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Briefing note

International Regulatory Update

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PRIIPs: Regulation on key information documents published in Official Journal

The regulation on key information documents for packaged retail and insurance-based investment products (PRIIPs) has been published in the Official Journal. The regulation will come into force on 29 December 2014 and apply from 31 December 2016.

European Long-Term Investment Funds: EU Council confirms agreement with Parliament

The Permanent Representatives Committee (COREPER), on behalf of the EU Council, has approved the final compromise text for the proposed regulation on European Long-Term Investment Funds (ELTIFs) agreed with the EU Parliament. The proposed regulation creates a new investment fund framework designed for investors who want to put money into companies and projects for the long term. These private ELTIFs would only invest in businesses that need money to be committed to them for long periods of time.

The Council will adopt the regulation at a forthcoming meeting without further discussion once the text has been finalised in all languages.

PSD 2: EU Council agrees negotiating stance

The EU Council has agreed its negotiating stance on the second Payment Services Directive (PSD 2), which will repeal Directive 200/64/EC. The agreement enables trialogue negotiations with the EU Parliament to begin, with an aim to adopt the legislation at first reading.

The proposed PSD 2 will adapt the existing Directive and includes rules on:

- emerging payment services, including internet and mobile payments;
- payment security; and
- harmonisation of the supervisory framework by national competent authorities (NCAs).

Benchmarks Regulation: EU Council Presidency publishes compromise proposal and ECON Committee publishes draft report

The EU Council Presidency has published a compromise text for the proposed regulation on indices used as benchmarks in financial instruments and financial contracts. Meanwhile, the EU Parliament's Committee on Economic and Monetary Affairs (ECON) has published its draft report setting out its suggested amendments to the proposed regulation.

Single Resolution Fund: EU Council reaches political agreement on bank contributions

The EU Council has reached political agreement on an implementing regulation on bank contributions to the Single Resolution Fund (SRF) under the Single Resolution Mechanism (SRM) from 1 January 2016.

Under the Bank Recovery and Resolution Directive (BRRD) national resolution funds will be established from 1 January 2015 with a target level of at least 1% of the amount of covered deposits of all the institutions authorised in each Member State by 31 December 2024. In the Banking

Union, the SRF will replace these national resolution funds from 1 January 2016, with a target level of at least 1% of the covered deposits of all the institutions authorised in the Banking Union to be built up over a period of eight years.

The implementing regulation will be adopted without further discussion by written procedure before the end of 2014 following finalisation of the text in all of the official languages of the EU.

Single Resolution Board: Commission Delegated Regulation on provisional system for contributions to cover administrative expenditures published in Official Journal

Commission Delegated Regulation (EU) No 1310/2014 on the provisional system of instalments for contributions to cover the administrative expenditures of the Single Resolution Board under the SRM Regulation has been published in the Official Journal. The contributions are to be made by entities within the scope of the SRM and the rules cover the system for the preliminary phase of the Single Resolution Board's existence between 1 January 2015 and 31 December 2015, or until the entry into force of the final system adopted by the EU Council for the payment of annual contributions if that date is later.

The Delegated Regulation entered into force on 11 December 2014.

Banking Union: ESM Board adopts direct recapitalisation instrument

The Board of Governors of the European Stability Mechanism (ESM) has adopted an instrument for the direct recapitalisation of systemic and viable banks in the euro area where necessary as a last resort. The direct recapitalisation instrument will only be available following bail-in by private investors under the Bank Recovery and Resolution Directive (BRRD). In addition, the national resolution funds or, from 2016 onwards, the Single Resolution Fund must contribute. The total amount of ESM resources available under the new instrument is limited to EUR 60 billion.

The adopted instrument is now fully operational. Alongside the ESM's announcement a set of frequently asked questions (FAQs) have been published.

CRR: Implementing Regulation to extend transitional period for capital requirements for CCP exposures published in the Official Journal

Commission Implementing Regulation (EU) No 1317/2014 to extend the transitional period for capital requirements for EU banking groups' exposures to central counterparties (CCPs) under the Capital Requirements Regulation (CRR) has been published in the Official Journal.

The CRR introduced a capital requirement for the exposures of EU banks and their subsidiaries to a CCP with the size of the requirement depending on whether a CCP is labelled as 'qualifying' or not. Qualifying CCPs are either authorised or recognised, depending on whether or not they are established in the EU, in accordance with rules set out in the European Market Infrastructure Regulation (EMIR). Capital charges for exposures to non-qualifying CCPs are higher.

Due to the length of time required for authorisation and recognition, the CRR provides a transitional period during which these higher requirements will not be applied to ensure a level playing field for EU CCPs, which was set to expire on 15 December 2014. Commission Implementing Regulation (EU) No 1317/2014 extends this transitional period until 15 June 2015.

CRR: EU Commission adopts Implementing Decision on third country equivalence for purposes of credit risk weighting

The EU Commission has adopted a draft Implementing Decision establishing a list of third countries whose supervisory and regulatory arrangements are considered equivalent to those applied in the EU with respect to credit institutions, investment firms and exchanges. The recognised third countries are listed in the annexes to the Decision. For those third countries recognised as equivalent, EU banks can apply preferential risk weights to relevant exposures to entities located in those countries including financial institutions, central and local governments and public sector entities in accordance with the Capital Requirements Regulation (CRR).

The Implementing Decision will enter into force on 1 January 2015, at which point any preferential treatment based on national assessments will cease.

CRD 4: EBA publishes aggregate supervisory disclosures

The EBA has published aggregate data for all the information disclosed by EU Competent Authorities

according to its Implementing Technical Standards (ITS) on supervisory disclosure as specified in Commission Implementing Regulation (EU) No 650/2014 under the Capital Requirements Directive (CRD 4). A new EBA webpage sets out supervisory practices by Member State and links to detailed information organised under four sections:

- rules and guidance;
- options and national discretions;
- supervisory review; and
- aggregate statistical data.

Information on the national authorities for each jurisdiction is also provided. The information disclosed on national implementation and transposition of CRD 4 covers all Member States except Cyprus, Lithuania, Poland and Portugal, which are expected to update this section shortly.

EMIR: ESMA agrees cooperation arrangements on CCPs with Australian regulators

The European Securities and Markets Authority (ESMA), the Australian Securities and Investments Commission (ASIC) and the Reserve Bank of Australia (RBA) have signed a Memorandum of Understanding establishing cooperation arrangements regarding central counterparties (CCPs) that are established in Australia and that have applied for recognition under the European Market Infrastructure Regulation (EMIR). The Memorandum of Understanding is effective as of 27 November 2014.

ESMA is working with other third-country authorities on similar cooperation arrangements and has also signed a Memorandum of Understanding with ASIC on trade repository data.

MiFID: ESMA publishes review of national authorities' supervision of conduct of business rules on investor information

ESMA's Board of Supervisors has published a peer review on the application of agreed good practices in the supervision of MiFID conduct of business rules in respect of information and marketing communications. The review considers national competent authorities' (NCAs') supervisory approaches to MiFID rules on providing fair, clear and not misleading information to clients and their organisation, monitoring and complaints handling procedures in relation to communications.

The results of the peer review reflect self-assessment questionnaires undertaken by all ESMA members except Iceland which did not contribute to the review. On-site visits also took place between December 2013 and May 2014 in Cyprus, Czech Republic, Germany, Italy, Portugal and the UK.

The review recommends improvements to supervision, in particular:

- enhanced-use of on-site inspections and thematic reviews;
- a specific focus on conduct of business issues in firms' risk assessments; and
- greater efforts to detect failings by firms in a timely manner.

MIFIR: EBA publishes final technical advice on criteria for structured deposit market monitoring

The European Banking Authority (EBA) has published its final technical advice on possible delegated acts specifying criteria in relation to intervention powers concerning structured deposits under MiFIR. The EBA is mandated under MiFIR to monitor the market for structured deposits which are marketed, distributed or sold in the EU. The final technical advice specifies the factors the EBA and competent authorities should consider when determining whether there is a significant investor protection concern with regard to structured deposits or a threat to the orderly functioning of financial markets.

The EU Commission requested that the EBA draft technical advice in May 2014 and the final advice follows an EBA consultation on the proposals between August and October 2014. The final technical advice incorporates certain elements of the responses received including an additional criterion.

Mortgage Credit Directive: EBA launches discussion paper on passport notifications and consults on draft guidelines for creditworthiness assessments

The EBA has published a discussion paper on the requirements for passport notifications for mortgage credit intermediaries across the EU under the Mortgage Credit Directive (MCD – Directive 2014/17/EU).

The MCD provides that when an EU credit intermediary intends to carry out business in another Member State for the first time, the credit intermediary should notify the competent authority in its home Member State in order that the competent authority can notify the relevant authority in the host Member State of the intermediary's intention and notify the credit intermediary that this has been done. The discussion paper sets out the EBA's preliminary considerations relating to draft requirements for passport

notifications, which the EBA is proposing to formalise to ensure consistent application across the EU.

The discussion paper is intended to provide an early indication to market participants of possible future requirements and also to seek comments on the preliminary proposals. Comments on the discussion paper are due by 12 March 2015.

In addition, the EBA has launched a consultation on draft guidelines on creditworthiness assessments under the MCD. The draft guidelines relate to Article 18, which specifies that before concluding a credit agreement, a creditor should conduct a thorough assessment of the consumer's creditworthiness, and Article 20(1), which specifies that the assessment should be carried out on the basis of information on the consumer's income and expenses among other financial and economic circumstances, and are intended to clarify how financial institutions should give effect to these provisions.

The draft guidelines are based on the EBA Opinion on Good Practices for Responsible Mortgage Lending published in June 2013 and align with the relevant principles of the Financial Stability Board's (FSB's) Principles for Sound Residential Mortgage Underwriting Practices.

Comments on the draft guidelines are due by 12 February 2015.

Net Stable Funding Ratio: Basel Committee consults on disclosure requirements

The Basel Committee on Banking Supervision (BCBS) has published a consultation paper on disclosure standards for the Net Stable Funding Ratio (NSFR). The NSFR standard was published in October 2014 and is intended to reduce funding risk over a long term by requiring banks to conduct their activities with funding from sources that are sufficiently stable to mitigate the risk of future funding stress. It will become a minimum standard from 1 January 2018. The BCBS intends to ensure that market participants are able to consistently assess banks' funding risk through the disclosure requirements set out in the consultation paper.

Comments on the consultation are due by 6 March 2015.

Basel Committee issues revisions to securitisation framework and consults on criteria for identifying simple, transparent and comparable securitisations

The BCBS has issued revisions to its securitisation framework that aim to address shortcomings in the Basel II securitisation framework and to strengthen the capital standards for securitisation exposures.

The most significant revisions relate to changes in the hierarchy of approaches, the risk drivers used in each approach, and the amount of regulatory capital banks must hold for exposures to securitisations. The framework will come into effect in January 2018 and forms part of the Committee's broader Basel III agenda to reform regulatory standards for banks.

The BCBS has also issued a joint consultation with the International Organisation of Securities Commissions (IOSCO) on criteria for identifying simple, transparent and comparable securitisations. The aim of the consultation is to provide a basis for stakeholders to identify certain features of securitisations which may indicate those securitisations that lend themselves to less complex analysis and therefore could contribute to building sustainable securitisation markets.

Comments on the consultation are due by 13 February 2015.

UK government consults on nullifying ban on invoice assignment contract clauses

The Department for Business, Innovation & Skills has published a consultation paper setting out its proposals to nullify terms which ban invoice assignments in business to business commercial contracts.

Invoice finance allows a business to assign the right to future payment of an invoice (trade receivable) to a finance provider in exchange for a loan up to the full value of the invoice. The government is concerned that clauses which ban invoice assignments may stop businesses accessing the finance they need. Rather than prohibiting businesses from putting bans in contracts, the government is proposing to introduce regulations which would nullify any bans that are put into contracts (with certain exceptions) after the regulations have come into force.

The government is proposing to limit the extent of the nullification to business to business contracts only. It does not intend to nullify bans on invoice assignment in financial service contracts, noting that some financial products would not be able to function without a ban.

Comments are due by 16 February 2014.

FCA consults on simplified capital requirements rules for non-bank mortgage lenders

The Financial Conduct Authority (FCA) has launched a consultation on changes to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU), in particular chapter 4 (MIPRU 4) which relates to the credit risk capital requirements for non-bank lenders (NBLs). The FCA implemented changes to MIPRU 4 on 26 April 2014 following the Mortgage Market Review (MMR), which had the effect that mortgage lenders are subject to the same capital requirements as banks and building societies (deposit takers) in the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU). In order to implement this change, MIPRU 4 largely cross-refers to the prudential provisions contained in BIPRU.

The consultation seeks views on proposals to remove all references to BIPRU from MIPRU 4 in order to create a stand-alone version that is less complex than the provisions in BIPRU to make MIPRU 4 more accessible for NBLs. Additionally, the FCA proposes to reorder the content and provide a roadmap at the start of lengthier sections in order to aid navigation. The changes to MIPRU 4 are intended to simplify the Handbook provisions, while the capital requirements remain essentially unchanged.

NBLs will retain the opportunity to apply to the FCA for waivers where they believe that provisions under BIPRU are more appropriate for their business activities.

FCA publishes Davis Review and its response

The FCA has published the report of the independent inquiry into the events of 27/28 March 2014 and the handling of the FCA's announcement of proposed supervisory work on the fair treatment of long standing customers in life insurance. The inquiry was conducted by Simon Davis of Clifford Chance at the request of the FCA's Non-Executive Directors.

In his report, Simon Davis makes a number of criticisms of the way the FCA handled the launch of its 2014/15 Business Plan and in particular the communications of the scope of the proposed thematic review of life assurance. The FCA Board has fully accepted the criticisms in the report and is making a number of changes to its structure and operating model which are intended to sharpen its focus and also address some of the issues identified in the report.

FCA consults on complaints handling by financial services firms

The FCA has published a consultation paper (CP14/30) proposing changes to its rules to improve complaints handling by financial services firms. The proposals include limiting the cost of calls that consumers make to firms when making a complaint, requiring firms to report all complaints to the FCA, and allowing complainants to refer their case to the Financial Ombudsman Service immediately after receiving the firm's response. The FCA is also consulting on amendments to the complaints handling rules to implement the Alternative Dispute Resolution Directive (ADRD).

Comments on the consultation are due by 13 March 2015.

Dutch legislator publishes Act on corporate tax treatment of CRD 4 compliant Additional Tier 1 instruments

The Collective Tax Act 2014 (Fiscale Verzamelwet 2014, known as the AT1 Tax Act) regarding, amongst other things, the corporate tax treatment of CRD 4 compliant Additional Tier 1 instruments has been published in the Bulletin of Acts and Decrees (Staatsblad).

The AT1 Tax Act states that capital instruments referred to in Article 52 paragraph 1 of the Capital Requirements Regulation (CRR) will be treated as debt for corporate tax purposes, with the exception of instruments that qualify under Dutch corporate law as shares, certificates of shares or membership rights of a cooperative. Consequently, interest payments on Additional Tier 1 instruments will in principle be tax deductible and will not be subject to withholding tax.

The AT1 Tax Act will come into force on 1 January 2015 with retroactive effect as from 1 January 2014.

CSRC consults on administrative measures on issuance and trading of corporate bonds

The China Securities Regulatory Commission (CSRC) has published a consultation draft of the 'Administrative Measures on Issuance and Trading of Corporate Bonds'. The Administrative Measures amend the 'Trial Measures on Issuance of Corporate Bonds' which were promulgated by the CSRC in 2007 to establish an elementary regulatory system for corporate bond issuance, in order to adapt them to economic developments and streamline the administrative procedures.

Amongst other things, under the consultation draft:

- generally all corporate legal entities, except local government-backed financing platform companies, are allowed to issue corporate bonds in accordance with the Measures;
- the approval procedure for public issuance will be streamlined and the sponsor requirement and examination committee will be removed;
- a separate section on non-public issuance is provided in the Measures under which 'non-public issuance' is generally defined as an issuance to no more than 200 qualified investors without using any means of public advertisement or solicitation;
- while bonds with a high credit rating may be issued to either the public or qualified investors, at the issuer's discretion, all other types of bonds shall only be issued to qualified investors as defined under the Measures; and
- information disclosure requirements have been enhanced and a separate chapter on information disclosure is provided in the Measures.

The consultation period will end on 19 December 2014.

Qianhai Shenzhen – Hong Kong cooperation plan approved

The Central Government has approved the 'Work Plan for Promoting Qianhai Shenzhen – Hong Kong Cooperation', which sets out a framework for further integrated cooperation between Qianhai Shenzhen and Hong Kong, especially in modern services areas. The work plan consists of fifty policies, including:

- foreign investor friendly policies to attract both financial and non-financial firms from Hong Kong to invest in the modern services sector in Qianhai;
- offering domestic treatment to eligible Hong Kong-invested enterprises in Qianhai under the framework of CEPA;
- offering Hong Kong investors favourable policies on land use and fundraising; and
- promoting financial cooperation in the areas of cross-border RMB loans, the Shenzhen – Hong Kong Stock Connect programme, mutual fund recognition, and admission of Hong Kong insurers and insurance products, etc.

The reform policies are quite general and high-level at this stage, pending implementing rules. As a mid-term goal, the local government of Shenzhen expects to have more than 9 million square meters developed by Hong Kong investors in Qianhai by the year 2020 and increase the size of the Hong Kong-invested service industry to more than RMB 100 billion (roughly USD 16 billion).

SAFE to allow non-bank financial institutions to trade in inter-bank foreign exchange market

The State Administration of Foreign Exchange (SAFE) has published the 'Circular on the Adjustment of Administrative Policies relating to Financial Institutions' Access to the Inter-bank Foreign Exchange Market' to further diversify the country's foreign exchange (FX) market. Amongst other things, under the circular:

- membership of the inter-bank FX market will be available to, apart from domestic banks and financial companies, a broader range of 'domestic financial institutions' (technically, including various non-bank financial institutions);
- after obtaining the FX spot settlement/sales license from SAFE and the derivatives trading license from other competent regulator(s), a 'domestic financial institution' can become a member of the inter-bank FX market to carry on RMB/FX spot and derivatives transactions, provided that the relevant technical conditions are satisfied;
- instead of seeking a separate pre-entry approval from SAFE, a 'domestic financial institution' will only be required to complete a simple filing with the China Foreign Exchange Trade System;
- a 'domestic financial institution' shall ensure its trading in the inter-bank FX market is based on the need for (i) hedging the risk associated with FX settlement/sales for its own or client accounts; (ii) carrying on market making and proprietary transactions within the permitted FX settlement/sales positions; and/or (iii) implementing its own hedging strategies; and
- a money brokerage company (including its branch(es)) approved by the banking regulators will be allowed to engage in FX brokerage business in the inter-bank FX market without a separate pre-entry approval from SAFE.

The circular also establishes a new FX market framework by combining both administrative supervision and self regulation.

The circular will take effect on 1 January 2015.

Stamp Duty (Amendment) Bill 2014 gazetted

The Financial Services and the Treasury Bureau (FSTB) has announced the gazettal of the Stamp Duty (Amendment) Bill 2014. The Bill seeks to implement the stamp duty waiver for the transfer of shares or units of all exchange traded funds (ETFs) as proposed in the 2014-15 Budget.

The FSTB believes that the proposed ETF stamp duty waiver will foster Hong Kong's position as an asset management centre and the development of its financial services sector as a whole, offering new business opportunities for market practitioners and a greater range of products for investors.

The Bill will be introduced into the Legislative Council on 17 December 2014.

SFC adopts proposals to allow greater flexibility for authorised funds in dissemination of prices and net asset values

The Securities and Futures Commission (SFC) has published consultation conclusions on its June 2014 proposals to amend the Code on Unit Trusts and Mutual Funds to give public funds greater flexibility in determining the means for making public their offer and redemption prices, net asset values (NAVs) and notices of dealing suspension. The proposals also required more frequent dissemination of prices and NAVs.

The SFC has indicated that all respondents supported the proposals, and that it will adopt them in full. Subject to a six-month transitional period for existing public funds, the amendments will become effective once they are gazetted.

RBI issues circulars on review of foreign direct investment policy

The Reserve Bank of India (RBI) has issued a set of circulars announcing the government's decisions on the review of foreign direct investment (FDI) policy in India. The government has revised its FDI policy to:

- allow 100% FDI in the railway infrastructure sector under the automatic route subject to the conditions specified;
- allow up to 49% FDI in the defence sector under the government route subject to the conditions specified; and
- bring uniformity in the sectoral classification/conditionalities for FDI.

The RBI has accordingly published the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Thirteenth Amendment) Regulations 2014; the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations 2014; and the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations 2014 to incorporate the revised FDI policy norms.

The RBI has advised authorised dealer banks to notify their constituents and customers concerned regarding the revised FDI policy.

KRX opens USD futures global night market

The Korea Exchange (KRX) has announced the opening of the USD futures global night market with effect from 8 December 2014. The KRX expects the night market to facilitate the management of currency risks and the provision of new investment instruments from the perspective of national economy, foreign exchange market and market participants.

The USD futures global night market provides an alternative market during after-market hours, and is intended to mitigate the effect of one-wayness in the non-deliverable forwards (NDF) market as well as reducing the costs of currency risk management and contributing to keeping import/export prices steady on the back of foreign exchange rate stability.

Australian Government's financial services inquiry recommends reforms across the industry

The Australian Government's Financial System Inquiry has released its final report, with a total of 44 recommendations for changes to the sector.

If adopted, these recommendations would have wide-ranging effects on the banking, superannuation and payment sectors, other financial services participants, and the capital markets.

The Australian Government will consult with industry and consumers before making any decisions on the report's recommendations. The consultation is open until 31 March 2015.

The final report focuses on perceived present weaknesses in Australia's financial system, and makes recommendations in the following areas to promote a resilient, efficient and fair financial system:

- resilience, including a recommended increase in regulatory capital, as well as aspects of stability and bail-in;
- superannuation and retirement products, including a recommendation that super funds tender for fund management;
- innovation, including alternative approaches to funding and electronic financial services and payments;
- consumer outcomes, including card payments, and further regulation of financial advisers and consumer insurance;
- capital markets reforms, including development of a corporate bond market; and
- regulator powers and accountability, including increased funding and enforcement powers.

Federal Reserve Board requests comment on proposed rule on global systemically important banking organizations

The Federal Reserve Board (FRB) has published a proposed rule which would institute a system for identifying whether a US bank holding company should be classified as a global systemically important banking organization (GSIB). Any firm identified as a GSIB would be subject to a risk-based capital surcharge to be calibrated based on its systemic risk profile. Under the terms of the proposal, eight US firms would currently be identified as GSIBs. A firm identified as a GSIB would calculate its GSIB surcharge under two methods and use the higher of the two surcharges.

According to a related FRB release, the first method would analyze the GSIB's size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity, consistent with a methodology developed by the Basel Committee on Banking Supervision (BCBS). The second method would use similar inputs, but would replace substitutability with use of short-term wholesale funding and would generally result in significantly higher surcharges than the BCBS framework. Under the proposal, estimated surcharges for bank holding companies identified as GSIBs currently would range from 1.0 to 4.5% of a firm's total risk-weighted assets.

Failure to maintain the capital surcharge would subject the GSIB to restrictions on capital distributions and discretionary bonus payments. The proposal would be phased in beginning on 1 January 2016, becoming fully effective on 1 January 2019.

Comments on the proposed rule are due by 28 February 2015.

SEC Chair discusses new rules for mutual funds

US Securities and Exchange Commission (SEC) Chair Mary Jo White has delivered a speech at the New York Times DealBook Opportunities for Tomorrow Conference in which she stated that the agency is preparing a new set of rules to police mutual funds that have increasingly moved into complex and harder-to-sell investments. According to White, the SEC staff is considering whether broad risk management programs should be required for mutual funds and exchange-traded funds to address the risks related to their liquidity and derivatives use, as well as measures to ensure the agency's comprehensive oversight of those programs. The staff is also reviewing options for specific requirements, such as updated liquidity standards, disclosures of liquidity risks, or measures to appropriately limit the leverage created by a fund's use of derivatives.

White's speech indicates that managers of mutual funds may face new requirements that limit how much they can invest in less-liquid assets and use derivatives to boost returns. In addition, regulators will require funds to provide investors with more information about their use of derivatives and their practice of lending out securities to earn a profit.

RECENT CLIFFORD CHANCE BRIEFINGS

EU clarifies scope of sectoral sanctions relating to Russia/Ukraine

In the face of significant uncertainty around the interpretation of aspects of the European Union's 'sectoral sanctions' imposed in response to the situation in Ukraine, there was a widespread sense that further guidance was desirable. A long-anticipated response to some of this uncertainty has emerged in the form of Council Regulation (EU) No. 1290/2014, published in the EU's Official Journal on 5 December 2014, following Council Decision 2014/872/CFSP of 4 December 2014 that it was 'necessary to clarify' its prior Decisions in relation to the relevant restrictive measures.

This briefing discusses the new regulation.

http://www.cliffordchance.com/briefings/2014/12/eu_clarifies_scopeofsectoralsanctionsrelatin.html

Final text for the Amended EU Regulation on Insolvency Proceedings

The process to update and extend the existing European Regulation on Insolvency Proceedings (EUIR) was commenced almost 2 years ago to the day, now the final text for the Amended Regulation has been published. The final text is the result of much wrangling between the EU Commission, the Council of the EU, and the EU Parliament as to what form and how far the amendments should go. There has also been much lobbying by Member States to get the amendments to address their individual concerns regarding cross border insolvency cases and ensure that there is a level playing field.

This briefing sets out the views of experts from our European network on what impact the amendments will have, and what their observations are on the changes that appear in the final text.

http://www.cliffordchance.com/briefings/2014/12/final_text_for_theamendedeuregulationo.html

Expecting the unexpected – lessons on sanctions and addressing legal uncertainties

With the decision by the United States and the European Union to impose sanctions on Russia came a raft of new challenges not ordinarily contemplated even by the most seasoned sanctions experts. Commercial and financial transactions have been heavily impacted by the imposition of constraints on dealings with a major trading power of the West, and the nature of the restrictions is itself unprecedented.

This briefing explores some of the contractual clauses and other mechanisms being used in the market, and looks at the legal uncertainties that remain unresolved.

http://www.cliffordchance.com/briefings/2014/12/expecting_the_unexpectedlessonsonsanction.html

Asia Pacific anti-corruption rankings for 2014

Transparency International recently released its always keenly awaited annual Corruption Perceptions Index (CPI) for 2014, just after a new bribery risk index was launched by TRACE International. The CPI has been an authoritative and valuable tool for measuring perceived levels of public sector corruption around the world since 1995. However, in November of this year, the TRACE Matrix was introduced, the first bribery risk index specifically tailored to the needs of the business community.

This briefing discusses the CPI and TRACE risk index.

http://www.cliffordchance.com/briefings/2014/12/asia_pacific_anti-corruptionrankingsfor2014.html

SFO secures first Bribery Act convictions and promises more to come

The Serious Fraud Office secured its first convictions for offences under the Bribery Act 2010 on 5 December two and a half years after the Act came into force. Three individuals, former directors of companies involved in the sale and promotion of investment products based on 'green biofuel' plantations in Cambodia, were convicted of a range of criminal offences and sentenced to a total of 28 years' imprisonment.

This briefing discusses these convictions.

http://www.cliffordchance.com/briefings/2014/12/sfo_secures_firstbriberyactconvictionsan.html

Withholding Tax Exemption – Private Placements

The UK Government announced a new withholding tax exemption for privately placed debt issuances in this year's Autumn Statement. Draft legislation has now been published.

This briefing looks at the implications of the proposed exemption and asks whether the conditions are likely to prove workable in practice.

http://www.cliffordchance.com/briefings/2014/12/withholding_tax_exemptionprivateplacements.html

New tax rules for restructuring and amending UK corporate debt

In this year's Autumn Statement, the Government announced new tax rules for restructuring and amending UK corporate debt. This is likely to have wide implications for debt restructurings, as well as distressed amendments and refinancings (such as 'amend and extends').

This briefing looks at the new rules and asks what practical impact they will have on lenders and borrowers.

http://www.cliffordchance.com/briefings/2014/12/new_tax_rules_forrestructuringandamendingu.html

The new UK diverted profits tax – will it impact your business, and will it survive legal challenge?

For 120 years, foreign companies selling to customers in the UK have not been subject to UK tax on their profits unless they trade in the UK through a 'permanent establishment'. That is to change. The Government has published draft legislation enacting a 'diverted profits tax' of

considerable breadth, which will potentially apply to many foreign companies doing business in the UK, and many UK companies transacting with affiliates abroad.

This briefing looks at the scope of the proposed tax, how and when it will apply, and asks whether it is compatible with EU law and the UK's double tax treaties.

http://www.cliffordchance.com/briefings/2014/12/the_new_uk_divertedprofitstaxwillitimpac.html

Russia Update – Summer/Autumn Issue 2014

Hot topics discussed in the Summer/Autumn 2014 issue include:

- sanctions, Russian ban on selected food imports and the 'Rotenberg' Law;
- deoffshorisation bill signed into law and Russian response to FATCA;
- massive amendments to the Land Code;
- new rules on bankers' remuneration;
- merger of two top court instances completed; and
- Russian Law Focus: latest amendments to the Civil Code regarding pledges and regulation of legal entities.

http://www.cliffordchance.com/briefings/2014/12/russia_update_summerautumnissue2014.html

US Federal Appeals Court Ruling Makes it Harder for the Government to Charge Remote Tippees

On 10 December 2014, a three-judge panel of the US Court of Appeals for the Second Circuit in New York vacated the insider trading convictions of hedge fund managers Todd Newman and Anthony Chiasson, instructing the district court to dismiss all charges against them with prejudice. In this highly anticipated ruling, United States v. Newman, the Second Circuit, which has jurisdiction over the majority of the government's insider trading prosecutions, resolved the open legal question of whether the government must prove that a remote tippee knew that the insider who disclosed confidential information to the first tippee received a personal benefit for doing so. The government bet against such a requirement, arguing that this element was not needed in the trial judge's jury instructions for Newman and Chiasson, as well as in several other high profile insider trading cases. The Second Circuit decided against the government, holding that the government is required to prove this element of the tippee's knowledge to secure a conviction, and had not done so, necessitating dismissal. More broadly, the Newman court's ruling makes it harder for the government to pursue claims against tippees who are removed from the initial prohibited information exchange.

This briefing discusses the ruling.

http://www.cliffordchance.com/briefings/2014/12/u_s_federal_appealscourtreversesinside.html