, Swiss federal withholding tax, at a current rate of 35%, is imposed on interest paid to Swiss or foreign investors on bonds and other forms of collective debt issued by or on behalf of Swiss tax-resident issuers. While Swiss interest withholding tax is generally recoverable by Swiss investors and foreign investors that benefit from double tax treaties, the recovery process might be lengthy and burdensome. As a result, the investor base for bonds issued by Swiss issuers is often limited to Swiss investors or bonds are issued through a foreign (often a Luxembourg) subsidiary. Credit financings may be subject to the same treatment if the number of non-bank creditors under such financing exceeds ten or the total number of creditors of a Swiss borrower exceeds twenty (the so-called Swiss 10/20 non-bank rules).

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> Whether the risk of contagion in the banking sector has been successfully contained remains to be seen.

In order to strengthen Switzerland's position as a financial market and treasury centre, the Swiss Federal Council decided in September 2020 to abolish Swiss withholding tax on interest payments (except for interest payments to Swiss resident individuals on domestic bank accounts and deposits). However, a referendum was initiated against such legislative proposal and it was rejected in September 2022 by 52% of voters. Hence, an important opportunity to reform Switzerland's withholding tax regime was missed and the Swiss 10/20 non-bank rules will continue to need to be considered when structuring financing arrangements for Swiss borrowers and, in certain circumstances, Swiss guarantors.

Sustainability – From trend to structural change

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> Swiss regional banks which, in 2021, were still reluctant to confront the topic are now fully committed to integrating sustainability at least in their investment advice.

A shift in perspective

According to the EY Banking Barometer 2023, 96% of banks surveyed (up from 89% the previous year) are taking sustainability into consideration in their advisory process, whereas 77% (up from 72% the previous year) are doing so in their lending decisions.

In particular, Swiss regional banks which, in 2021, were still reluctant to confront the topic are now fully committed to integrating sustainability at least in their investment advice.

Sustainability (self-)regulation

Regulation certainly plays its part in banks taking account of sustainability factors in both their investment and lending business.

In its **Action Plan** for the period 2021-2023, the Swiss Federal Council adopted a national sustainability agenda which places the financial sector at the heart of the **2030 Sustainable Development Strategy.**

Also in June 2022, the Swiss Federal Council launched the **Swiss Climate Scores** for climate transparency in financial investments which are intended to provide institutional and private investors with comparable and meaningful information on the extent to which their financial investments are compatible with international climate goals. The use of the Swiss Climate Scores is voluntary and the indicators range from greenhouse gas emissions and exposure to fossil fuel activities over transition to net zero and management of net zero to credible climate stewardship and global warming potential.

Again, in the same month, the **Swiss Bankers Association** published both its 'Guidelines for financial service providers on the integration of ESG-preferences and ESG-risks into investment advice and portfolio management' and new guidelines for mortgage providers on the promotion of energy efficiency.

In addition, the counterproposal to the Responsible Business Initiative has led to changes in the Swiss Code of Obligations (cf. articles 964a et seqq.) which will increase non-financial reporting obligations for Swiss banks and other large corporates from 2024 (for the 2023 financial year). In-scope companies (public interest companies with an annual average of at least 500 full-time positions and a balance sheet of CHF 20 million or revenues of CHF 40 million) must report on an annual basis on environmental (in particular, climate-related), social and labour matters as well as on human rights and anti-corruption.

In September 2022, the **Asset Management Association Switzerland** (AMAS) established a self-regulation for sustainable asset management in the form of a principle-based framework on transparency and disclosure for sustainability-related collective investment vehicles which will enter into force in September 2023. The framework is binding on AMAS members only but can be adhered to by non-members on a voluntary basis. Importantly, it recognises the possibility to apply comparable foreign standards which are not limited to EU rules.

Additionally, in November 2022, the Swiss Federal Council adopted its **Ordinance on Climate Disclosures** pursuant to which climate reporting for large Swiss companies will come into force in 2024 and require companies to publish their climate risks based on the recommendations of the Task Force on Climate-Related Financial Disclosure (TCFD). For the largest Swiss banks and insurance companies which fall into FINMA's supervisory categories 1 and 2, these obligations have already been in force since July 2021 under revised FINMA Circular 2016/1.

In the EU, the main focus of regulation is on the disclosure of climate and sustainability related information, including in the financial services sector. For Swiss banks that want to sell their financial products in the EU, the **Sustainable Financial Disclosure Regulation** (SFDR) is already mandatory.

Notably, 66% of banks surveyed for the EY Banking Barometer 2023 think these regulations still need to be fleshed out further if sustainability in both lending and investment is to be credible.

From sustainability criteria in financing to financing sustainability

Whereas sustainability seems to be relatively firmly established in the investment business of Swiss banks, institutions are increasingly focusing on lending, in particular, mortgage lending, when expanding their sustainable product range.

However, when it comes to commercial lending, the focus of Swiss banks is still very much on risk, i.e. the exclusion of certain companies or sectors and the inclusion of ESG ratings in credit decisions and pricing (so-called sustainability-linked loans), rather on opportunities, i.e. the financing of corporate transformations and sustainability solutions (through green, sustainable or social loans). Whereas, in the case of sustainability-linked loans, which are constantly increasing in the Swiss lending market and are becoming more and more sophisticated in the process, the use of proceeds is not restricted or tied to a specific project and instead pre-defined key performance indicators and margin discounts or premiums are being used to encourage borrowers towards sustainability, green, sustainable or social loans restrict the use of proceeds to the financing of green, sustainable or social projects and might, therefore, not be suitable for medium-sized entities that do not have projects large enough for an independent structured loan. Additional challenges such as higher financial risk (at least in the short-term), a lack of standards, data availability and ratings (in particular, for SMEs), regulatory hurdles and sometimes still a lack of expertise, means that, when it comes to financing green, sustainable or social projects, new financing solutions may be needed. Among these are mezzanine instruments (with more flexible terms and covenants than senior debt and a debt-to-equity option for lenders), blended finance (i.e. a collaboration with the public sector where the state assumes certain risks and provides additional guarantees, insurances or subsidies to reduce risks for private lenders), specialised intermediaries (such as asset managers) or technological solutions (FinTech, DLT etc.).

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> When it comes to commercial lending, the focus of Swiss banks is still very much on risk.

Green Bonds

Contrary to a certain reluctance in the Swiss bank lending market to embrace green, sustainable or social loans, a considerable number of sustainable, green and even social bonds have been listed on the SIX Swiss Exchange. Also, in July 2022, the Swiss Confederation Green Bond Framework was introduced with a targeted issuance volume of several hundred million Swiss Francs per year and the first Green Confederation Bond for CHF 766 million was issued in October 2022.

Greenwashing

The topic of greenwashing has come under increased attention also from the Swiss regulator, FINMA, which issued Guidance 05/2021 on preventing and combatting greenwashing. For two-thirds of Swiss banks, however, the reputational risk associated with greenwashing is considerably more important than the risk of regulatory sanctions or legal disputes with customers. It is mainly foreign banks that attribute more weight to these consequences of greenwashing which may be due to such banks' experiences in other markets. In the US, for example, the Securities and Exchange Commission has already launched investigations into banks in connection with greenwashing and imposed multimillion dollar penalties.

Bankruptcies & restructurings - The elephant in the room

Alongside the worldwide increase of government debt, companies have also significantly boosted their debt ratios in recent years. The impact of such high debt on the economy was apparent in 2022 with credit defaults by companies such as Greensill, Evergrande, Archegos, Cineworld, Diamond Sports, Envision, Revlon and FTX and a leveraged loan default volume in the US that was three times higher than in 2021.

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> A slowdown in economic growth, rising energy and commodities prices, a drop in share prices and higher interest rates are creating a challenging environment for many companies.

In Switzerland too, a slowdown in economic growth, rising energy and commodities prices, a drop in share prices and higher interest rates are creating a challenging environment for many companies, in particular, those that were already reliant on governmental support to get them through the COVID-19 pandemic and that now find that loan financing is becoming again more difficult and more expensive.

Under the Swiss COVID-19 loan programme, loans with an aggregate volume of over CHF 17 billion were granted and a significant number of those are still outstanding. Apart from the argument that, by saving numerous Swiss companies from bankruptcy in 2020 and 2021, governmental support measures merely masked and continue to mask deeper structural problems in various sectors, it should be noted that a number of important restrictions apply to companies that continue to be financed by COVID-19 loans, in particular, in respect of the upstreaming of cash flows and the granting of upstream security and guarantees.[2]

According to Dun & Bradstreet's statistics on corporate insolvencies in Switzerland, there is a gradual increase in insolvency rates since 2020 (from 487 in 2020 to 637 in 2022) and 61% of banks surveyed in the context of the EY Banking Barometer 2023 expected to see a rise in credit defaults on their SME loan portfolios for 2023 (compared to 43% the previous year).

Whether the long-expected waive of corporate restructurings and bankruptcies will finally arrive in 2023 remains to be seen.

2. A borrower under a Swiss COVID-19 loan is, inter alia, restricted from paying dividends or repaying equity to its shareholders, granting or repaying loans to affiliated parties, refinancing intra-group loans or on-lending proceeds from COVID-19 loans to group companies outside of Switzerland.

UAE
The New Mortgage Law and its Executive Regulations

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Jade has authored many publications in regional legal magazines and presented several seminars in Kuwait and the UAE regarding a range of corporate and capital market matters. Jade is also a lecturer on ADGM laws and regulations at one of the UAE's most prestigious law schools.

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The New Mortgage Law and its Executive Regulations

During the last decade, the UAE has undergone a period of significant legal reforms, with the development of new legislation and the modification and strengthening of existing legislation. This legal reform has been driven by a number of factors, including the impact of the COVID-19 pandemic, and the need to align its legislation with international best practices, to modernise the legal system, improve the business environment, and attract foreign investment. As part of this reform, old laws have been modified and replaced with new provisions that are more modern, efficient, and consistent with the changing needs of the UAE's economy and society.

> “The New Mortgage Law highlights the efforts of the UAE to improve its legal framework and provide efficiency and transparency of lending and borrowing practices in the UAE.

In fact, the UAE has introduced new laws and regulations covering a wide range of areas, including foreign direct investment, company formation and governance, employment, and personal property security. The UAE has also implemented various new banking regulations in recent years in order to promote financial stability, enhance consumer protection, and keep pace with international best practices to maintain its position as a leading financial centre in the region.

These new and modified laws are designed to provide a clear and predictable framework for investors and businesses, to protect the rights of all parties involved in business transactions, to support the growth and development of the UAE economy, and to provide a stable legal framework covering all aspects of transactions.

The continued development and improvement of the legal system in the UAE are expected to support the country's overall economic growth and development in the years to come and has already proven a positive impact on the investment climate in the country.

One of the notable developments in the UAE's recent legislation is the new Federal Law Number 4/2020 which was issued on 28 May 2020, and published in the Official Gazette in June 2020 (the "New Mortgage Law"). The New Mortgage Law repealed Federal Law Number 16/2016 (the "Old Law") and preserved some key features which were introduced under the Old Law.

The New Mortgage Law is a comprehensive legislative update that primarily governs the mortgage of certain tangible and intangible assets, existing and future assets, and addresses the establishment of a new securities register, a decisive action that contributed to instilling confidence in the market and resolving various legal and operational obstacles that previously deterred lenders under the previous legislation.

Accordingly, the New Mortgage Law highlights the efforts of the UAE to improve its legal framework and provide efficiency and transparency of lending and borrowing practices in the UAE.

In the following article, we will (i) review the key developments introduced by the New Mortgage Law and (ii) its implementation by way of executive regulations.

I- The New Mortgage Law:

The New Mortgage Law, which came into effect on the 1st of June 2020, is considered one of the most important developments in the UAE's recent legislative reforms. This law updates the regime for registering security interests over movable assets, providing greater transparency and efficiency in the registration process and enhancing the protection of the rights of creditors and borrowers. The New Mortgage Law replicates the provisions of the Old Law on the mortgaging of movable property as security for debts, and introduces new provisions.

This law allows the creditors to register their security interests, which is defined by the New Mortgage Law as a real right over a movable asset that is created under a contract of guarantee (between the guarantor and the obligee) for the purpose of securing the performance of an obligation.

The New Mortgage Law outlines amongst others (A) the assets that may constitute collaterals, (B) the registration of the security interest, and (C) the enforcement of security rights on collaterals.

A- Assets that may constitute collaterals:

The New Mortgage Law has provided more clarity about the categories of movable assets that are eligible for use as security for debts. According to the New Mortgage Law[1], any current or future, moveable corporeal or incorporeal asset, any portion thereof, or any indivisible right thereto may qualify as collateral.

This includes (i) accounts receivable, (ii) accounts payable at banks, (iii) bonds and documents transferable through delivery or endorsement, which prove the entitlement to an amount or ownership of goods (including the commercial paper, bank deposit certificates, documents of carriage and goods deposit certificates), (iv) equipment and work tools, (v) material and moral elements of a business, (vi) goods intended for sale or lease, raw materials and goods under manufacturing or transformation, (vii) agricultural crops, animals and products thereof, (viii) fixtures, and (ix) any other movable assets suitable as subject of collateral.

However, some assets cannot be subject to a security right[2], including (i) movable assets over which Security Interests should be entered in special registers (such as shares registered before the DED, cars registered with the RTA, and immovable property), (ii) expenses, wages, salaries and workers' compensation, and (iii) public funds, endowment funds and funds of foreign diplomatic and consular entities and intergovernmental organisations.

We note that with the New Mortgage Law, some assets are now excluded from the list of exempted assets (but were included in the Old Law), such as the objects of use allocated for necessary personal or home purposes, dues of the insured or the beneficiary under an insurance contract, and future rights resulting from inheritance or will.

B- Creation of the Register and Right of Access:

In fact, the Old Law introduced the creation of an electronic register intended for registering and publicising the mortgage over movable assets which are pledged as security for the repayment of a debt.

The New Mortgage Law's implementing regulations outline the specific procedures for registering security on the new register. The Implementing Regulation of the law governs the functioning of the register[3], the procedures for entering securities, and the fees for using it. Information contained in the register is made accessible to the public as determined by the New Mortgage Law's implementing regulations.

The public may access the information contained in the register by virtue of a request[4], and accordingly, the public may obtain a hard copy or an electronic report on the information contained in the register. The report shall have a binding force as evidence of the date and time of publicity and of any information publicised in the Register when authenticated by the Register managing authority.

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> The New Mortgage Law has provided more clarity about the categories of movable assets that are eligible for use as security for debts.

C- The Enforcement of security rights:

The Enforceability of the security interest against third parties shall grant the oblige (which is defined in the New Mortgage Law as the creditor benefitting from the security interest) the right to pursue the collateral with any person to whom it is assigned for enforcing against such person and claiming their rights[5].

As per Article 27 of the New Mortgage Law, in the event

1 As per Article 3 of Federal Law No. 4/2020.
2 As per Article 4 of Federal Law No. 4/2020.
3 As per Article 6 of Federal Law No. 4/2020.
4 As per Article 7 of Federal Law No. 4/2020.
5 As per Article 18 of Federal Law No. 4/2020.

of a failure by either the guarantor or the principal debtor to fulfil the obligations outlined in the guarantee contract, the obligee may serve written notice of their intent to seize and enforce the collateral, the lender can proceed to an enforcement under Article 27, without the need to pass by the court provided that he has served a legal notice to the borrower. If necessary, the collateral will be separated from any other attached assets, and disposed of within the specified time frame in the notice, subject to the following conditions being met:

a- Issuing notice to other parties with rights over the collateral listed in the register.

b- Informing the holder of the collateral if it is in the possession of a third party.

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> In the UAE, Executive regulations play a crucial role in complementing and implementing the country's federal laws.

c- Notifying the owner of the property where the collateral is located, the mortgage creditor of the property, the owner of the movable asset to which the collateral is attached, and the holder of the asset.

As per the New Mortgage Law, the Obligee may, without submitting a request to the Court, specify the manner, method, time and place as well as the other aspects of the sale.

The collateral shall pass to its buyer or any other assignee who acquires a right to it, free of the security interest held by the enforcing obligee and any other rights over the collateral, except for those rights that have priority over the enforcing obligee's right. When selling the collateral, the enforcing obligee shall perform the following actions:

a- Applying the proceeds of enforcement to pay off the secured obligation, after deducting reasonable execution expenses.
b- Returning any surplus proceeds and enforcement returns to any party with a lower priority right over the collateral who has notified the enforcing obligee of their claim prior to distribution, to the extent of their claim, then refunding the remaining balance to the guarantor.

While the New Mortgage Law introduces new key developments as highlighted in paragraph (I) above, it does not address the procedures pertaining to such new developments. The procedures pertaining to the new provisions of the New Mortgage Law are addressed in its implementing regulations, which, (as detailed below), primarily provides a detailed explanation of the relevant procedures for the execution of the New Mortgage Law.

II- The Executive Regulations for New Mortgage Law:

In the UAE, Executive regulations play a crucial role in complementing and implementing the country's federal laws. They serve as the primary means for translating the general provisions of the federal laws into specific and concrete guidelines and procedures.

The role of executive regulations is to provide further detail and clarity to the laws, establish implementation mechanisms, and set out procedures for the enforcement of the laws.

The implementing regulations were published in the Official Gazette as Cabinet Decision No. 29/2021 on the Implementing Regulations for the New Mortgage Law (the "Executive Regulations"). The publication of the Executive Regulations, provides details on a number of key issues including the (A) specific procedure of the security register; (B) the liability when registering the securities, (C) introduces the control agreements, and (D) provides clarity on the unilateral enforcement of security rights.

A- Functions of the Register:

The New Mortgage Law outlines the Register as an electronic registry where the rights to movable assets are made public. This registry was formerly known as the Emirates Movable Collateral Registry under the Old Law, and is now referred to as the Emirates Integrated Registries Company. Existing security holders are not required to re-register their security interests in the new registry, as all previously established security interests will still be recognised in the new registry.

The Executive Regulations outline the role of the register[6] as publishing security rights and any updates or changes to those rights. This includes saving and organising the declarations in the database, allowing public access to view the declarations, and issuing certified reports that include the information saved in the database. The register also records and saves the certified search reports, including the time and date conducted and the search parameters used.

B- Procedure for Registration of Security Interests:

Article 5 of the Executive Regulations provides the procedure pertaining to the registration of security interests. To register security, a "Customer Account" must be established, which the Executive Regulations define as an account used to declare security rights, search the register's database, and access other services provided by the register. This account can be accessed through the register's website. Once the necessary conditions and information have been fulfilled, the security declaration will be recorded in the register according to the New Mortgage Law and the Executive Regulations.

For registering security interests, the following information must be submitted:

(a) Identification Information of both the guarantor and secured party, including[7]:

For Guarantor:

1. The personal ID card number for individuals who hold the UAE nationality or reside in the UAE.
2. The passport number for individuals who do not hold the UAE nationality or reside outside the UAE.
3. The registration number or license number for legal entities registered in the UAE.
4. The nationality and registration number for legal entities registered outside the UAE.

For the secured party:

1- Name;
2- Address, including email address.

(b) Description of the security interest[8]:

> "
>
> The New Mortgage Law outlines the Register as an electronic registry where the rights to movable assets are made public.

The description of a security interest must be clear and concise, and can be determined through the following: (i) The type, class, quantity, or inclusion of the security interest in a specific list; (ii) The inclusion of a phrase indicating that the security interest encompasses all of the guarantor's current and future funds; (iii) The inclusion of a phrase indicating that the security interest encompasses a specific type or class of assets, such as "all equipment" or "all current and future receivables". The security interest will have priority over all other security interests listed in the register, regardless of when the liabilities were incurred or when the security interest was registered.

(c) Description of the secured obligations[9]:

The security agreement must provide either a general or specific description of the secured obligations, which must be clear enough to identify. This description will be considered sufficient under any of the following conditions:

8 As per Article 11 Paragraph 1 of Cabinet Decision No. 29/2021.
9 As per Article 11 Paragraph 2 of Cabinet Decision No. 29/2021.

a- If the agreement specifies a specific amount or a maximum limit for the secured obligation that the security interest can be enforced against.

b- If the agreement refers to all obligations owed to the secured party at any point in time.

In cases where the secured obligation is described as all obligations owed to the secured party at any time, the priority of the security interest will extend to all such obligations, including any that may arise after the security interest is enforced against third parties.

Anyone is able to search the register's database[10] to find information about security interests. The declaration from the registry will include information about[11]: the guarantor and the secured party, the description of the collateral, the duration of the registration's validity, and any additional data requested by the registry.

> "
> The New Executive Regulations have clarified Article 27 of the New Movables Pledge Law which refers to the possibility of enforcement of security rights without the court but by merely sending a notice to the borrower.

C- Liability for registration:

According to the Executive Regulations[12], the register is not responsible for verifying the accuracy or correctness of the information contained in the declaration or search application, and shall not review the content of the declaration or application.

The register has the right to refuse a declaration or search request if it lacks complete information in a required field, or if the information provided is unreadable. If a declaration or search request is rejected, the register must promptly inform the person who submitted it of the reason for rejection and specify the necessary steps to be taken to make it acceptable[13].

D- Enforceability of the declaration issued by the register:

The declaration or amendment shall be considered legally binding[14] as of the moment when the information is entered into the register database in a manner that allows it to be retrieved when searched. If there is an error in the ID entered into the register database, which results in the inability to retrieve the information contained in the declaration upon searching using the correct ID, the declaration will not be considered enforceable. However, this error shall not affect the enforceability of the declaration with regards to other guarantors who have been properly identified in the declaration. Unless the error in the information entered into the declaration results in misleading the person conducting the search, it shall not be considered a reason for the non-enforceability of the declaration, excluding errors in the ID.

E- Control agreements[15]:

The control agreement, as described in the Executive Regulation, is a written agreement between a financial institution, a guarantor, and a secured party, in which the financial institution agrees to follow the instructions of the secured party regarding the payment of funds in a current or deposit account without obtaining the consent of the guarantor later. The security right established on credit accounts may be enforced against third parties through the means of control. This security right becomes enforceable against third parties in either of the following scenarios: (a) if it is established for the benefit of the financial institution that manages the credit account, or (b) if a control agreement is signed between the guarantor, the secured party, and the financial institution managing the credit account.

F- Execution Notice – Article 27 of the New Mortgage Law:

The New Executive Regulations[16] have clarified Article 27 of the New Movables Pledge Law which refers to the possibility of enforcement of security rights without the court but by merely sending a notice to the borrower. The notice served by the secured party to the holder of the security right to finance the purchase shall be sufficient if it is notified to the secured party who has registered the declaration of the security right established in his favour over the receivables at his address specified in that declaration.

10 As per Article 6 of Cabinet Decision No. 29/2021.
11 As per Article 9 of Cabinet Decision No. 29/2021.
12 As per Article 3 of Cabinet Decision No. 29/2021.
13 As per Article 8 of Cabinet Decision No. 29/2021.
14 As per Article 13 of Cabinet Decision No. 29/2021.
15 As per Article 18 of Cabinet Decision No. 29/2021.
16 As per Article 22 of Cabinet Decision No. 29/2021.

The secured party shall include in the execution declaration mentioned in Article (27) of the Law the following details:

a- The intention to take possession of the security interest and to enforce it.
b- The identification of the guarantor and the security interest to be enforced.
c- The method of enforcement.
d- The date and location for disposal of the security interest.

Even if the notice contains additional information or minor inaccuracies that do not significantly deceive others, it will still be considered sufficient.

Conclusion:

The introduction of the New Mortgage Law and its New Executive Regulations in the UAE has brought a substantial change in the way lenders secure their debts. This legislation has allowed for the creation and registration of security rights over a wider range of assets, including tangible and intangible assets, existing and future assets (with some exceptions as mentioned herein-above), which had a positive impact on the UAE's local market.

In practice, prior to New Mortgage Law, the lenders in the UAE were limited to mortgages on movables such as primarily real estate registered before the land department, and other assets governed by specific regulations such as ships, aircraft and vehicles, and shares registered with the relevant capital markets and department of economic development. This limited range of assets to secure loans resulted in inadequate protection for lenders in case of borrower default, reducing the willingness of business leaders to increase their lending portfolios. The New Mortgage Law, however, provides lenders with a wider range of assets to secure their loans through comprehensive and flexible registration, allowing for improved protection and enforcement of their rights through registration of their rights or guarantee contracts.

For the banking and finance sector, the New Mortgage Law provides a more comprehensive and transparent framework for secured lending, which increased the availability of financing for businesses and individuals. The New Mortgage Law also helped improve the creditworthiness of borrowers, which increased the stability of the banking and finance sector.

Overall, the New Mortgage Law and its Executive Regulations represent a significant development, and made the UAE a more secure and attractive jurisdiction for individuals to set up their businesses and invest which has a positive impact on the economy as a whole.

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For the banking and finance sector, the New Mortgage Law provides a more comprehensive and transparent framework for secured lending.

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