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Briefing note

International Regulatory Update

22 - 26 June 2015

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EU institutions set out roadmap for future of Economic and Monetary Union

The five presidents of the European Council, the EU Commission, the EU Parliament, the Eurogroup and the European Central Bank have published a report entitled 'Completing Europe's Economic and Monetary Union'.

The report, which was commissioned by EU leaders at the Euro Summit in October 2014, lays out a roadmap for further integration of the euro area. It will be presented to political leaders assembled in the European Council on 25 June.

The report sets out the following three stages for strengthening Europe's Economic and Monetary Union (EMU):

- Stage 1 or 'Deepening by Doing' (1 July 2015 – 30 June 2017) – using existing instruments and the current treaties to boost competitiveness and structural convergence, achieving responsible fiscal policies at national and euro area level, completing the Financial Union and enhancing democratic accountability;
- Stage 2, or 'completing EMU' – more far-reaching actions to make the convergence process more binding, including a set of commonly agreed benchmarks for convergence which would be of legal nature, as well as a euro area treasury; and
- Final Stage (at the latest by 2025).

To prepare the transition from Stage 1 to Stage 2, the EU Commission will present a White Paper in Spring 2017 outlining the next steps needed, including legal measures to complete EMU in Stage 2.

EU extends economic sanctions against Russia by six months

The EU Council has extended EU economic sanctions against Russia until 31 January 2016. This follows an agreement at the European Council in March 2015, when EU leaders linked the duration of these sanctions to the complete implementation of the Minsk agreements, which is foreseen by 31 December 2015. The restrictive measures were imposed in July 2014 and reinforced in September 2014. They target certain exchanges with Russia in the financial, energy and defence sectors and dual-use goods.

PRIIPs: Joint Committee of ESAs publishes discussion paper on key information documents

The Joint Committee of the European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), has published a technical discussion paper on risk, performance scenarios and cost disclosures for key information documents (KIDs) for packaged retail and insurance-based investment products (PRIIPs).

Under the PRIIPs Regulation, the ESAs are mandated to develop draft regulatory technical standards (RTS) on the content and presentation of the KIDs for PRIIPs. The discussion paper aims to collect views on the possible methodologies to determine and display risks, performance and costs in the KID.

Comments are due by 17 August 2015.

CRR: EBA publishes final draft ITS amending liquidity coverage ratio reporting for credit institutions

The European Banking Authority (EBA) has published final draft Implementing Technical Standards (ITS) on supervisory reporting of the liquidity coverage ratio (LCR). The final draft ITS will amend Commission Implementing Regulation (EU) No 680/2014 following adoption of a Commission Delegated Act on the LCR for credit institutions in October 2014, which was published in the Official Journal in January 2015 (Commission Delegated Regulation (EU) 2015/61).

Under the delegated act, significant changes to existing LCR reporting templates and instructions set out in the ITS on supervisory reporting are necessary. As such, the EBA proposes in its updated final draft ITS to implement new LCR templates and instructions for credit institutions to fully replace the LCR templates in the previous ITS. Investment firms will continue to report LCR items using the current instructions and templates.

The EBA proposes that the first reference date should be December 2015 or six months after the publication of the ITS in the Official Journal, whichever is later. The EBA has

also announced that changes to validation rules, data point model (DPM) and the XBRL taxonomy reflecting the amended templates will be published at a later stage, but prior to the publication of the final ITS in the Official Journal.

Rating agencies: ESMA publishes translations of guidelines on periodic information to be submitted by CRAs

The European Securities and Markets Authority (ESMA) has published the official translations of its guidelines on periodic information to be submitted to ESMA by credit rating agencies (CRAs). The guidelines will come into force on 23 August 2015, two months after their publication.

Basel Committee issues net stable funding ratio disclosure standards

The Basel Committee on Banking Supervision (BCBS) has issued the final Net Stable Funding Ratio (NSFR) disclosure standards, following the publication of the NSFR standard in October 2014.

The standards aim to:

- improve the transparency of regulatory funding requirements;
- reinforce the principles for sound liquidity risk management and supervision;
- strengthen market discipline; and
- reduce uncertainty in the markets as the NSFR is implemented.

In order to promote the consistency and usability of disclosures related to the NSFR, the Basel Committee has agreed that internationally active banks in all member jurisdictions will be required to publish their NSFRs according to a common template.

In parallel with the implementation of the NSFR standard, supervisors will give effect to these disclosure requirements, and banks will be required to comply with them from the date of the first reporting period after 1 January 2018.

IOSCO consults on international standards on fees and expenses of collective investment schemes

The International Organization of Securities Commissions (IOSCO) has launched a consultation on elements of international regulatory standards on fees and expenses of investment funds. This follows a 2004 IOSCO paper which recommended a set of common international standards of best practice of collective investment scheme (CIS) operators and regulators to consider.

The consultation seeks to determine whether these standards might need to be updated in light of market and regulatory changes.

The paper looks at key issues across jurisdictions, including:

- types of permitted fees and expenses;
- performance-related fees;
- disclosure of fees and expenses;
- transaction costs; and
- hard and soft commissions on transactions.

Only funds whose units are permitted to be sold to retail investors are within the scope of the consultation; hedge funds and other funds for professional investors are excluded.

Comments are due by 23 September 2015.

PRA and FCA publish new rules on remuneration

The Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) have published a joint policy statement (PRA PS12/15, FCA PS15/16) on new remuneration rules to be included in the PRA Rulebook and FCA Handbook. Publication of the policy statement follows a joint consultation launched in July 2014 and sets out feedback on responses and the final rules. The rules apply to all material risk takers (MRTs) at banks, building societies and PRA-designated investment firms, including UK branches of non-EEA headquartered firms.

The changes include:

- extending deferral periods for variable remuneration to:
  - seven years for senior managers as defined under the Senior Managers Regime (SMR);
  - five years for risk managers with senior, managerial or supervisory roles at PRA-regulated firms; and
  - three to five years for all other MRTs as per the Capital Requirements Directive (CRD);
- prohibiting variable pay for non-executive directors;
- strengthening PRA requirements on dual-regulated firms to apply more effective risk adjustment to variable remuneration; and
- extending to the FCA rules already applied by the PRA on clawback for periods of seven years from the awarding of variable remuneration for all MRTs.

The policy statement also sets out explicitly that no variable pay should be paid to management at firms in receipt of taxpayer support.

The PRA rules will form the Remuneration Part of the PRA Rulebook and the section SYSC 19A will be repealed from the PRA Handbook. Other consequential changes to the PRA Handbook are set out in an instrument annexed to the policy statement. The instrument amending the FCA rules is also annexed to the policy statement and the dual-regulated firms' Remuneration Code will be included in a new chapter SYSC 19D of the FCA Handbook.

The rules will apply from 1 July 2015, except for the new rules on deferral and clawback which will apply to variable remuneration awarded for performance periods beginning from 1 January 2016.

Alongside the changes to the Handbooks the PRA has also published a supervisory statement on remuneration and made necessary updates to other previous supervisory statements. The FCA and PRA have announced that they will further consider the scope for applying malus to buy-out awards in a form that permits those awards to be subject to malus by a previous employer.

PRA and FCA consult on reform of credit unions sourcebook

The PRA and FCA have launched a joint consultation (PRA CP22/15, FCA CP15/21) on reforming the Credit Unions sourcebook (CREDS), which is a module of the Handbook inherited from the predecessor Financial Services Authority (FSA) when the PRA and FCA assumed their powers on 1 April 2013.

The PRA is consulting on the deletion of CREDS in order to replace it with a new Credit Unions Part in the PRA Rulebook. The PRA proposes new rules intended to reduce possible disruption from the failure of a credit union, including a maximum amount of shares and deposits that a depositor may hold with a credit union at the limit of the financial services compensation scheme (FSCS). The PRA also proposes a flexible framework for additional specified activities and introducing enhanced prudential standards where credit unions are engaged in riskier lines of business.

The FCA proposes retaining the parts of CREDS that relate to its statutory responsibilities. Among other things, the FCA is consulting on changes that would turn some current guidance into rules and adjust regulatory reporting requirements.

Comments on the consultation are due by 30 September 2015.

FCA consults on investing in authorised funds through nominees

The FCA has launched a consultation on investing in authorised funds through nominees. In 2011 the Financial Services Authority (FSA) published rules and guidance (COBS 14.4) concerning investment in authorised funds and requiring certain nominee companies, defined as 'intermediate unitholders', to notify the underlying beneficial owners of units in those funds where the authorised fund manager or depositary issued certain fund information, or notifications about general meetings of unitholders. The rules were originally set to come into force on 31 December 2012, but were deferred until 31 December 2013 to resolve operational aspects of the rules.

Towards the end of 2013, the FCA decided to put the implementation of the majority of COBS 14.4 on hold until 31 December 2015.

As it is currently considering the effectiveness of disclosures required under the rules due to come into force, the FCA proposes to revoke the rules and guidance in COBS 14.4 that relate to notifications to beneficial owners about short reports, unitholder voting rights and other fund information. The FCA is planning a discussion paper on improving firms' communications with customers and a market study on asset management, and intends to reconsider the substance of these rules in 2016 in light of feedback from these activities. The FCA believes it would be disproportionate to require firms to introduce procedures to ensure compliance with rules that may be in place for a short time.

Comments are due by 17 July 2015.

HMT consults on transposition of Payment Accounts Directive

HM Treasury (HMT) has launched a consultation on the transposition of the Payment Accounts Directive (2014/92/EU – PAD) in the UK.

The consultation sets outs the Government's approach to implementing PAD, which will apply to current accounts and accounts that have functionalities directly comparable to current accounts. The consultation discusses:

- a carve out to exempt the Bank of England, NS&I, credit unions and municipal banks from requirements;
- the Government's intention not to extend the application of PAD, as is discretionary under the Directive, except in relation to payment accounts with

basic features for which existing UK measures are more developed and will be preserved;

- provisions on account switching, which will be implemented to ensure that the UK's existing Current Account Switch Services (CASS) can continue as an alternative measure to the switching process outlined in PAD; and
- standardisation for annual fee statements and ensuring consumers receive a fee information document prior to choosing an account.

Alongside the consultation paper, HMT has published the draft Payment Accounts Regulations 2015, which would come into force in September 2015.

CONSOB publishes Q&A on practices for firms selling complex products to retail investors

Following its communication on practices for firms selling complex products to retail investors (Communication no. 0097996 of 22 December 2014), the Commissione Nazionale per le Società e la Borsa (CONSOB) has published a set of Q&A intended to provide further guidance and clarity on certain aspects of the communication.

The Q&A have been published by CONSOB further to various questions raised by interested firms over the past six months. Amongst other things, the clarifications included in the Q&A focus on the scope of application of the communication, the specific recommendations addressed to firms and on the products classified as 'highly complex products'.

Law on recovery and resolution of credit institutions and investment firms published in Spanish Official Gazette

Law 11/2015, which partially repeals Law 9/2012 of 14 November 2012 on restructuring and resolution of credit institutions and transposes the EU Bank Recovery and Resolution Directive (BRRD) and the revised Deposit Guarantee Schemes Directive has been published in the Spanish Official Gazette.

Law 11/2015 includes a package of measures aimed at:

- establishing the Bank of Spain as the supervisory body for the resolution of credit entities and the Spanish Securities Market Commission (CNMV) for the resolution of investment firms;
- establishing a resolution procedure which distinguishes between preventative actions to be carried out by the Bank of Spain and the CNMV and executive actions to be carried out by the Fund for the Orderly Restructuring of the Banking Sector (FROB);
- introducing provisions so that, apart from certain excluded categories of claim, potentially all other liabilities are susceptible to bail-in (and not only up to the level of the subordinated creditors, as Law 9/2012 established);
- creating the National Resolution Fund, for the purposes of financing the resolution procedures;
- establishing the obligation of having an individualised recovery and resolution plan for each entity (regardless of its financial situation); and
- establishing the regime applicable to deposits in the event that a credit entity is under an insolvency proceeding (concurso).

Law 11/2015 entered into force on 20 June 2015.

CNMV issues statement on application of MiFID and EMIR to commodity derivatives and agreements on commodities

The Spanish Stock Exchange Commission (CNMV) has published a document indicating that it has notified the European Securities and Markets Authority (ESMA) of its intention to comply with ESMA's guidelines on the application of the definitions of commodity derivatives under C6 and C7 of Annex I of the Markets in Financial Instruments Directive (MiFID). The document also expressly states that one of the aims of ESMA's guidelines is to avoid any regulatory arbitrage as to the application of the European Market Infrastructure Regulation (EMIR) to the agreements referred to in the guidelines (which include, among other things, physically settled commodity forwards and take or pay agreements).

FINMA publishes revised Anti-Money Laundering Ordinance

The Swiss Financial Market Supervisory Authority (FINMA) has published the revised Anti-Money Laundering Ordinance (AMLO), which will come into force on 1 January 2016. The revision of the AMLO took into account the Financial Action Task Force (FATF) recommendations, which are internationally recognised standards on combating money laundering and the financing of terrorism, as well as the Anti-Money Laundering Act revised by the Swiss Parliament implementing the FATF recommendations. It also took into account insights gained from FINMA's supervisory practice, recent market developments, as well as comments and proposals from respondents to the public consultation.

The revised AMLO includes the following changes:

- introducing the concept of 'controller' – that is, the natural persons behind operationally active legal entities and partnerships;
- setting out prerequisites for a simplified due diligence requirement for payment service providers offering cashless payment transactions and for institutions under the Collective Investment Schemes Act (including fund management companies, investment companies and asset managers);
- changing statutory reporting requirements for financial institutions – for example, provisions which allow client instructions to be executed by financial intermediaries where reports have been made to the Money Laundering Report Office; and
- amending the provisions in relation to new payment methods, taking into account the increasing digitalisation of payment transactions – for example, cashless payments of goods and services amounting to CHF 5,000 a month and/or CHF 25,000 a year to traders in Switzerland can be made without formal client identification.

Swiss Federal Council sets out principles of reform of financial institution supervisory regime

The Swiss Federal Council has decided the principles of the revisions of the Financial Services Act and Financial Institutions Act, as part of the reform of the supervisory regime for financial institutions. The principles follow a consultation procedure on the revision concluded in March 2015, and relate to three areas of the regime: prudential supervision of asset managers, training and continuous professional development of client advisers, and civil proceedings. The revised bills are scheduled to be submitted to Parliament by the end of 2015. The Federal Council's principles include the following:

- prudential supervision of asset managers – asset managers will become subject to prudential supervision by one or more new independent supervisory organisations authorised and supervised by the Financial Market Supervisory Authority (FINMA). The supervision will follow a risk-based approach. Smaller asset managers with lower risk potential and straightforward structure may be subject to a reduced audit frequency of no less than once every four years;
- training and continuous professional development (CPD) – in addition to the original proposal that only client advisers with adequate training and CPD will be allowed to provide client advice, the Federal Council decided that financial institutions will also be responsible for ensuring that their client advisers fulfil the relevant training and CPD requirements. Individual sectors within the self-regulation framework should set minimum training and CPD requirements for each activity; and
- civil proceedings – the Federal Council makes various proposals which aim to reduce obstacles for customers to pursue claims against financial institutions, including an exemption from payment of guarantees and advances on costs of legal proceedings, a provision that financial service providers should cover their own litigation costs even if they win the case (where the amount under dispute does not exceed CHF 250,000 and proceedings are held before an ombudsman beforehand), and a provision that allows the court to divide court costs among parties at its discretion.

Dutch Ministry of Finance consults on implementing rules for credit unions

The Dutch Ministry of Finance has issued a consultation on a draft decree and a ministerial regulation which, once adopted, would contain detailed rules for credit unions.

According to a new bill, which was approved by the Dutch Parliament in April 2015, a credit union is defined as a financial cooperative which admits its members on the basis of their business or profession, and which makes its business from soliciting repayable funds from its members on the one hand and extending credit to such members on the other hand. Although technically qualifying as a bank, credit unions will be exempt from the bank license requirement. However, they will still be subject to a separate license requirement and certain ongoing prudential requirements.

The current consultation documents comprise the draft for these implementing prudential rules. The rules provide, amongst other things, that credit unions will be subject to rules on their internal organisation and integrity of business, liquidity, solvency and requirements to report financial statements to the regulator. The envisaged ongoing prudential rules follow the equivalent rules for banks, but are somewhat less strict. The regulations for credit unions will therefore be a 'light' version of the legal framework for licensed banks. In order to fall within this special regime, credit unions would have to limit the amount of repayable funds to EUR 100 million and the amount of members to 25,000. If the amount of repayable funds is less than EUR

10 million, the credit union would be exempt from all license requirements.

The consultation ends on 17 July 2015.

Transparency Directive: Dutch Minister of Finance submits bill to implement amendments to Parliament

The Dutch Minister of Finance has submitted a bill to Parliament which, once enacted, would implement the amendments made by Directive 2013/50/EU.

The Directive amends three other directives, namely:

- Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market;
- Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading; and
- Directive 2007/14/EC which lays down rules for the implementation of certain provisions of Directive 2004/109/EC.

The purpose of the Directive is to make the application of the Transparency Directive less complicated (especially for small and medium sized companies), to improve its effectiveness and to decrease administrative burdens.

The bill would amend the Dutch Financial Supervision Act, the Dutch Civil Code and several other Dutch laws.

Mandatory Provident Fund Schemes Authority issues nine sets of revised guidelines

The Mandatory Provident Fund Schemes Authority (MPFA) has issued revised sets of the following nine mandatory provident fund (MPF) guidelines:

- Guidelines on Notification of Events of Significant Nature (Guidelines II.9);
- Guidelines on Election for Transfer of Accrued Benefits (Guidelines IV.3);
- Guidelines on Monthly Returns of Registered Schemes (Guidelines II.1);
- Guidelines on Payment of Accrued Benefits – Documents to be Submitted to Approved Trustees (Guidelines IV.4);
- Guidelines on Enrolment and Contribution Arrangements for Relevant Employees Other Than Casual Employees (Guidelines IV.8);
- Guidelines on Enrolment and Contribution Arrangements for Casual Employees (Guidelines IV.9);
- Guidelines on Enrolment and Contribution Arrangements for Self-employed Persons (Guidelines IV.10);
- Guidelines on MPF Exempted ORSO Schemes – Preservation of Benefits (Guidelines V.4); and
- Guidelines on MPF Exempted ORSO Schemes – Withdrawal of Minimum MPF Benefits (Guidelines V.11).

The Guidelines on Notification of Events of Significant Nature have been revised to provide clearer guidance in relation to the reporting of significant events by approved trustees under the Mandatory Provident Fund Schemes (General) Regulation, and the Guidelines on Election for Transfer of Accrued Benefits have been revised to update the list of approved trustees and MPF schemes for scheme members to elect for the purposes of MPF account consolidation.

The remaining guidelines have been revised in light of the enactment of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2015 in January 2015 and the commencement of operation of certain provisions of the Ordinance on 1 August 2015. The revisions mainly reflect legislative amendments relating to: (i) adding terminal illness as an additional ground for withdrawal of accrued benefits in MPF schemes and minimum MPF benefits in MPF exempted ORSO schemes (Guidelines IV.4, V.4 and V.11); (ii) clarifying the definitions of other grounds for early withdrawal of benefits (Guidelines IV.4 and V.11); (iii) eliminating employers' participation certificates (Guidelines II.1); and (vi) clarifying the definitions of 'permitted period' and 'contribution day' (Guidelines IV.8, IV.9 and IV.10).

Hong Kong and Thailand sign MoU on investment promotion co-operation

Invest Hong Kong (InvestHK) and the Thailand Board of Investment (BOI) have signed a memorandum of understanding (MoU) pledging mutual co-operation on investment promotion exchanges and best practices.

The MoU provides a framework for a close relationship for the mutual benefit of the Hong Kong Special Administrative Region (HKSAR) and Thailand in promoting both inward and outward investment in the two jurisdictions. Under the MoU, both sides will exchange information on the investment environment and investment opportunities with a view to promoting investment between the HKSAR and Thailand and share experiences in attracting foreign investment as well as best practices regarding investment promotion. The two agencies will encourage interested

local companies to set up or expand their businesses in the other jurisdiction.

FSS develops best practice to strengthen FX soundness of financial companies

The Financial Supervisory Service (FSS) has developed the 'Best Practice for the Management of Country Risk' to strengthen the management of external risks by domestic banks and financial holding companies, and to bring domestic supervisory rules in line with global standards.

The Best Practice reflects Principle 21 (Country and Transfer Risks) of the Core Principles for Effective Banking Supervision published by the Basel Committee on Banking Supervision and presents detailed guidelines so that financial companies can file a comprehensive report on their risk exposure and profile.

The Best Practice applies to 18 domestic banks and eight bank holding companies, except for local branches of foreign banks. The key recommendations involve detailed guidelines for analysing country risk, assigning credit ratings, and setting exposure limits.

The Best Practice is expected to help improve the foreign exchange (FX) soundness of financial companies by inducing them to develop a systematic risk management framework. It will also enable companies to voluntarily set internal risk management rules that are suitable for their risk exposure, profile and management capability.

The Best Practice is set to be implemented on 1 October 2015 to allow financial companies time to establish internal standards and relevant IT systems. The FSS is scheduled to monitor how the Best Practice is being reflected in the companies' risk management during the fourth quarter of 2015.

MAS proposes enhancements to resolution regime for financial institutions in Singapore

The Monetary Authority of Singapore (MAS) has published a consultation paper on the proposed enhancements to its resolution regime for financial institutions in Singapore. The proposed enhancements take into account global developments, including the Key Attributes of Effective Resolution Regimes for Financial Institutions adopted by the Financial Stability Board (FSB).

Guided by the Key Attributes, the MAS had in April 2013 strengthened its resolution regime for financial institutions and expanded its powers under the Monetary Authority of Singapore Act (MAS Act) for the resolution of financial institutions. In view of global developments, the MAS has further reviewed the resolution regime and proposes to strengthen the resolution regime for financial institutions in Singapore in the following areas:

- recovery and resolution plans;
- temporary stays on early termination rights on financial contracts;
- temporary suspensions and stays on insurance contracts;
- ensuring continuity of essential services and functions;
- statutory bail-in regime;
- cross-border recognition of resolution actions;
- creditor safeguards; and
- resolution funding.

The proposed policy changes will be effected primarily through amendments to the MAS Act, supported by necessary regulations. The MAS also intends to amend the Insurance Act for provisions relating to the resolution regime for insurers. The MAS will consult on the legislative amendments after considering the feedback on the policy proposals in this consultation.

Comments on the consultation paper are due by 22 July 2015.

RECENT CLIFFORD CHANCE BRIEFINGS

The US menu of early-stage capital-raising options – Lessons for the European Commission

The European Commission, in its green paper dated 18 February 2015, announced the 'need to build a true single market for capital – a Capital Markets Union for all 28 Member States'. One of the goals of the Capital Markets Union is to unlock more investment for small and medium sized enterprises (SMEs). SMEs are Europe's equivalent to start-ups and small businesses in the United States. At present, small businesses in Europe receive five times less funding from the capital markets than their American counterparts. The European Commission is looking for feedback from those who work in capital markets and others to develop an action plan to, among other things, make it easier for SMEs to raise funding and reach investors cross border.

This article discusses the lessons that the European Commission can take from the American experience in connection with recent legal changes meant to boost capital formation in the United States. Among other things, the

article details the latest menu of early-stage capital-raising options in the United States, which includes new Regulation A as well as other new and old options ranging from Rules 506(b) and (c) and Rule 144A to crowdfunding and IPOs.

http://www.cliffordchance.com/briefings/2015/06/the_u_s_menu_of_early-stagecapitalraisin.html

Update on Solvency II Equivalence

On 5 June 2015, the EU Commission adopted draft delegated acts on third country equivalence decisions under the Solvency II Directive.

Equivalence between third country jurisdictions and the EU can bring benefits – EU insurers can use local rules in equivalent jurisdictions to report on their operations in third countries, reinsurers based in an equivalent jurisdiction can be treated in the same way as European reinsurers and, depending on the waiver requirements of national competent authorities, EEA supervisors can rely on the group supervision of an equivalent third country.

This briefing paper discusses the recent equivalence decisions taken by the Commission and outlining some legal considerations for Solvency II group supervision where the ultimate parent undertaking of a group is located in an equivalent third country jurisdiction and where it is not.

http://www.cliffordchance.com/briefings/2015/06/update_solvency_iiequivalence.html

Cyber Security – Legal and regulatory considerations

Banks and other financial institutions are acutely aware of their vulnerability to cyber attacks and security lapses. These attacks can be directly damaging to their businesses and reputations, but can also raise legal and regulatory issues that need to be anticipated and addressed. Increasingly, banks are subject to express obligations to keep data secure and to inform affected individuals and regulators in the case of a breach.

In this article, Clifford Chance experts consider these issues and look at how banks can both defend against, and respond to, cyber security lapses.

http://www.cliffordchance.com/briefings/2015/06/cyber_security_legalandregulator.html

Contractual interpretation – shades of grey

The principles for interpreting commercial contracts are easy to state but sometimes much harder to apply in practice. The two elements that go into the mix are the words used and the context in which the words were used. The most difficult issue is where the balance between these elements should fall: when should the words outweigh the context, and when should the context overwhelm the words? After a period in which context appeared to be king, the Supreme Court may now have signalled a reversal of this position, placing greater emphasis on the words.

This briefing paper discusses the Supreme Court's decision in Arnold v Britton [2015] UKSC 36.

http://www.cliffordchance.com/briefings/2015/06/contractual_interpretationshadesofgrey-jun.html