

# International Regulatory Update

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### European Long-Term Investment Funds: EU Council adopts regulation

The EU Council has adopted [the regulation on European Long-Term Investment Funds \(ELTIFs\)](#). The creation of the ELTIF label is intended to help tackle barriers to long-term investment and stimulate employment and economic growth. ELTIFs will focus on alternative investments that fall within a defined category of long-term asset classes whose successful development requires a long-term commitment from investors.

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Only EU alternative investment funds (AIFs) that are managed by alternative investment fund managers (AIFMs), authorised in accordance with the AIFMD, will be eligible to market themselves as ELTIFs. ELTIFs will be subject to additional rules requiring them, amongst other things, to invest at least 70% of their capital in clearly defined categories of eligible assets. Trading in assets other than long-term investments will only be permitted up to a maximum of 30% of their capital.

Adoption of the regulation follows an agreement reached with the EU Parliament in December 2014 at first reading. The regulation will enter into force on the twentieth day following its publication in the Official Journal.

#### **MIF Regulation: Council adopts approved text**

The EU Council has passed the proposed Regulation on Interchange Fees for Card-based Payment Transactions ([MIF Regulation](#)) following EU Parliament approval of the agreed text on 10 March 2015 at its Plenary session.

The MIF Regulation will apply from the date it enters into force, which will be on the twentieth day following that of its publication in the Official Journal, except for certain provisions which will apply either six months or one year after entry into force. Rules capping interchange fees for consumer debit and credit card transactions will apply six months after entry into force.

#### **AMLD 4: Council approves agreed text**

The EU Council has adopted the proposed text of the fourth Anti-money Laundering Directive ([AMLD 4](#)) and the proposed Regulation on information accompanying transfers of funds ([FATF 2 Regulation](#)) at first reading. The Council and EU Parliament reached agreement on the measures in December 2014 following trilogue negotiations.

The Parliament will vote on the proposed legislation at second reading in a forthcoming plenary session.

#### **MiFID2: ESMA consults on guidelines for assessing knowledge and competence of investment advisers**

The European Securities and Markets Authority (ESMA) has launched a [consultation](#) on draft guidelines under MiFID2. The draft guidelines propose criteria for assessing individual competence to provide investment advice or information to clients on behalf of a MiFID investment firm in relation to financial instruments, investment services or ancillary services, including:

- characteristics of products and services and their total cost;

- market behaviour and market structure;
- use of relevant data sources and valuation principles;
- regulatory requirements; and
- the firm's internal procedures for MiFID2 compliance.

Comments are due by 10 July 2015.

#### **ESMA calls for evidence on virtual currency investments and distributed ledger technology**

ESMA has issued a [call for evidence](#) on developments in virtual currency investments. ESMA has been monitoring and analysing virtual currency investments over the last six months and has invited market participants and stakeholders to submit feedback on its analysis to date and provide additional input.

In particular, ESMA is seeking information on:

- investment products that give an investor underlying exposure to one or more virtual currencies;
- issuing and trading financial assets using virtual currency distributed ledger technology, also known as blockchains; and
- other uses of distributed ledger technology, both relating to virtual currencies and separate from virtual currency related products.

ESMA's call for information is intended in part to help ascertain the extent to which the blockchain could enter the financial mainstream and how it could be used. ESMA will monitor developments to ensure that regulators are aware of significant market developments.

Contributions to the call for evidence are due by 21 July 2015.

#### **Basel Committee removes certain national discretions from Basel II capital framework**

The Basel Committee on Banking Supervision (BCBS) has issued a [statement](#) on its decision to remove certain national discretions from the Basel II capital framework. National discretions allow jurisdictions to adapt Basel standards according to local financial systems, but may impact comparability between jurisdictions. The national discretions that have been removed relate to:

- treatment of past-due loans;
- definition of retail exposures;
- transitional arrangements for corporate, sovereign, bank and retail exposures;
- rating structure standards for wholesale exposures;
- internal and external audit; and

- re-aging.

The national discretion on the internal ratings-based (IRB) approach treatment of equity exposures will expire in 2016, due to a ten year limit on the discretion under Basel II.

The BCBS has also published an answer to a frequently asked question (FAQ) on funding valuation adjustment and derecognition of a debit valuation adjustment in the statement.

#### **FSB and G20 report on progress of agreed financial reforms**

G20 Finance Ministers and Central Bank Governors have published a [communiqué](#) following their second meeting under the Turkish G20 Presidency, which took place in Washington DC on 16-17 April 2015. Alongside the communiqué, the Financial Stability Board (FSB) has published its [letter to the G20](#), dated 9 April 2015, on progress towards achieving its work plan on financial reform by the Antalya Summit in November 2015.

The FSB addresses work on its first annual consolidated report on agreed reforms, which is intended to enable the G20 to assess over time whether reforms are achieving their intended results in an effective and efficient manner. The letter also discusses work on remaining post-crisis reforms, including:

- completing work on the total loss absorbing capacity (TLAC) international standard;
- finalising policy measures for statutory and contractual approaches to cross-border recognition of resolution actions; and
- work alongside the Committee on Payments and Market Infrastructures (CPMI) and International Organization of Securities Commissions (IOSCO) to promote CCP resilience and standardisation and aggregation of OTC derivatives trade reporting data.

On emerging vulnerabilities, the FSB reports on its work relating to risks stemming from market-based finance and misconduct. The FSB also highlights the inclusion of five new institutions as Plenary members to increase representation of emerging market and developing economies (EMDEs) and discusses work on Basel III, OTC derivative reforms and resolution in the Emerging Market Forum.

The G20 communiqué discusses many of the FSB's work streams in relation to its priorities on financial reform and makes various commitments, including to:

- identify and address gaps related to the resilience, recovery and resolution of central counterparties;
- call on the International Association of Insurance Supervisors (IAIS) to finalise higher loss absorbency requirements for global systemically important insurers (G-SIIs);
- implement the G20 Roadmap to strengthen oversight and regulation of shadow banking;
- work to ensure market based finance is available to support the real economy while maintaining appropriate oversight and regulation;
- support the work of BCBS and IOSCO to finalise criteria to identify simple, transparent and comparable securitisations; and
- consider possible policy actions on asset management, if necessary, following the FSB's review of potential financial stability risks.

#### **Consob consults on amendments to its administrative sanctions proceedings**

The Italian Commissione Nazionale per le Società e la Borsa (CONSOB) has launched a [consultation](#) on measures to amend CONSOB Resolution no.18750 of 29 December 2013 on administrative sanctions proceedings.

The proposed amendments stem from recent case law (amongst others, European Court of Human Rights and Consiglio di Stato) which endorsed some general principles to enhance the rights of the accused throughout CONSOB's administrative sanctions proceedings.

Comments are due by 13 May 2015.

#### **Ministry of Economy and Finance and ACRI sign memorandum of understanding on investment guidelines for banking foundations**

The Italian Ministry of Economy and Finance (MEF) and Associazione di Fondazioni e di Casse di Risparmio Spa (ACRI), the Italian association representing joint-stock savings banks and banking foundations, have signed a [memorandum of understanding](#) (MoU) setting out investment guidelines for Italian banking foundations.

Among other things, the MoU includes provisions on:

- concentration limits, requiring foundations not to be exposed against a single counterparty for more than one third of their assets;

- limitations on indebtedness, specifying that foundations may not raise financing except in limited circumstances; and
- limitations on the use of derivatives, stating that foundations may only use derivatives for hedging purposes or in circumstances where there is no risk of financial losses.

The guidelines have been agreed with banking foundations, which will incorporate them into their constitutional documents. MEF will supervise foundations' compliance.

#### **CBRC consults on implementing measures on administrative licensing of Chinese-funded commercial banks**

As part of its efforts to simplify the licensing requirements for Chinese-funded commercial banks, the China Banking Regulatory Commission (CBRC) has published a [consultation draft](#) of Implementing Measures on Administrative Licensing of Chinese-funded Commercial Banks for public comment.

Amongst other things, the consultation draft proposes that:

- most licensing matters, such as establishment/acquisition of offshore entities, adjustment of business scope, appointment of directors and senior management personnel, are delegated to local banking regulatory authorities; and
- proposed directors and senior management personnel shall meet relevant qualification requirements and the exceptional case review mechanism will no longer be available to those who fail to satisfy any of the requirements.

The public consultation period will end on 10 May 2015.

#### **CBRC consults on amendments to implementing measures on administrative licensing of non-banking financial institutions, trust companies and foreign-funded banks**

CBRC has published three consultation papers on amendments to the Implementing Measures on [Administrative Licensing of Non-banking Financial Institutions](#), [Implementing Measures for the Administrative Licensing of Trust Companies](#) and [Implementing Measures on Administrative Licensing of Foreign-funded Banks](#).

The consultation draft of the implementing measures on administrative licensing of non-banking financial institutions proposes to lift a number of administrative licensing requirements regarding non-banking financial institutions, including:

- the addition of financial asset management companies and consumer financing companies to the covered institutions, whereas trust companies will be subject to separate administrative licensing rules;
- delegation to local banking regulatory authorities for most of the administrative licensing matters for non-banking financial institutions (except financial asset management companies), including changes of name, domicile, registered capital and articles of association, etc.; and
- relevant qualification requirements for proposed directors and senior management personnel and making the exceptional case review mechanism no longer available to those who fail to satisfy any of the requirements.

Trust companies are currently subject to the CBRC Implementing Measures for the Administrative Licensing of Non-banking Financial Institutions issued in 2007, but CBRC has published a separate consultation draft of Implementing Measures for the Administrative Licensing of Trust Companies. The CBRC intends to conduct the administration of trust companies in a differentiated way from other non-banking financial institutions due to the specialities of the trust business. The consultation draft sets out comprehensive legislation covering:

- the establishment, change and termination of trust companies;
- changes of business scope and product types of trust companies; and
- the qualifications of board and senior management.

CBRC has also issued proposals to lift a number of administrative licensing requirements regarding foreign-funded banks in China, which are set out in the consultation draft of the implementing measures on administrative licensing of foreign-funded banks. Under the proposals:

- some licensing matters which are currently subject to the CBRC's jurisdiction are delegated to local banking regulatory authorities;
- a foreign bank will no longer need to operate a representative office in China for at least 2 years (for Hong Kong, Macau and Taiwan banks, 1 year) before it can set up a branch in China;
- a foreign-funded bank will no longer need to allocate an operation fund equivalent to no less than RMB 100 million to a branch it proposes to set up; and
- the qualification requirements for operating RMB business by a foreign-funded bank have been largely

- relaxed – for an initial application, the relevant bank only needs to have an operating history in China of more than 1 year (while a 3-year track record is currently required) and satisfy other prudential conditions as required by the CBRC.

Comments on each of the three consultations are due by 10 May 2015.

## RECENT CLIFFORD CHANCE BRIEFINGS

### Amendment of the RPA regime in concessions

Spain's draft Bill on Public Sector Procurement proposes an amendment to the regime governing what is known as the financial liability of public administrations (responsabilidad patrimonial de la administración - RPA) in the event of the termination of concession agreements, limiting in certain cases their amount to the market value of the concession. The draft Bill will implement EU regulations on public procurement into Spanish law.

This briefing paper discusses the proposed amendments.

[http://www.cliffordchance.com/briefings/2015/04/amendment\\_of\\_the\\_rpa\\_regime\\_in\\_concessions.html](http://www.cliffordchance.com/briefings/2015/04/amendment_of_the_rpa_regime_in_concessions.html)

### Company Representative No Longer Required to be a Japanese Resident

In order to facilitate further inbound investment into Japan, the Abe administration has decided to abolish the requirement that each company should have at least one Japanese resident as a representative director. This

change of policy is good news for international companies which have or wish to establish a subsidiary in Japan and also for international sponsors investing in Japan.

This briefing paper discusses the implications of the policy change.

[http://www.cliffordchance.com/briefings/2015/04/company\\_representative\\_no\\_longer\\_required\\_to\\_be\\_a\\_japanese\\_resident.html](http://www.cliffordchance.com/briefings/2015/04/company_representative_no_longer_required_to_be_a_japanese_resident.html)

### U.S. Department of Labor Proposes New Fiduciary Rules

On 14 April 2015, the US Department of Labor issued a long-awaited notice of proposed rulemaking relating to the definition of 'investment advice fiduciary' under the Employee Retirement Income Security Act and the Internal Revenue Code. The 2015 Proposed Rules aim to increase consumer protection by replacing the existing 'five-part' test for determining the status of an investment advice fiduciary and imposing the same standards that apply to plans covered by ERISA on individual retirement accounts.

This briefing paper discusses the proposed new rules.

[http://www.cliffordchance.com/briefings/2015/04/us\\_department\\_of\\_labor\\_proposes\\_new\\_fiduciary\\_rules.html](http://www.cliffordchance.com/briefings/2015/04/us_department_of_labor_proposes_new_fiduciary_rules.html)

### US Sanctions against North Korea - turning into a country of mushrooms

This briefing paper discusses US sanctions against North Korea, which were announced in January 2015.

[http://www.cliffordchance.com/briefings/2015/04/us\\_sanctions\\_against\\_north\\_korea\\_turning\\_into\\_a\\_country\\_of\\_mushrooms.html](http://www.cliffordchance.com/briefings/2015/04/us_sanctions_against_north_korea_turning_into_a_country_of_mushrooms.html)

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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