

International Regulatory Update

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EBA publishes revised Work Programme for 2015 and sets out delayed and deleted deliverables

The European Banking Authority (EBA) has published its revised [Work Programme for 2015](#), which is dated 27 March 2015. The previous version was published in September 2014, but following its adoption the EBA has received new mandates from the EU Commission, predominantly stemming from the Multilateral Interchange Fees (MIF) Regulation and technical standards updates on the Liquidity Coverage Ratio (LCR), in addition to a reduction to the EBA budget which has led the EBA to delay or delete certain deliverables.

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Work to be delayed includes drafting Level 2 measures under the Capital Requirements Directive (CRD 4) and Regulation (CRR), European Market Infrastructure Regulation (EMIR) and Bank Recovery and Resolution Directive (BRRD). The EBA has announced that it will not proceed with work on consolidated banking data, this year's annual report on the impact of the LCR and regulatory technical standards (RTS) on permanent partial use.

CRD 4: EBA publishes annual report on convergence of supervisory practices

The EBA has published its first [report](#) on the convergence of supervisory practices in the EU banking sector under CRD 4. The report is addressed to the EU Parliament and EU Council and will be published on an annual basis; the first report covers the findings from a three year assessment.

The report focuses on the supervisory review and evaluation process and assessment of risks (SREP), supervisory stress testing, the ongoing review of permissions to use internal approaches and supervisory measures and powers. Overall the EBA has found that significant progress has been made towards improving the convergence of supervisory practices since 2011. However, it has warned that divergent supervisory practices pose a potential risk to the single market and further steps to neutralise such risks are required.

The EBA intends to provide training and use monitoring tools to assess implementation of SREP and related technical standards in the 2016 report.

Eligibility of assets: new ECB Guideline on implementation of monetary policy published in Official Journal

The European Central Bank's Guideline ([EU 2015/510](#)) on the implementation of the Eurosystem monetary policy framework, setting out the eligibility of assets for ECB open market operations, has been published in the Official Journal. The new Guideline will replace the current framework on Eurosystem monetary policy instruments and procedures (Guideline ECB/2011/14). The new Guideline seeks to consolidate, simplify and improve the clarity of the Eurosystem's existing general framework for monetary policy implementation. For this purpose, it consolidates several amendments to the Eurosystem framework made since 2011 and updates cross-references to several EU legal acts, such as the CRR and CRD 4. In addition, all provisions previously laid down in Annexes I and II to Guideline ECB/2011/14 (in particular Annex I, also known

as the General Documentation) have now been incorporated into the enacting terms of the new Guideline.

The Guideline will apply from 1 May 2015 with the exception of Article 142 on liquidity support in respect of asset-backed securities, which will apply from 1 November 2015.

IOSCO consults on business continuity plans for trading venues and market intermediaries

The International Organization of Securities Commissions (IOSCO) has [launched two consultations](#) on the resilience of financial markets and intermediaries through business continuity plans (BCPs), including disaster recovery plans (DRPs). Both reports draw on feedback from IOSCO members, stakeholders and the industry and are intended to address possible weaknesses in BCPs and other recovery strategies.

The report on trading venues discusses technology and illustrates examples of risks associated with increased technological reliance, which it warns may lead to systemic vulnerabilities including the inability to trade and have a negative impact on confidence in markets, trading venues and participants. The report considers mechanisms for trading venues to effectively manage electronic trading risks, possible recommendations to regulators and good practice for trading venues in developing their BCPs and implementing mechanisms for resilience and reliability of their critical systems.

The consultation report on market intermediaries discusses business continuity and recovery planning including proposed standards for regulators when assessing plans as part of their oversight activities. The standards may also assist intermediaries when preparing BCPs.

Comments on both consultations are due by 6 June 2015.

IMF recommends stress tests for investment funds in its Global Financial Stability Report

The International Monetary Fund (IMF) has published its latest [Global Financial Stability Report](#), which raises concerns about the nature and magnitude of associated risks posed by less leveraged investment products such as mutual funds and exchange-traded funds (ETFs) investing in bonds and equities. In its report, the IMF contends that easy redemption options and the presence of a 'first-mover' advantage can create risks of a run, and that the resulting price dynamics can spread to other parts of the financial system through funding markets and balance sheet and collateral channels.

The report recommends that:

- securities regulators should enhance microprudential supervision of risks stemming from individual institutions building on regulators' own risk analysis and stress testing, supported by global standards for supervision and better data and risk indicators;
- regulatory and supervisory reforms are needed to incorporate a macroprudential approach; and
- liquidity rules, the definition of liquid assets, investment restrictions, and reporting and disclosure rules could be enhanced.

Bank of Italy consults on implementing provisions on cooperative banks reform

The Bank of Italy has launched a [consultation](#) on the implementing measures of certain provisions of Legislative Decree no. 385, dated 1 September 1993 (Italian Banking Act), as amended by Decree Law no. 3 of 24 January 2015 (converted into law with amendments on 24 March 2015) on the proposed transformation of the main cooperative banks into joint stock companies.

In the consultation document, the Bank of Italy proposes a set of provisions intended to regulate the calculation methods of the EUR 8 billion threshold set out under the Decree, on the one hand, and the right to redemption of shares in case of withdrawal, also following transformation or exclusion of the shareholder, on the other.

Comments need to be submitted within 15 days of the date of publication of the consultation document, which was 9 April 2015.

Law establishing Systemic Risk Committee enters into force

The Law of 1 April 2015 establishing a Systemic Risk Committee in Luxembourg and implementing the European Systemic Risk Board (ESRB) Recommendation of 22 December 2011 on the macro-prudential mandate of national authorities (ESRB/2011/3) and the ESRB Recommendation of 4 April 2013 on intermediate objectives and instruments of macro-prudential policy (ESRB/2013/1) has been [published in the Luxembourg Official Gazette](#) (Mémorial) and entered into force.

The Committee encompasses four members, namely the member of the Luxembourg government responsible for the financial sector (currently the Minister of Finance), the director general of the Luxembourg Central Bank, the Banque Centrale de Luxembourg, the director general of

the financial sector supervisory authority, the Commission de Surveillance du Secteur Financier, and the director general of the insurance sector supervisory authority, the Commissariat aux Assurances.

The Committee is entrusted with coordinating the implementation of macro-prudential policy by the authorities represented in it. Its ultimate objective is to contribute to the safeguarding of the Luxembourg financial system, in particular by strengthening the resilience of the financial system and decreasing the build-up of systemic risks, ensuring a sustainable contribution of the financial sector to economic growth. The Committee is established as a board contributing to cooperation between those authorities that are responsible for micro- and macro-prudential supervision.

Amongst other things, the Committee is intended to identify, monitor and assess risks in relation to financial stability and issue opinions, warnings and recommendations in order to prevent and mitigate those risks.

SAFE launches macro-prudential management pilot programme for foreign debt in three selected zones

In February 2015, the State Administration of Foreign Exchange (SAFE) approved a Foreign Debt Macro-prudential Management Pilot Programme, which is intended to reform the foreign debt and capital flow management framework and increase the exchangeability of RMB under capital accounts. The pilot programme is taking place in selected zones comprising the [Zhangjiagang Free Trade Zone](#) (Zhangjiagang, Jiangsu), Zhongguancun Science Park (Beijing) and Qianhai Modern Service Industry Cooperation Zone (Shenzhen, Guangdong). The SAFE local branches in [Beijing](#) and [Shenzhen](#) have now published rules for the implementation of the pilot programme.

Amongst other things, the rules cover:

- eligibility, which is limited to non-financial enterprises registered in the selected zones. In Beijing, the rules specify that eligible entities will be high-tech enterprises approved by the Zhongguancun Science Park authority. Enterprises in certain regulated industries (such as real estate) and certain special financing transactions (such as issuance of overseas bond), however, are not covered by the pilot programme;
- size management of foreign debt, which for pilot participants should be regulated on a maximum ratio basis in order that the outstanding foreign debts of an

eligible enterprise cannot be more than twice its audited net asset as of the end of the preceding year. In addition, a Chinese-funded eligible enterprise cannot incur debt exceeding 75% of its total assets;

- registration of foreign debts taken by eligible enterprises under the pilot programme with a competent SAFE branch, which is required within 15 working days after the underlying foreign debt contract is executed under the published rules; and
- use of foreign debt by eligible enterprises, which may convert funds obtained under the pilot programme into RMB and use them in accordance with the current SAFE regulations.

The existing SAFE regulations apply in areas not affected by the pilot programme.

State Council approves Bank Deposit Insurance Rules

[The Bank Deposit Insurance Rules](#), which were approved by the PRC State Council on 17 February 2015, have been published. The Rules are intended to establish and regulate the deposit insurance system and protect the legitimate rights and interests of depositors. They are viewed as an important step to establishing the bankruptcy system for financial institutions in China. Amongst others, the following aspects are worth noting:

- the Rules will apply to all the PRC-established commercial banks, rural cooperative banks, rural credit cooperatives and other banking financial institutions that take deposits (covered institutions), but generally not apply to the domestic branches of foreign banks or the overseas branches of Chinese banks;
- the State Council will designate a deposit insurance funds regulator who will formulate rules on the applicable rate of the insurance premium and all covered institutions shall pay the premium accordingly to such regulator every six months;
- the insurance limit of the principal and interest of the same depositor at one covered institution shall be RMB 500,000 and the excessive portion shall be recovered from the liquidated estate of the relevant institution; and
- the insurance deposit funds regulator will be responsible for making repayments to the depositors within the insurance limit under certain situations (e.g., when the court accepts the bankruptcy petition of a covered institution).

The Rules will take effect on 1 May 2015.

CSRC issues guidelines on publicly-raised securities investment funds trading under Stock Connect

The China Securities Regulatory Commission (CSRC) has issued the '[Guidelines on Publicly-Raised Securities Investment Funds Trading under the Shanghai – Hong Kong Stock Connect Programme](#)', which are intended to promote southbound trading under the Shanghai – Hong Kong Stock Connect programme. Amongst other things, under the guidelines:

- publicly-offered securities investment funds may invest in eligible H Shares under the South Bound Trading Link and a Qualified Domestic Institutional Investor license is not required to make such investments;
- funds already approved by or registered with the CSRC which may invest in H Shares according to the fund contracts can make such investments either through the existing mechanism or via the Stock Connect;
- funds already approved by or registered with the CSRC whose fund contracts do not expressly allow investment in H Shares shall hold a general meetings of fund unit-holders to determine the investment strategy for H Share investment – the fund contracts need to be revised before these funds can invest in H Shares under the Stock Connect; and
- funds' investment in H Shares under the Stock Connect should be disclosed in the funds' quarterly, semi-annual and annual reports as well as their offering documents.

The guidelines are effective immediately.

PBOC issues circular on issuance of credit asset-backed securities

The People's Bank of China (PBOC) has published a [circular](#) on the issuance of credit asset-backed securities (credit ABS), which was promulgated on 26 March 2015 to simplify the process and improve the efficiency and transparency of the PBOC's administration of credit ABS.

Amongst other things, under the circular:

- originators and trustees who have already (i) obtained relevant licenses from competent regulators, (ii) issued credit ABS and (iii) made information disclosure in accordance with applicable regulations may apply to register with the PBOC and the registered institutions may, within the term of registration, issue credit ABS from time to time at their own discretion;

- for the registration application, originators and trustees are required to submit relevant documents to the PBOC, which include an application report, contracts and rating arrangements relating to the proposed credit ABS, etc.;
- after registration, in respect of each credit ABS product, the registered institutions should file with the PBOC the final prospectus, credit rating report, all related legal documents and the registration forms 5 working days before the disclosure of the issuance information as required by the applicable regulations; and
- before the issuance and during the term of each credit ABS product, originators and trustees shall disclose information in accordance with applicable regulations and assume principal responsibilities.

The circular took effect immediately.

SFC issues circular regarding waiver of annual licensing fees

The Securities and Futures Commission (SFC) has issued a [circular](#) to remind all intermediaries, responsible officers and representatives of the annual licensing fee waiver announced on 17 March 2014.

The annual fee waiver is intended to relieve licensed corporations, registered institutions, responsible officers and representatives of the obligation to pay the annual licensing fees that would otherwise be payable by them during the period from 1 April 2014 to 31 March 2016. Accordingly, the SFC will not issue a demand for payment for any annual licensing fee that would otherwise become payable up to and including 31 March 2016.

The fees payable in connection with new licence applications and transfers will not be waived.

RECENT CLIFFORD CHANCE BRIEFINGS

EU Legislation Pilot – Q1 2015

Clifford Chance has launched an update of its EU Legislation Pilot, which provides an overview of major current EU legislative initiatives in Q1 2015. The pilot indicates the progress of a range of EU initiatives affecting the financial sector and indicates the business areas likely to be affected by the legislation.

http://www.cliffordchance.com/briefings/2015/04/eu_legislation_pilotq12015.html

Transaction Services Newsletter – April 2015

Clifford Chance has prepared the latest edition of the Transaction Services Newsletter, a publication edited by lawyers in the Transaction Services group for business and legal professionals working in cash management and securities services. In this edition, we cover a range of hot topics and developments, including cyber-security, a review of the annual SIBOS conference, the impact of consumer protection measures on wholesale banks and a look at the new Payment Systems Regulator. We also share details of our new Financial Markets toolkit, the 'one-stop shop' for Clifford Chance financial markets resources, including 'At a glance' transaction services briefings on the second Payment Services Directive (PSD2), the MIF Regulation, the Cybersecurity Directive, the Payment Accounts Directive, and the FATF2 Regulation.

http://www.cliffordchance.com/briefings/2015/04/transaction_servicesnewsletter-april2015.html

Trade receivables financings – documentary considerations

This briefing explores some of the common documentary issues and solutions encountered by businesses and banks when undertaking trade receivables financings and securitisations. The documentary issues arise from restrictive covenants and security arrangements in acquisition financings, and sales contracts. The briefing considers what steps might be taken when drafting these in order to facilitate trade receivables financings.

http://www.cliffordchance.com/briefings/2015/04/trade_receivablesfinancingsdocumentar.html

Polish Legislation Newsletter

The Polish Legislation Newsletter for February – March 2015 summarises selected recent changes to Polish law.

http://www.cliffordchance.com/briefings/2015/04/polish_legislationnewsletterfebruary-marc.html

Offshore financing in Shanghai Free Trade Zone liberalised

On 12 February 2015, in order to liberalise control over capital account transactions and implement further financial deregulation in the Shanghai Pilot Free Trade Zone (Shanghai FTZ), the Shanghai Head Office of the People's Bank of China (PBoC) issued the Trial Implementation Rules on the Macroscopic Prudent Management of Account-Based Settlement Business for Offshore Financing and Cross-Border Capital Flow in the Shanghai FTZ.

These measures became effective on the same day and have laid the foundation for a new legal regime that greatly facilitates the conduct of offshore financing activities.

This briefing discusses the regulation of the new regime.

http://www.cliffordchance.com/briefings/2015/04/clifford_chance_clientbriefingoffshor.html

Impact of the Antitrust Reform Act – changes in appeals process and introduction of JFTC pre-order hearing

On 1 April 2015, reforms to the Anti-Monopoly Act of Japan (Antitrust Reform Act), which were approved on 7 December 2013, took effect.

The Antitrust Reform Act abolishes the appeal process to the Japan Fair Trade Commission (JFTC) in respect of cease and desist orders and fine orders issued by the JFTC (JFTC Post-Order Review), and transfers the first review function from the JFTC to the Tokyo District Court. This is because the JFTC Post-Order Review had been criticised on the grounds that 'prosecutors double as judges'.

In addition, the Antitrust Reform Act creates a new pre-order hearing conducted by the JFTC to enhance the protection of due process for the party concerned.

This briefing discusses the impact of the Antitrust Reform Act.

http://www.cliffordchance.com/briefings/2015/04/impact_of_the_antitrustreformactchangesi0.html

Partnerships and companies – new rules on registration of capital

The Central Partnership and Company Registration Office has further revised its rules for partnerships and companies when registering either their initial capital or an increase in their registered capital of over Baht 5 million.

This briefing discusses the revised rules.

http://www.cliffordchance.com/briefings/2015/04/thailand_partnershipsandcompaniesnewrule.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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