CLIFFORD
CHANCE

Briefing note

International Regulatory Update

14 – 18 July 2014

IN THIS WEEK'S NEWS

- EMIR: EU Commission responds to ESMA letter regarding frontloading requirement
- Banking Union: EU Council formally approves regulation on Single Resolution Mechanism
- Bank Recovery and Resolution Directive: EBA consults on draft RTS for independent valuations
- EBA publishes revised guidelines for data collection on high earners and remuneration benchmarking
- Market abuse: ESMA consults on draft technical standards and technical advice
- ESMA consults on submission of information by credit rating agencies
- Ratings agencies: ESMA publishes technical advice on development of European creditworthiness assessment for sovereign debt
- ECB sets out disclosure process for comprehensive assessment
- House of Lords launches inquiry into EU financial regulatory framework
- FSB consults on proposed FX market reforms
- Special resolution regime: Statutory instruments on extension to investment firms, central counterparties and group companies published
- FCA consults on price cap for high-cost short-term credit industry
- CMA consults on competition in personal current account and SME banking services sectors
- Bulgarian National Bank prepares for talks on joining EU Banking Union
- Bank of Italy consults on second level provisions implementing Title V of Italian Banking Act on financial intermediaries
- CSSF issues new circular clarifying Luxembourg UCITS depositary regime
- CSSF publishes information form and further guidance on marketing of AIFs by non-EU AIFMs in Luxembourg
- Royal Decree on bonds of internationalisation published
- CSRC consults on private fund rules

Clifford Chance's International Regulatory Update is a weekly digest of significant regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.

If you would like to continue to receive International Regulatory Update or would like to request a subscription for a colleague, please click here.

To request a subscription to our Alerter: Finance Industry service, please email Online Services.

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

International Regulatory Group Contacts

Chris Bates +44 (0)20 7006 1041

Nick O'Neill +1 212 878 3119

Marc Benzler +49 69 7199 3304

Steven Gatti +1 202 912 5095

Mark Shipman + 852 2826 8992

Donna Wacker +852 2826 3478

International Regulatory Update Editor

Joachim Richter +44 (0)20 7006 2503

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

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

- RBI issues circular regarding issue of partly paid shares and warrants by Indian companies to foreign investors
- FSC announces plan to improve license system for financial investment business
- MAS consults on measures to strengthen regulations against money laundering and terrorist financing
- Recent Clifford Chance Briefings: ICMA consults further on sovereign bonds; MAS consults on FX derivatives reporting and other amendments to reporting regime in Singapore; and more. Follow this link to the briefings section.

EMIR: EU Commission responds to ESMA letter regarding frontloading requirement

Michel Barnier, EU Commissioner for Internal Markets and Services, has responded to a May 2014 letter from Steven Maijoor, Chair of the European Securities and Markets Authority (ESMA), in relation to the clearing obligation and frontloading requirement included in the European Market Infrastructure Regulation (EMIR). The frontloading requirement is the obligation to clear OTC derivative contracts entered into during the period after a central counterparty (CCP) has been authorised under EMIR and before the date of application of the clearing obligation. In its letter, ESMA had warned that the frontloading requirement may introduce uncertainties in the market, including potential negative impacts on financial stability.

In his response, Mr. Barnier notes that EMIR provides for the possibility to adjust the application of the frontloading requirement, through the determination of minimum remaining maturities adapted to the specificities of the different classes of OTC derivatives, which must ensure a uniform and coherent application of EMIR and a level playing field for market participants without undermining the overarching objective of the clearing obligation to reduce systemic risk. On that basis, the Commission is of the view that the frontloading of OTC derivatives should be avoided in cases where it would not ensure the achievement of those objectives.

Mr. Barnier states that the determination of remaining maturities should not result in the application of the frontloading requirement to OTC derivatives concluded before counterparties could reasonably foresee that those contracts would need to be cleared as a consequence of the frontloading requirement, as this could jeopardise the principle of legal certainty. In this respect, the Commission considers that before ESMA submits its draft regulatory technical standards (RTS) to the Commission, counterparties cannot reasonably foresee the terms of the frontloading obligation. Moreover, since the RTS may be amended or even rejected before they enter into force, some uncertainty may remain as to the concrete terms of the frontloading requirement until the delegated act adopting the RTS is finally published in the Official Journal.

Mr. Barnier states that, in light of the above, the determination of remaining maturities should be carefully assessed and duly motivated on the basis of the goals pursued by EMIR in general, and by the frontloading requirement in particular, taking into account the specificities of the different classes of OTC derivatives and the degree of uncertainty inherent to the different periods mentioned in ESMA's letter (i.e. the period between the notification of a class of derivatives to ESMA and the entry into force of the RTS introducing the clearing obligation for that class of derivatives, and the period between the entry into force of the RTS and the date of application of the clearing obligation provided for in the RTS).

Banking Union: EU Council formally approves regulation on Single Resolution Mechanism

The EU Council has adopted the regulation establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism (SRM) and a Single Bank Resolution Fund (SRF), intended to ensure orderly resolution without recourse to public funds. The regulation establishes:

- the SRF, which will be built up over eight years to reach a target level equal to at least 1% of covered deposits of all credit institutions authorised in all Member States participating in the SRM, estimated at around EUR 55 billion; and
- a central decision-making resolution board to determine the application of resolution tools and the use of the SRF.

Provisions in the SRM that relate to the preparation of resolution planning, the collection of information and cooperation with national resolution authorities will apply from 1 January 2015. Provisions relating to resolution planning, early intervention, resolution actions and resolution instruments, including bail-in, will apply from 1 January 2016, provided that the conditions for the transfer of contributions to the SRF have been met.

Bank Recovery and Resolution Directive: EBA consults on draft RTS for independent valuations

The European Banking Authority (EBA) has launched a consultation paper on draft RTS on independent valuers under the Bank Recovery and Resolution Directive (BRRD). The BRRD specifies that independent valuers should be appointed to determine whether an institution is failing or likely to fail, assess the scope of resolution measures and determine whether shareholders and creditors would have received better treatment under normal insolvency procedures rather than resolution. The draft RTS set out the general criteria to be used to examine possible situations that may affect the valuer's objectivity and to determine whether a valuer complies with the legal requirement of independence.

Comments are due by 11 October 2014.

EBA publishes revised guidelines for data collection on high earners and remuneration benchmarking

The EBA has published updated guidelines on its data collection exercise regarding high earners and its remuneration benchmarking exercise. The updated guidelines repeal those published on 27 July 2012 and reflect changes introduced under the Capital Requirements Directive (CRD 4).

The guidelines for the high earners data collection exercise require competent authorities to collection information on the number of natural persons per institution remunerated EUR 1 million or more per financial year. New reporting formats have been released and should be used for collection of data regarding financial year 2013.

The guidelines on the remuneration benchmarking exercise includes revised templates in order to introduce data collection on different business areas, management bodies and control and corporate functions to ensure that data can be benchmarked for different classes of staff. The reporting format should be used for collection of data regarding financial year 2013, although competent authorities may collect data for that period using only the business areas defined in the previous guidelines where an institution's data cannot be mapped to the level defined in the new guidelines.

Market abuse: ESMA consults on draft technical standards and technical advice

ESMA has published consultation papers on draft technical standards and draft technical advice on possible delegated acts concerning the Market Abuse Regulation (MAR).

Publication of these consultation papers follows a discussion paper on ESMA's policy orientations and initial proposals for MAR implementing measures in November 2013.

The consultation on draft technical standards discusses:

- draft RTS related to buy back programmes and stabilisation measures, market soundings and accepted market practices and draft implementing technical standards (ITS) on market soundings;
- draft RTS related to the prevention and detection of market abuse;
- draft ITS on disclosure of inside information, insider lists and managers' transactions; and
- draft RTS related to investment recommendation or other information recommending or suggesting an investment strategy.

ESMA's draft technical advice to the EU Commission relates to proposals for a number of possible delegated acts concerning MAR. The consultation paper discusses:

- the specification of the indicators of market manipulation;
- minimum thresholds for the purpose of the exemption for certain participants in the emission allowance market from the requirement to publicly disclose inside information, which was not included previously in the November 2013 discussion paper;
- determination of the competent authority for notification of delays in public disclosure of inside information;
- managers transactions; and
- reporting of infringements.

Comments on the consultation papers are due by 15 October 2014. The new MAR framework will become applicable in July 2016.

ESMA consults on submission of information by credit rating agencies

ESMA has launched a consultation seeking stakeholders' views on new supervisory guidelines regarding the information that is periodically submitted to ESMA by credit rating agencies (CRAs).

Registered CRAs must notify ESMA of changes to their initial conditions for registration and periodically submit to ESMA information in accordance with ESMA's guidance on enforcement practices and activities. The aim of the consultation is to ensure that the information that CRAs are

requested to submit supports ESMA's supervisory work in identifying the key risks in the sector.

An open hearing on these issues will be held on 15 October 2014 and the deadline for submissions is 31 October 2014.

Rating agencies: ESMA publishes technical advice on development of European creditworthiness assessment for sovereign debt

The ESMA has published its technical advice to the EU Commission on the appropriateness of the development of a European creditworthiness assessment for sovereign debt.

In its advice, ESMA provides information regarding the market for sovereign ratings as well as conveying relevant lessons from its supervisory experience. It believes the following criteria are critical in the consideration of the appropriateness of the development of a European creditworthiness assessment:

- the rating process should be a fully independent assessment;
- the review function responsible for the annual review of methodologies must be independent of the business lines which are responsible for credit rating activities;
- confidentiality of pre-rating information is a critical issue; and
- it is necessary to have sufficient resources in place for the conduct of both a rigorous rating process, in any circumstance, as well as on-going monitoring.

Article 39b(2) of the Credit Rating Agencies (CRA) Regulation states that, after receiving ESMA's technical advice, the EU Commission shall report to the EU Parliament and Council on creditworthiness assessment for sovereign debt by the end of 2014.

ECB sets out disclosure process for comprehensive assessment

The European Central Bank (ECB) has published a note setting out the process for the comprehensive assessment alongside the disclosure template that will record the results. The note also includes an update on progress in the asset quality review (AQR) and stress test exercise, the final results of which will distinguish between capital shortfalls in the AQR and those under the baseline and adverse scenarios of the stress test. However, the ECB is preparing to 'join-up' the AQR and stress test by incorporating AQR results to adjust the starting point of the stress test. The join-up methodology will be published in August 2014.

House of Lords launches inquiry into EU financial regulatory framework

The House of Lords EU Sub-Committee on Economic and Financial Affairs has launched its inquiry into the EU financial regulatory framework, with a view to assessing whether it is sufficiently robust to prevent future financial crises.

The inquiry will cover areas such as:

- how effective the reforms to the financial regulatory framework introduced since the 2007 outbreak of the crisis are;
- what the biggest strengths and weaknesses in the regulatory framework are;
- how effective the EU's attempt to harmonise rules in the form of the Single Rulebook has been and whether the needs of consumers of financial services and products have been met satisfactorily;
- what the best balance between the powers of Member States and the EU is when it comes to regulation and supervision;
- whether there are any inconsistencies between regulation of the eurozone and of the wider EU; and
- what the challenges will be for those Member States not in the eurozone and whether the UK has done enough to defend its strategic interests.

The Committee has invited any interested parties to submit written evidence by 30 September 2014.

FSB consults on proposed FX market reforms

The Financial Stability Board (FSB) has launched a consultation proposing possible recommendations for reform in the foreign exchange (FX) market.

The FSB established the Foreign Exchange Benchmarks Group (FXBG) to undertake a review of FX benchmarks and, in particular, undertake analysis of the FX market structure and incentives that may promote particular types of trading activity around the benchmark fixings.

As part of the FXBG's work to prepare recommendations for the G20 summit in November 2014, it has published an interim consultation report. In the report, the group proposes reforms to the FX market in the following categories:

- the circulation methodology of the WM/Reuters (WMR) benchmark rates;
- the publication of reference rates by central banks;

- market infrastructure in relation to the execution of fix trades;
- the behaviour of market participants around the time of the major FX benchmarks; and
- recommendations from a forthcoming review of WMR fixes by the International Organisation of Securities Commissions (IOSCO).

The deadline for comments is 12 August 2014.

Special resolution regime: Statutory instruments on extension to investment firms, central counterparties and group companies published

Four statutory instruments (SIs) made under the Banking Act 2009 and relating to the extension of the special resolution regime (SRR) to investment firms, central counterparties and group companies have been published:

- the Banking Act 2009 (Restriction of Partial Property Transfers) (Recognised Central Counterparties) Order 2014 (SI 2014/1828), which restricts the making of partial property transfer instruments in respect of recognised central counterparties (RCCPs) and makes provision to protect certain interests where a partial property transfer has been made in respect of an RCCP, including security interests, set-off arrangements and netting arrangements;
- the Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) (Amendment) Regulations 2014 (SI 2014/1830), which extends to investment firms rules applying to 'banking institutions' in relation to provisions which must, or may be, included in a third party compensation order in relation to a partial property transfer;
- the Banking Act 2009 (Banking Group Companies) Order 2014 (SI 2014/1831), which sets out conditions that must be met in relation to an undertaking in the same group as a bank if it is to be a 'banking group company' for the purposes of the Banking Act and includes provision for the Bank of England to exercise a stabilisation power in respect of a banking group company to achieve a transfer to a commercial purchaser or a bridge bank; and
- the Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014 (SI 2014/1832), which excludes the type of investment firms described in Article 29 of the Capital Requirements Directive (CRD 4), which are not subject to the initial capital requirement (EUR 730,000), from the meaning of 'investment firm' in s.258A of the Banking Act 2009.

The four SIs come into force on 1 August 2014.

FCA consults on price cap for high-cost short-term credit industry

The Financial Conduct Authority (FCA) has launched a consultation on proposals to cap the price of the high-cost short-term credit industry including payday loans. The consultation paper (CP14/10) discusses the evidence gathering exercise that has informed the FCA's proposals and sets out the capped amounts:

- a total cost cap of 100% so that consumers do not pay back more than twice what they borrowed;
- an initial cost cap on interest and fees set at 0.8% of the total amount borrowed per day; and
- a fixed cap on default fees set at GBP 15.00.

Comments are due by 1 September 2014. Final rules will be published in November 2014 with the introduction of these rules from 2 January 2015.

CMA consults on competition in personal current account and SME banking services sectors

The Competition and Markets Authority (CMA) has launched a consultation on its provisional decision to open a market investigation reference (MIR) into personal current accounts and banking services for small and medium sized enterprises (SMEs). The consultation follows two market studies that highlighted a lack of effective competition in the UK retail banking sector.

The market study into banking services for SMEs was carried out jointly with the FCA and focused on the core SME banking services of liquidity management services through business current accounts and overdrafts and general purpose business loans. The findings highlight that the market does not exhibit all of the characteristics the CMA and FCA consider necessary for a well-functioning banking sector for SMEs, which should:

- be customer-focussed;
- equip customers with information to engage with their services and drive competition;
- promote efficiency and innovation through competition between banks;
- offer customers a broad choice of provider; and
- enable new entrants to the market offering services to SMEs.

The CMA has separately updated the Office of Fair Trading (OFT) 2013 review of the personal current account market.

Comments on the consultation are due by 17 September 2014. A decision on the MIR will be made in autumn 2014.

Bulgarian National Bank prepares for talks on joining EU Banking Union

The Bulgarian National Bank (BNB) has contacted the European Central Bank's Executive Board as part of preparations for a talk between the Bulgarian Head of State and the ECB President about starting a procedure for Bulgaria's application for membership in the EU's Single Supervisory Mechanism. This follows the consensus reached at a meeting attended by the President of the Republic of Bulgaria, representatives of the major parliamentary political powers, the Bulgarian government and the BNB. The BNB has also commenced talks with the European Banking Authority's Chairperson, Mr. Andrea Enria, about initiating a review of the quality, capacity, practices and procedures of the BNB Banking Supervision Department. Once the outcomes of the review are known, they will be made public.

Bank of Italy consults on second level provisions implementing Title V of Italian Banking Act on financial intermediaries

Further to the reform approved in 2010 (Legislative Decree no. 141/2010) of Title V of Legislative Decree no. 385/1993 (the Italian Banking Act) regarding the discipline governing financial intermediaries, the Bank of Italy, after a first round of consultation, has launched a second round of consultation on a set of second level provisions intended to fully implement Title V of the Italian Banking Act.

This new consultation document focuses primarily on new requirements for financial intermediaries in terms of regulatory capital, internal audit functions, risk concentration, and the acquisition of qualifying holdings.

Comments are due by 12 September 2014.

CSSF issues new circular clarifying Luxembourg UCITS depositary regime

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a new circular 14/587 dated 11 July 2014 concerning the provisions applicable to credit institutions acting as a UCITS depositary subject to Part I of the Luxembourg law of 17 December 2010 on undertakings for collective investments (2010 Law) and to all UCITS, where appropriate, represented by their management company.

In brief, the purpose of the circular is to clarify the depositary regime of Luxembourg UCITS by defining new standard organisational rules concerning the duties and rights attached to the depositary function of Luxembourg UCITS. These rules have to be put in place at the level of both the depositaries of Luxembourg UCITS and the Luxembourg UCITS themselves. Of particular interest are the new rules and clarifications concerning the segregation of assets, the due diligence for the appointment and on-going monitoring of sub-custodians/delegates, the prevention and management of conflicts of interests and the cash monitoring duties.

Most of the new organisational rules introduced by circular 14/587 are aligned with the AIFMD depositary regime and anticipate the changes to be introduced to the UCITS depositary regime under the UCITS V Directive. The current liability regime of depositaries of Luxembourg UCITS is, however, not addressed nor amended by circular 14/587 and remains subject, for the time being, to the provisions of the 2010 Law.

Credit institutions acting as depositary of Luxembourg UCITS and all Luxembourg UCITS, where appropriate, represented by their management company, must comply with the provisions of circular 14/587 by 31 December 2015 at the latest, subject however to the transitional provisions of the UCITS V Directive, where applicable.

CSSF publishes information form and further guidance on marketing of AIFs by non-EU AIFMs in Luxembourg

The CSSF, has published an information form to be completed by every non-EU AIFM that intends to market to professional investors in Luxembourg as of 22 July 2014 shares or units of the AIF(s) it manages without a passport under Article 45 of the Luxembourg law of 12 July 2013 on alternative investment fund managers (AIFM Law).

The information form must be completed irrespective of the nationality of the relevant AIF(s) (Luxembourg, EU or non-EU) or whether the AIF(s) is/are regulated or not in the country it is/they are established. Once the form is properly filled out, a paper version shall be dated and signed by the applicant and sent to the CSSF electronically. Marketing by the applicant non-EU AIFM may in principle start from the date the information form is sent to the CSSF, provided that the specified form and its appendices (if any) are complete and that the AIFMD requirements imposed by Article 45 of the AIFM Law are complied with.

Additional guidance on the use of the information form and updated questions and answers relating to Article 45 of the

AIFM Law have also been published by the CSSF on its website.

Royal Decree on bonds of internationalisation published

Royal Decree 579/2014 developing certain aspects of Law 14/2013 of 27 September supporting entrepreneurs and their internationalisation in relation to bonds of internationalisation (cédulas y bonos de intermacionalización) has been published in the Official Journal.

The Royal Decree aims to facilitate access to funding and ensure that these facilities result in better financing conditions for companies exporting or engaged in processes of internationalisation. It is based on the following three fundamental pillars:

- the rules governing the issue, establishing the information that the issues of bonds of internationalisation must contain, the way the issue limits should be calculated and the mechanisms to restore those limits when exceeded – institutions shall also register the assets backing such issues;
- the operation of the secondary market for bonds of internationalisation, putting special emphasis on the regulation of the operations that the issuers can perform on their own bonds of internationalisation; and
- the supervision competences, the Bank of Spain being in charge of the supervision of the conditions of the assets backing the issues of bonds of internationalisation and the National Securities Market Commission (CNMV) being in charge of the supervision of those aspects related to public offerings of covered bonds and bond internationalisation.

The Royal Decree will enter into force on 17 July 2014.

CSRC consults on private fund rules

The China Securities Regulatory Commission (CSRC) has published a consultation draft of the 'Interim Administrative Rules on Private Investment Funds', which are intended to promote the development of the private fund industry. The rules will apply to privately-offered investment funds that raise capital from qualified investors and invest in stocks, equities, bonds, futures, options, fund interest or other subjects as agreed in the relevant investment contracts (private funds). Amongst other things, under the draft rules:

- managers of private funds are required to register with the Asset Management Association of China and make filings for all the private funds managed by them;
- private funds shall be offered to qualified investors within the limited number as prescribed by the applicable laws;
- 'qualified investors' are subject to a minimum subscription amount of RMB 1 million for each private fund and shall be (i) an entity with a net asset value of no less than RMB 10 million or (ii) an individual who has financial assets of no less than RMB 3 million or an average annual income of no less than RMB 500,000 in the last three years;
- social security funds, enterprise annuity funds, endowment funds, investment schemes regulated by financial regulators and investment management professionals that invest in the private funds under their management will be considered as qualified investors; and
- private funds shall appoint fund custodians unless otherwise agreed under the fund contracts.

The rules will also apply to companies or partnerships set up for investment purposes and managed by fund managers or general partners and the private fund business engaged by the securities companies, fund management companies and securities companies.

The consultation period will end on 10 August 2014.

RBI issues circular regarding issue of partly paid shares and warrants by Indian companies to foreign investors

The Reserve Bank of India (RBI) has issued a circular regarding the issue of partly paid shares and warrants by Indian companies to foreign investors. Pursuant to a review of its policy regarding partly paid shares and warrants, the RBI has decided the following:

- eligible instruments and investors – partly paid equity shares and warrants issued by an Indian company in accordance with the provisions of the Companies Act 2013 and the Securities and Exchange Board of India guidelines, as applicable, will be eligible instruments for the purpose of foreign direct investment (FDI) and foreign portfolio investment (FPI) by foreign institutional investors (FIIs)/registered foreign portfolio investors (RFPIs) subject to compliance with FDI and FPI schemes;
- pricing and receipt of balance consideration of the partly paid equity shares – the pricing of the partly paid equity shares will be determined upfront and 25% of the total consideration amount (including share premium, if any), will also be received upfront. The

balance consideration must be received within 12 months;

- pricing and receipt of balance consideration of warrants – the pricing of the warrants and price/conversion formula will be determined upfront and 25% of the consideration amount will also be received upfront. The balance consideration must be received within 18 months;
- reporting – the reporting of receipt of foreign inward remittance towards each upfront/call payment for FDI transactions must be made in the Advance Reporting Form (format enclosed with the circular) along with copy(ies) of Foreign Inward Remittance Certificate/s, Know Your Customer report on non-resident investors and details of the government approval, if any; and
- compliance – the onus of compliance with all the conditions under the Foreign Exchange Management Act regarding entry route, sectoral caps and all other conditions under the FDI guidelines will be on the investee company in case of issue of partly paid shares/warrants as well as on the resident transferor or transferee in accordance with extant guidelines in the case of transfer of partly-paid shares/warrants.

FSC announces plan to improve license system for financial investment business

The Financial Services Commission (FSC) has announced its plan to ease regulations on the license system for financial investment businesses. Amongst other things, the plan is intended to:

- improve the license system for financial investment business;
- simplify the procedure for financial investment business license; and
- amend the license-related policy for financial investment business.

In principle, financial investment businesses will be required to apply for a business license only when they first enter the sector and the number of business units for regulatory approval will be cut from the current 42 to 13.

Further, once a financial institution is granted regulatory approval for business, the company will be allowed to add new business within the same sector simply through add-on registration, without any additional procedure for approval. Regulations regarding majority shareholders will be also revised.

A fast-track procedure will be introduced on a temporary basis in order to expedite the regulatory approval process for added-on businesses, given that it will take time for the revision to the Financial Investment Services and Capital Markets Act (FSCMA) to allow for the add-on registration system. The fast-track procedure is expected to reduce the time for regulatory approval from the current seven to eight months to three to four months. Guidelines on review standards for business license will be publicly disclosed to enhance transparency and predictability in the approval process. The documents required to be submitted for regulatory approval, which currently amount to 20 or more, will also be simplified, eliminating overlapping requirements.

Investment trading and brokerage business units with similar characteristics and synergy will be merged for a 'package approval'. New standards for regulatory approval will be developed at each stage of business growth, considering the business model and growth path of asset management companies. Further, non-life insurance companies will be permitted to operate money trust business and futures companies will be permitted to deal with over-the-counter (OTC) derivatives based on currency, interest rate and credit.

The FSC has indicated that a draft bill to revise relevant laws and supervision regulations will be submitted to the National Assembly by the end of 2014. Measures that can be taken without a revision of the law will be implemented in September 2014.

MAS consults on measures to strengthen regulations against money laundering and terrorist financing

The Monetary Authority of Singapore (MAS) has released a consultation paper on proposed amendments to its notices to financial institutions and capital markets intermediaries on anti-money laundering and countering the financing of terrorism (AML/CFT). The scope of the amendments will be comprehensive across the financial sector, covering banks, merchant banks, finance companies, money-changers and remittance licence holders, life insurers, capital markets intermediaries, financial advisers, approved trustees, trust companies, stored value facility holders, and non-bank credit and charge card licensees, and these Notices will be amended:

- Notice 626 to Banks;
- Notice 1014 to Merchant Banks;
- Notice 824 to Finance Companies;
- Notice 3001 to Holders of Money-Changer's Licence and Remittance Licence;
- Notice 314 to Life Insurers;

- Notice SFA04-N02 to Capital Markets Intermediaries;
- Notice SFA13-N01 to Approved Trustees;
- Notice FAA-N06 to Financial Advisers;
- Notice TCA-N03 to Trust Companies; and
- Notice PSOA-N02 to Holders of Stored Value Facilities.

The MAS also proposes to issue a new Notice 626A to Non-Bank Credit Card or Charge Card Licensees on the Prevention of Money Laundering and Countering the Financing of Terrorism.

Amongst other things, the proposed key amendments and obligations include new obligations to identify and assess the overall ML/TF risks they face as an institution, and to take steps to mitigate these risks effectively, and to perform customer due diligence when effecting or receiving funds exceeding SGD 1,500 by domestic or cross-border wire transfer for new customers. They also clarify existing expectations:

- relating to risk assessment and mitigation requirements for new products, practices and technologies;
- for deterrence of illicit monies arising from tax evasion, in respect of the treatment of / relation with both prospective and existing customers;
- relating to the cascading measures that need to be undertaken when identifying and verifying the identity of beneficial owners of legal persons and legal arrangements;
- to introduce the option for adoption of a risk-based approach for certain categories of politically exposed persons;
- for the conduct of customer and related parties screening – the scope of screening will include the customer, natural persons appointed to act on behalf of the customer, connected parties, beneficial owners of the customer and wire transfer originators and beneficiaries; and
- by setting out requirements to take into account countries and jurisdictions identified by the Financial Action Task Force (FATF) as higher risk.

Comments on the consultation paper are due by 14 August 2014.

The proposed changes to the MAS AML/CFT Notices will be supplemented with updates to the related guidance, which will be issued following the public consultation.

RECENT CLIFFORD CHANCE BRIEFINGS

ICMA consults further on sovereign bonds

The International Capital Market Association has followed up its consultation paper of December 2013 about collective action and pari passu clauses in sovereign bonds with supplementary questions about how collective action clauses should be structured in order to enable sovereign debt restructuring to take place in an efficient and fair manner. The questions relate mainly to how voting should be managed across multiple series of bonds. For example, is a single vote across all series of bonds being aggregated sufficient, or should there also be individual votes within each series? What series of bonds should be capable of aggregation? How and when should information be given to bondholders? The questions raise important policy issues that are vital to ensure that appropriate forms of sovereign collective action are used in the future and are being discussed at a time when the International Monetary Fund is working on its lending framework and sovereign debt vulnerabilities.

This briefing discusses these questions.

http://www.cliffordchance.com/briefings/2014/07/icma_consults_furtheronsovereignbonds.html

Companies Act Reform – Supervisory Function of the Board of Directors

An amendment to the Companies Act was enacted on 20 June 2014. This is the first major amendment since the enactment of the Companies Act in 2006 and addresses many of the practical issues that have arisen since its enactment. The amendment is expected to come into effect on 1 April 2015.

This briefing explains the introduction of a new corporate governance structure for large public companies in Japan by way of an audit/supervisory committee, and new rules on outside directors, which had been a point of protracted debate. The new audit/supervisory committee governance structure will be introduced to facilitate appointments of outside directors and provides a corporate governance system that is more familiar to foreign investors. It is expected to be an important alternative to the existing corporate governance structures. With respect to the new rules on outside directors, although companies are currently not obliged to appoint outside directors, the directors of listed companies that do not have outside directors will, following the amendment, be required to explain why outside directors have not been appointed.

http://www.cliffordchance.com/briefings/2014/07/companies_act_reformsupervisoryfunctiono0.html

MAS consults on FX derivatives reporting and other amendments to reporting regime in Singapore

Following the commencement of 'Phase I' of its mandatory reporting regime for OTC derivatives contracts, the MAS is now consulting the industry on 'Phase II' of the regime in respect of FX derivatives and other proposed changes to the existing reporting regime.

This briefing provides an overview of the consultation.

http://www.cliffordchance.com/briefings/2014/07/mas_consults_on_fxderivativesreportingan.html

An overview of Australian merger control clearance

This briefing outlines Australia's merger control regime that is relevant to anyone planning to make a direct or indirect acquisition of shares or assets that would be likely to substantially lessen competition in a particular market in Australia.

http://www.cliffordchance.com/briefings/2014/07/an_overview_of_australianmergercontrolclearance.html