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Banking Union: EU Parliament and Council Presidency reach agreement on single resolution mechanism

The EU Council Presidency and the EU Parliament have reached a provisional agreement on the proposed regulation establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism (SRM) and a Single Bank Resolution Fund and amending Regulation (EU) No 1093/2010.

The SRM complements the Single Supervisory Mechanism (SSM) which, once fully operational in late 2014, will see the European Central Bank (ECB) directly supervise banks in the euro area and in other Member States which decide to join the Banking Union. The SRM will be governed by two texts – a regulation covering the main aspects of the mechanism and an intergovernmental agreement related to some specific aspects of the Single Resolution Fund (SRF).

It is expected that the EU Parliament will vote on the proposed SRM regulation in plenary in April 2014, while the Council will formally adopt it subsequently. The SRM would enter into force on 1 January 2015, whereas bail-in and resolution functions would apply from 1 January 2016, as specified under the Bank Recovery and Resolution Directive.

Payment accounts: EU Parliament and Council Presidency reach agreement on proposed directive

The EU Council Presidency and the EU Parliament have reached a political agreement on the proposed directive on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features. Formal adoption is expected in the coming weeks.

The proposed directive:

- provides for all EU consumers, without being residents of the country where the credit institution is located and irrespective of their financial situation, a right to open a payment account that allows them to perform essential operations, such as receiving their salary, pensions and allowances or payment of utility bills etc.;
- seeks to make it easier for consumers to compare the fees charged for payment accounts by payment service providers in the EU; and
- establishes a new procedure for consumers who wish to switch their payment account to one with another payment service provider within the same Member State, and facilitates the process of closing a bank account in one Member State and opening it in another.

UCITS V: EU Council confirms agreement with EU Parliament

The Permanent Representatives Committee has, on behalf of the EU Council, approved an agreement reached with the EU Parliament on the proposed directive amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities as regards depositary functions, remuneration policies and sanctions (UCITS V).

Amongst other things, the proposed directive introduces specific provisions on the depositary's safekeeping and oversight duties, and defines the conditions in which safekeeping duties can be delegated to a sub-custodian. It sets out a list of entities that are eligible to act as UCITS depositaries, and clarifies the depositary's liability in the event of the loss of a financial instrument held in custody. It also includes provisions on redress.

As concerns remuneration, the proposed directive introduces a requirement for the UCITS management company to implement a policy that is consistent with sound risk management and complies with minimum principles. According to the agreement, fund managers would be required not to take investment risks beyond what is accepted by their UCITS investors. At least half of the variable part of their remuneration would be paid in the assets of their UCITS, unless the management of UCITS accounts for less than half of the total portfolio. Payment of at least a further 40% of this variable remuneration would be deferred for at least 3 years, to encourage managers to take a long-run view. On sanctions, it lists the main breaches to Directive 2009/65/EC and lays down the administrative sanctions and measures that the authorities should be empowered to apply.

The agreement will enable the directive to be adopted at first reading, before the Parliament adjourns for elections at the end of May 2014. Member States will have 18 months to transpose the directive into national law, and depositories will be given an additional 24-month transition period after the transposition deadline.

EMIR: Delegated Regulation on OTC derivative transactions by non-EU counterparties published in Official Journal

EU Commission Delegated Regulation (EU) No 285/2014 supplementing the European Market Infrastructure Regulation (EMIR) with regard to regulatory technical standards on direct, substantial and foreseeable effect of contracts within the EU and to prevent the evasion of rules and obligations has been published in the Official Journal.

The Delegated Regulation will enter into force on 10 April 2014, but Article 2 on contracts with a direct, substantial and foreseeable effect within the EU will only apply from 10 October 2014.

SEPA: Regulation extending deadline for migration published in Official Journal

The regulation postponing to 1 August 2014 the end-date in the euro area for the migration of domestic and intra-European credit transfers and direct debits in euros to the new SEPA-standard-based credit transfers and direct debits has been published in the Official Journal. The regulation amends Regulation 260/2012, which had set a migration deadline of 1 February 2014. It will enter into force on 21 March 2014 and apply with retroactive effect from 31 January 2014.

ESMA publishes list of authorised CCPs and OTC derivatives

Following the authorisation of NASDAQ OMX as the first EU-based CCP on 18 March 2014, the European Securities and Markets Authority (ESMA) has published information about Nasdaq OMX and the contracts it is authorised to clear. In accordance with the procedure laid out under Article 5(1) of the European Market Infrastructure Regulation (EMIR), on 18 March 2014 ESMA was notified of NASDAQ OMX's authorisation including the classes of OTC derivatives cleared by them.

ESMA will propose draft regulatory technical standards (RTS) on the clearing obligation if the classes of OTC derivatives notified to ESMA meet the criteria defined in EMIR. The clearing obligation procedure defined in Article 5(2) of EMIR is triggered every time a new CCP clearing OTC derivatives is authorised. For the clearing obligation, ESMA will only assess the suitability of those classes notified to ESMA.

This means that if CCPs are authorised on different dates, several clearing obligation procedures may run in parallel. For each of these procedures, ESMA has up to six months from the time of the notifications to draft the respective RTS, consult and submit them for endorsement to the EU Commission. After the Commission's endorsement, the RTS are subject to a non-objection period by both the EU Council and Parliament, after which the clearing obligation will be phased in by type of counterparties.

Central securities depositories: ESMA publishes discussion paper on draft technical standards

ESMA has published a discussion paper on the possible content of draft technical standards under the regulation on central securities depositories (CSDs) on matters such as settlement discipline, CSD registration and requirements, including confirmation rules (acceptance or rejection of terms in good time before the intended settlement date) for trading venues and investment firms, as well as access to CSDs by other CSDs, participants and other market infrastructures.

Comments are due by 22 May 2014.

On the basis of the feedback received, ESMA will finalise its proposed draft technical standards and publish them for consultation. The date of publication of the consultation paper and the commenting period will depend on the date of publication of the regulation in the Official Journal and the final deadline for ESMA to deliver the draft RTS and ITS to the EU Commission.

Transparency Directive: ESMA consults on major shareholders disclosures

ESMA has launched a consultation on draft Regulatory Technical Standards (RTS) under the revised Transparency Directive relating to the notification of major shareholdings and the indicative list of financial instruments subject to notification requirements.

The revised Transparency Directive harmonises transparency requirements relating to information about issuers whose securities are admitted to trading on an EU regulated market. This harmonisation aims to enhance transparency in respect of the ownership structure of an issuer, to improve legal certainty and reduce the administrative burden for cross-border investors. The revised Transparency Directive also addresses the issue of the disclosure regime for new types of financial instruments that expose investors to an economic risk similar to when holding shares.

The draft RTS are intended to support these objectives by facilitating the creation of a harmonised regime regarding the aggregation of holdings of shares and financial instruments, the calculation of notification thresholds and the exemptions from notification requirements.

Comments are due by 30 May 2014. ESMA is required to submit its draft RTS on major shareholdings to the EU Commission by 27 November 2014.

Bank of England publishes annual report on supervision of financial market infrastructures

The Bank of England has published the annual report on its supervision of financial market infrastructures. The report provides an account of how the Bank has exercised its responsibilities in respect of financial market infrastructure supervision. It is the first such report since the Bank assumed new responsibilities for central counterparties (CCPs) and securities settlement systems in April 2013 and replaces the previous annual report on its supervision of payment systems last issued in March 2013.

The report notes that over the past year, UK CCPs have introduced new and enhanced margin models as well as making a number of other improvements to their risk management arrangements. Additionally, all UK CCPs have now introduced arrangements to manage clearing member default losses that exceed their pre-funded resources. Also over the past year, the UK retail payment systems Bacs and FPS have developed plans to eliminate settlement risk through participants prefunding their payments with cash held at the Bank of England. Implementation is expected by the end of 2014. Finally, the Bank has been working together with other UK authorities towards meeting the recommendation of the Financial Policy Committee (FPC) to assess, test and improve the resilience of core parts of the UK financial sector to cyber attack.

The report also sets out issues the Bank expects to focus on over the coming year and how it has worked with the Financial Conduct Authority (FCA) and other regulatory authorities.

FCA and Bank of England agree memorandum of understanding for supervision of markets and market infrastructure

The Financial Conduct Authority (FCA) and the Bank of England, including the Prudential Regulation Authority (PRA), have agreed a Memorandum of Understanding (MoU) that sets out how they co-operate with one another in relation to the supervision of markets and market infrastructure, which includes financial market infrastructures (FMIs).

This reflects the FCA's and the PRA's responsibilities for the supervision of participants of FMIs supervised by the Bank as well as the FCA's responsibilities for trading venues that rely on, or are connected with, FMIs. The Financial Services Act 2012 introduced an obligation to review this MoU annually. The FCA and Bank committed that this review would include feedback from industry and the findings would be published.

The FCA and the Bank conducted the first such review in early 2014, following the commencement of the new regulatory responsibilities in April 2013.

The Chief Executive Officer of the FCA and the Deputy Governor Financial Stability at the Bank considered the views of industry and staff, concluding that the MoU's arrangements for co-operation over the first 11 months of the authorities' new responsibilities have worked well and in a coordinated manner with no material duplication. They noted that as staff who had previously worked together under the aegis of the Financial Services Authority (FSA) moved into different roles, it was important to retain strong working level relationships.

Retail Distribution Review: FCA publishes review into delivering 'independent' financial advice

The FCA has published the findings of its thematic review into delivering 'independent' financial advice following the implementation of the Retail Distribution Review (RDR). The FCA concluded that most advisory firms describing their service as 'independent' appeared to use the description accurately.

In response to calls from the industry for further clarification on the standards required for advice to be 'independent', the FCA has published examples of good and poor practice within its review. In addition, the FCA has released a video on the issue of independence for financial advisers introduced by Clinton Askew, a financial adviser who sits on the FCA's Smaller Business Practitioner Panel. Together the examples in the review and the video address a number of topics, including:

- providing advice on all retail investment products in a relevant market;
- referrals to other advisers;
- the use of product panels;
- the use of platforms;
- the use of model portfolios, which are a collection of funds with a certain asset allocation typically designed to meet a specific risk profile; and
- referrals to discretionary investment services.

The FCA will publish its findings on how firms are disclosing their service proposition and charging structure to clients in April 2014.

BaFin publishes two General Decrees under Capital Requirements Regulation

The German Federal Financial Supervisory Authority, the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin), has exercised its rights under Article 89 para 3 point (a) of the Capital Requirements Regulation (CRR) and opted to apply a risk weight of 1,250% for qualifying holdings outside the financial sector, rather than prohibiting such holdings.

The BaFin has further exercised its rights under Article 467 para 2 sub-paragraph (2) of the CRR and opted to allow institutions not to include in any element of own funds unrealised gains or losses on exposures to central governments classified in the 'available for sale' category of EU-endorsed IAS 39.

European Committee of Polish Council of Ministers adopts draft Act implementing EMIR and short selling regulation

The European Committee of the Polish Council of Ministers has adopted a draft Act implementing the European Market Infrastructure Regulation (EMIR) and the Regulation on Short Selling and Certain Aspects of Credit Default Swaps (SSR) into Polish law. Amongst other things, the draft Act provides for the penalties which would be imposed by the Polish Financial Supervision Authority for breaches of the SSR or EMIR.

Subject to approval by the Council of Ministers, the draft Act will go before the Polish Parliament for further work. The legislation is intended to be implemented for Q4 2014.

Draft Bill on Promotion of Corporate Financing published

The Draft Bill on the Promotion of Corporate Financing, which is currently in public hearing until 28 March 2014, has been published. Following the public hearing, the Cabinet is expected to approve a revised Draft Bill and submit it to the Spanish Parliament for discussion and enactment.

The Draft Bill includes a package of measures intended to:

- promote the financing of SMEs;
- consolidate and provide greater flexibility for the legal regime for securitisation;
- modify and make more flexible the legal regime for the issuance of bonds; and
- regulate the activity of crowdfunding by means of participatory funding platforms (plataformas de financiación participativa).

FINMA and esisuisse enter into MoU for mutual cooperation

The Swiss Financial Market Supervisory Authority (FINMA) and the Swiss Banks' Securities Dealers' Depositor Protection Association (esisuisse) have entered into a memorandum of understanding (MoU) to mutually exchange information necessary for the discharge of their respective responsibilities.

The MOU comes into effect immediately and essentially documents the existing information sharing practice between the two institutions. Amongst other things, the MOU provides that:

- FINMA will notify esisuisse in advance of implementing any potential deposit protection measures or making any public communications relating to deposit protection; and

- esissuise will notify FINMA in advance of any changes to its organisational structure or operational methods.

Ukraine: EU and US expand list of individuals subject to sanctions

The European Council has agreed to expand the list of individuals subject to a visa ban and asset freeze in light of the situation in Ukraine. The European Council has also decided to cancel the next EU-Russia Summit and Member States will not hold bilateral regular summits for the time being.

The Council warned that any further steps by the Russian Federation to destabilise the situation in Ukraine would lead to additional and far reaching consequences for relations in a broad range of economic areas between the EU and its Member States on the one hand and the Russian Federation on the other hand. In this respect, the Council invited the EU Commission and the Member States to prepare possible targeted measures.

Meanwhile, US President Barack Obama has announced that the US is imposing sanctions on more senior officials of the Russian government, as well as a number of other individuals who provide material support to the Russian leadership and a bank that provides material support to these individuals.

EU and US impose sanctions against persons threatening Ukraine's territorial integrity

Following the statement by the EU Heads of State or Government on 6 March 2014, the EU Council has adopted restrictive measures against persons responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine as well as persons and entities associated with them. In this regard, 21 persons have been identified and targeted with a travel ban and a freeze of their assets within the EU. The sanctions entered into force on 17 March 2014, following publication of the legal acts with the list of persons concerned in the Official Journal.

Meanwhile, US President Barack Obama has announced sanctions on specific individuals responsible for undermining the sovereignty, territorial integrity and government of Ukraine. The President also signed a new Executive Order that expands the scope of US sanctions by providing the ability to target officials of the Government of the Russian Federation, any individuals or entities that operate in the arms or related material sector in the Russian Federation, and any individual or entity that is owned or controlled by, or provides material or other support to any senior official of the Government of the Russian Federation or any person designated pursuant to the order.

AMAC publishes CSRC announcement regarding registration of private fund managers and filing of privately offered funds

The Asset Management Association of China (AMAC) has published an announcement made by the China Securities Regulatory Commission (CSRC) at a recent press conference regarding the registration of private fund managers and filing of privately offered funds.

According to the announcement, as well as a set of Q&A notes subsequently published on AMAC's website:

- the registration requirement will generally apply to domestically incorporated managers of privately offered securities investment funds, private equity funds and venture capital funds;
- all the established private fund managers shall register with AMAC by 30 April 2014 and the CSRC will impose regulatory sanctions on any manager failing to register by that time;
- only companies or partnerships (as opposed to individuals) can be registered as private fund managers;
- while the CSRC is still considering the eligibility criteria of 'qualified investors' for privately offered funds, AMAC has suggested private fund managers raise funds from investors satisfying the following requirements:
  - any individual having financial assets of no less than RMB 5 million or any institution with a net asset value of no less than RMB 10 million;
  - having the suitable risk identification abilities and risk tolerance degree; and
  - having a minimum subscription of RMB 1 million in one private fund; and
- AMAC and the CSRC will set up an information sharing system and periodic reporting regime for registration of private fund managers and filing of private funds.

AMAC issues opinions to improve corporate governance of fund management companies

The AMAC has published the 'Opinions on Issues Concerning Improving the Corporate Governance of Fund Management Companies' with a view to enhancing corporate governance and exploring diversified business structures of fund managers. Amongst other things, the opinions set out the following principles:

- the board of directors shall assume ultimate responsibility for performing fiduciary duties and protecting the interests of fund investors;
- fund managers are encouraged to diversify their corporate governance structures (by taking reference of partnership structures) and shareholding structures (based on the principle of protecting interests of fund investors);
- fund managers are encouraged to set up effective incentive schemes that can line up interests of investors, employees and shareholders; and
- qualified fund managers will be able to convert into companies limited by shares for going listed in the future.

CBRC amends rules on financial leasing companies

The China Banking Regulatory Commission (CBRC) has issued the amended 'Administrative Measures on Financial Leasing Companies' to further relax the supervision and administration of financial leasing companies regulated by the CBRC.

Amongst other things, the amended measures include the following changes from the 2007 version:

- the distinction between 'primary contributor' and 'other contributor(s)' under the 2007 measures is removed and eligible sponsors of financial leasing companies include qualified domestic and foreign commercial banks, domestic manufacturing companies, overseas financial leasing companies, and other domestic legal persons and overseas financial institutions as permitted by the CBRC;
- while the minimum 50% contribution requirement for the primary contributor is removed, there should be at least one qualified commercial bank, domestic manufacturing company or overseas financial leasing company contributing no less than 30% of the total capital among all the sponsors of a financial leasing company;
- the business scope of financial leasing companies is enlarged to include transferring and purchasing the financial leasing assets, collecting term deposits from non-banking shareholders for no less than three months and investing in fixed income products – subject to approval by the CBRC, certain qualified financial leasing companies may issue bonds, set up SPVs in domestic bonded areas, conduct asset securitisation business and provide guarantees for their subsidiaries or SPVs;
- sponsors of financial leasing companies are required to provide liquidity support and inject capital when the financial leasing companies have operating problems; and
- financial leasing companies may set up branches or subsidiaries as approved by the CBRC.

The amended measures became effective immediately.

Shanghai Stock Exchange updates trading rules for QFIIs and RQFIIs

The Shanghai Stock Exchange (SSE) has issued the 'Implementing Rules on Securities Trading of Qualified Foreign Institutional Investors and Renminbi Qualified Foreign Institutional Investors on the Shanghai Stock Exchange'. The rules supersede all previous trading rules applicable to Qualified Foreign Institutional Investors (QFIIs) issued by the SSE and apply to Renminbi Qualified Foreign Institutional Investors (RQFIIs) as well. Amongst other things:

- the alert shareholding threshold for all QFIIs and RQFIIs in a single listed company has been raised to 26% (from 16%), which is consistent with the relevant change on foreign ownership limit under the relevant QFII and RQFII rules issued by the China Securities Regulatory Commission;
- the rules further specify the permissible securities that a QFII or RQFII may invest on the SSE, which include certain newly-introduced products such as preferred stocks, policy financial bonds, asset-backed securities, when-issued treasury bonds, etc.;
- for the disclosure of interest by any QFII, RQFII or its underlying investor, it should aggregate both onshore and offshore listed shares of a listed company held by it;
- where a QFII or RQFII opens multiple securities accounts on the SSE for securities trading, each account has to be opened via a separate securities company; and
- to the extent that the SSE spots any unusual trading activity, the SSE is entitled to order a QFII or RQFII to report the securities transactions and positions of its underlying investors on a timely basis.

The rules became effective immediately.

SFC clarifies disclosure requirements under Code of Conduct

The Securities and Futures Commission (SFC) has published a circular to clarify the application of disclosure requirements under paragraphs 8.3 and 8.3A of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.

The SFC notes that some intermediaries interpret the phrase 'back-to-back transactions' under paragraph 8.3 Part A as referring only to 'purchase' order transactions. The circular states that when a client sells an investment product to an intermediary under a back-to-back arrangement i.e. when the intermediary purchases the product from the client and sells it to a third party, potential conflicts of interest, similar to a 'purchase' order scenario, may also arise. As such, 'sell' order transactions are also covered under the phrase 'back-to-back transactions' for the purposes of paragraph 8.3.

The SFC notes that some intermediaries interpret paragraph 8.3A as referring only to transactions where an intermediary is acting as the initial distributor of an investment product and as not referring to transactions where it sells an investment product to or buys such product from a client. The circular clarifies that the disclosure of transaction related information under paragraph 8.3A (including the disclosure of monetary and non-monetary benefits under paragraph 8.3) should not be limited to transactions where the intermediary is acting as the initial distributor of an investment product.

The SFC has made the related amendments to paragraphs 8.3 and 8.3A of the Code of Conduct to clarify the application of the requirements.

SFC waives annual licensing fee for two more years

The SFC has issued a circular to advise all licensed corporations, registered institutions, responsible officers and licensed representatives that it will continue to waive payment of all annual licensing fees that would otherwise be payable by them during the period of two years from 1 April 2014 to 31 March 2015 (first waiver period) and from 1 April 2015 to 31 March 2016 (second waiver period).

The SFC has indicated that the fee waiver will apply equally to each licensed corporation, registered institution, responsible officer and licensed representative (including licensed individuals whose accreditation is transferred from one licensed corporation to another during the first and second waiver periods) so that each will benefit to the full extent of the annual licensing fees applicable to them, but not by more than those amounts.

In relation to any application to be licensed or registered or for approval to carry on additional regulated activities that is granted during the first waiver period, and in respect of which an annual licensing fee will become payable during the second waiver period, the payment of this fee will also be waived. In relation to any such application that is granted during the second waiver period, and in respect of which an annual licensing fee will become payable after 31 March 2016, the payment of this fee will not be waived.

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

FSTB consults on introducing new open-ended fund company structure

The Financial Services and the Treasury Bureau (FSTB) has published a consultation paper on the proposal to introduce a new open-ended fund company (OFC) structure to expand Hong Kong's legal structure for investment fund vehicles.

Currently, an open-ended investment fund may be established under the laws of Hong Kong in the form of a unit trust but not in corporate form due to various restrictions on capital reduction under the Companies Ordinance. To complement the existing unit trust structure, it is proposed that the new OFC will be an open-ended collective investment scheme structured in corporate form with limited liability and variable share capital, aiming to serve as an investment fund vehicle via which investments will be managed for the benefit of its shareholders.

Under the proposed OFC regime, the new OFC vehicle will be established under the Securities and Futures Ordinance (SFO) and be regulated and supervised by the Securities and Futures Commission (SFC). The enabling provisions will be provided in the SFO to facilitate the making of a separate piece of OFC subsidiary legislation governing the detailed regulation of these new vehicles. The SFO and the OFC subsidiary legislation will set out the full scheme of the OFC and cover matters relating to the creation and regulation of OFCs. To supplement the SFO and the OFC subsidiary legislation, the more detailed requirements relating to OFCs and their operation, subject to further public consultation, will be set out in a separate OFC Code to be issued under the SFO.

Under the proposal, the OFC itself will be a pure legal vehicle for investment and therefore will not be required to be licensed as a licensed corporation under the SFO. However, as an investment fund vehicle, the day-to-day management and investment functions of the OFC must be delegated to an investment manager licensed or registered with the SFC to carry out Type 9 regulated activity on asset management. Further, the OFC will have to be registered with the SFC under the new legislation, and if the shares of the OFC are to be offered to the public, it must also be authorised by the SFC under the SFO in line with the existing regulations for investment fund offerings in Hong Kong.

Comments on the consultation paper are due by 19 June 2014.

FSTB warns public of risks associated with virtual commodities

The FSTB has issued an advisory to warn the public of consumer, money laundering and cyber-crime risks associated with any trading or dealing in virtual commodities, such as the 'Bitcoin'. The FSTB has indicated that such virtual commodities are not regarded as legal tender in Hong Kong, and that their prices are susceptible to significant fluctuation due to speculation.

As the anonymous nature of virtual commodities poses potential money laundering or terrorist financing risks on their transactions, the FSTB reminds financial institutions, virtual commodity dealers or operators, and individuals of their statutory duty to report suspicious transactions to the Joint Financial Intelligence Unit, if their due diligence work or transactions reveal any suspicious activities in relation to money laundering or terrorist financing, regardless of whether virtual commodities are involved. The Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC), the Office of the Commissioner of Insurance (OCI), and the Customs and Excise Department have also issued circulars respectively to banks, securities brokers, insurers, insurance agents and brokers, and money service operators to remind them to ensure an escalated level of vigilance commensurate with money laundering and terrorist financing risks associated with virtual commodities.

The government and financial regulators intend to closely monitor further developments, including the usage of virtual commodities in Hong Kong, the evolving regulatory consensus at international platforms such as the Financial Action Task Force, and relevant regulatory and enforcement actions in comparable jurisdictions, with a view to taking further action to ensure proper protection for the public.

FSA publishes bill to amend Financial Instruments and Exchange Act

The Financial Services Agency (FSA) has published a bill to amend the Financial Instruments and Exchange Act (FIEA), which was submitted to the Diet on 14 March 2014. The bill contains a number of proposals aimed at enhancing market activity and improving confidence in the market. In particular, the proposals include the following:

- crowdfunding – relaxed regulation for broker-dealers helping venture businesses in raising funds from general investors via the internet, and a requirement for such broker-dealers of appropriate provision of information via the internet;
- business years – under the current FIEA, a business year of a securities company in Japan must start on 1 April and end on 31 March, but the FSA will abolish this restriction in order to attract more foreign securities firms into Japan (i.e., by enabling their Japanese subsidiaries to adopt business years consistent with their parent companies);
- large shareholding reports – the bill contains provisions to streamline the large shareholding reporting system (e.g., deregulation of reporting of treasury shares);
- civil liability for false disclosure – the bill contains amendments to the civil liability of issuers of securities for false disclosures (e.g., limitation of liabilities of the issuers and expansion of the scope of people entitled to claim damages);
- stricter regulation on broker-dealers of fund interests – currently, foreign broker-dealers registered as Type II Business Operators under the FIEA are not required to have offices in Japan, but the bill proposes to require them to have offices in Japan; and
- financial benchmarks (including TIBOR) – the bill contains proposals to introduce regulations on benchmark administrators, including a requirement of code of conduct applicable to reference banks.

These amendments will take effect within one year after the Diet passes the bill (with some exceptions).

FSA publishes amendment to the Money Lending Business regulations

The FSA has published a finalised version of the amendment to the ordinances under the Money Lending Business Act. The amendment follows a public consultation procedure which commenced on 27 January 2014 and ended on 26 February 2014. The FSA has also published its responses to comments and questions received from the public on the draft version.

The content of the finalised amendment is essentially the same as the draft version published on 27 January 2014, which specified relaxed licensing requirements for loans made between group companies and loans made by a joint venture partner to its joint venture company.

Under the Act, a lender may be required to obtain a licence to engage in Money Lending Business (as defined in the Act) unless the lender is a bank or certain other financial institutions. Currently, although the licence requirement does not apply to loans made between a parent and its subsidiary (in which the parent holds more than 50% of the voting rights), it may apply to loans made between a parent and its subsidiary (in which the parent holds no more than 50% of the voting rights) and a company and its sister company.

One of the intentions of the FSA in making the amendment is to exempt loans between companies which belong to the same group (i.e. a company and its consolidated subsidiaries, with certain exceptions). As a result, the type of loans described above may be exempted after the implementation of the amendment. The proposed amendment may be useful in particular to Japanese companies (and non-Japanese companies which have group companies in Japan) by enabling them to adopt more efficient cash management systems.

The FSA also exempts loans made by a joint venture partner to its joint venture company, if the partner holds 20% or more of the voting rights of the company and all of the other joint venture partners consent to the loan.

The new regulations will be implemented on 1 April 2014.

MAS responds to feedback on review of regulatory framework for unlisted margined derivatives offered to retail investors and consults on draft regulations

The Monetary Authority of Singapore (MAS) has published its responses to the feedback it received on its 28 May 2012 consultation paper on the enhanced regulatory requirements for holders of capital markets services (CMS) licence and financial institutions exempted from holding the CMS licence.

Amongst other things, the MAS has confirmed that:

- expert investors and customers of specialised units will be excluded from the relevant proposals in the consultation paper, in view of the more sophisticated profile of such investors – corporations that do not qualify as accredited investors, institutional investors or expert investors will not be excluded from the proposals in the consultation paper;
- where a derivative dealer has risk management tools such as stop loss features in its trading system, it is currently allowed to set lower minimum margin rates as applicable under the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations – this provision will similarly be applicable to the proposed margin requirements for Contract-for-Differences (CFD) on Foreign Exchange and other Leveraged Foreign Exchange (LFX) contracts;
- the MAS will not proceed with the proposal to extend the minimum margin requirement that are currently applicable to CMS licensees dealing in CFDs on a referenced asset to the margin trading of all other unlisted derivatives on the same referenced asset by retail investors – instead, the MAS will monitor the types of leveraged products that are offered to retail investors and assess if there is a need to introduce margin requirements to address regulatory concerns;
- the margin requirements will be applied consistently to all derivative dealers for the applicable unlisted margined derivatives transacted with retail investors;
- the MAS will impose a minimum base capital requirement of SGD 5 million and specify as an admission guideline a minimum group shareholders' funds requirement of SGD 200 million for CMS licence applicants applying to deal in unlisted derivatives with retail investors;
- derivative dealers will be required to hold customer moneys with licensed banks in Singapore, save for assets denominated in a foreign currency pledged by customers as collateral with derivative dealers; and
- the conduct of LFX trading by banks, which is currently not regulated under the Securities and Futures Act (SFA), will be brought into the ambit of the SFA.

The MAS has launched a consultation on the draft regulations to enhance the regulatory framework for unlisted margin derivatives offered to retail investors.

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

Basel Committee concludes assessment of Basel III capital regulations in Australia

The Basel Committee on Banking Supervision has published a report assessing the regulations that implement the Basel capital framework in Australia. This is the eighth in a series of reports on Basel Committee members' implementation of Basel III risk-based capital minimum standards. The reports are prepared under the Committee's Regulatory Consistency Assessment Programme (RCAP). The Basel Committee has already published reports on Brazil, China, the EU, Japan, Singapore, Switzerland and the United States.

To assess the compliance of Australia's domestic capital rules with the international Basel capital standards, the Committee's RCAP assessment team held discussions with senior officials and technical staff of the Australian Prudential Regulation Authority (APRA), senior representatives from selected Australian authorised deposit-taking institutions, two accounting/audit firms and a credit rating agency.

Australia's implementation of the Basel capital framework was found to be closely aligned with the Basel III standards: 12 out of 14 assessed components were found to be 'compliant'. The two components that were graded 'largely compliant' were the 'definition of capital' and the 'internal ratings-based approach for credit risk', where some differences exist vis-à-vis the Basel framework. The overall framework of Australia's capital regulation was graded 'compliant'.

The assessment team noted that some aspects of Australia's capital regulations, such as those related to the definition and measurement of capital, are more rigorous than required under the Basel Framework. APRA has also implemented some aspects of the Basel III Framework ahead of the internationally agreed timeline and has also decided not to opt for the extended transition period for Basel Framework implementation.

An assessment of the implementation of the Basel III capital standards in Canada, and follow-up assessments of the final Basel III rules in the EU and the United States are under way.

RECENT CLIFFORD CHANCE BRIEFINGS

UK Budget 2014

It was billed as a Budget targeted at 'Makers, Doers and Savers'. Makers and Doers will welcome the doubling of the amount of the annual investment allowance. Savers will benefit from an increased ISA allowance. There are also major changes to the tax treatment of defined contribution pension schemes.

Anti-avoidance measures were also prominent. Those aimed at transfers of corporate profits appear to be potentially very wide-ranging in their scope. The Government has also set out its priorities for countering Base Erosion and Profit Shifting. Users of tax schemes which fall to be disclosed under the DOTAS regime or which are subject to counteraction under the General Anti-Abuse Rule will be required to pay their tax upfront.

This briefing summarises the main business tax announcements.

http://www.cliffordchance.com/briefings/2014/03/uk_budget_20140.html

Contentious Commentary – a review for litigators

Clifford Chance has prepared the latest edition of 'Contentious Commentary', a newsletter that provides a summary of recent developments in litigation. The newsletter is produced by lawyers in the litigation and dispute resolution practice at Clifford Chance. This edition covers the following key issues:

- conflict prevention measures doubted;
- representations continue to contract;
- Financial Ombudsman's decision really is final;
- uncertainties in vicarious liability explored;
- damages assessments assume proper performance;
- Mitchell moderation?;
- liquidators' claim to privilege rejected;
- arbitration finding does not stop the same argument in court;
- foreign law does not bring with it foreign procedure;
- arbitrator not apparently biased; and
- time for jurisdictional challenge extended, but challenge rejected.

http://www.cliffordchance.com/content/cliffordchance/briefings/2014/03/contentious_commentary-march2014.html

Polish Legislation Newsletter

Clifford Chance has produced the Polish Legislation Newsletter for February 2014, summarising selected recent changes to Polish law.

http://www.cliffordchance.com/content/cliffordchance/briefings/2014/03/polish_legislationnewsletterfebruary2014.html

Application of Spanish criminal law abroad to offences of corruption between private individuals and corruption in international business transactions

On 14 March 2014, the Official State Gazette published Act 1/2014, of 13 March, which amended Judiciary Act 6/1985, of 1 July (LOPJ), in relation to universal justice.

One of the reforms introduced by the Act in article 23.4 of the LOPJ is the possibility, given certain circumstances, for offences of corruption between private individuals and corruption in international business transactions being heard and judged by Spanish courts, even if committed by Spaniards or foreign nationals outside of Spain.

This briefing discusses this reform.

http://www.cliffordchance.com/briefings/2014/03/application_of_spanishcriminallawabroadt.html

Update on the situation in Ukraine

Over the last few months, events in Ukraine have been changing rapidly. In recent days we have seen the people of the Autonomous Republic of Crimea voting in a referendum in favour of seceding from Ukraine and becoming a part of the Russian Federation and a declaration of independence by the Crimean Parliament (whose authority is not recognised by Ukraine). The referendum and declaration of independence have been categorised as illegal under Ukrainian law, as the Ukrainian Constitution does not allow Crimea to organise a referendum on the modification of the territorial configuration of Ukraine. Following an accession request by the Parliament in Crimea on 18 March, we have seen the Russian President and the representatives of Crimea signing an agreement on the accession of Crimea to the Russian Federation, which is stated to take immediate effect and is due to be ratified by the Constitutional Court and the Parliament of the Russian Federation.

In response, we have so far seen the imposition of EU and US sanctions against certain Ukrainian and Russian individuals and the very real possibility that additional sanctions will be coming soon, including from Ukraine itself.

This briefing provides an update on these developments.

http://www.cliffordchance.com/content/cliffordchance/briefings/2014/03/update_on_the_situationinukraine0.html

Delaware Supreme Court affirms that the business judgment rule applies to a going-private merger proposed by a controlling stockholder

In 'Kahn v. M&F Worldwide', C.A. No. 6566 (Del. Mar. 14, 2013), the Delaware Supreme Court ruled for the first time that a going-private merger with a controlling stockholder is not always subject to the entire fairness standard (which is Delaware's most rigorous standard of review). Instead, a controlling stockholder going-private transaction can be subject to Delaware's most forgiving standard of review, which is the business judgment standard, when the merger is conditioned up-front on both approval by an independent special committee and a majority-of-the-minority stockholder vote, and both of those protective devices subsequently are properly and effectively implemented. As we discuss, although the route to business judgment review approved by the Court doubtless will be followed in many future controlling stockholder going-private transactions, it will not always be the best approach.

This briefing discusses this decision.

http://www.cliffordchance.com/content/cliffordchance/briefings/2014/03/delaware_supremecourtaffirmsthatthebusines.html

Rural Metro – More Lessons on Practices to Avoid When Selling a Publicly Traded Delaware Corporation

At first glance, the all-cash third-party buyout addressed in a recent Chancery Court decision, In re Rural Metro Corp. Stockholder Litig., C.A. No. 6350-UCL (Del. Ch. March 7, 2014), seemed an unlikely candidate for criticism, judicial or otherwise.

The buyout of Rural Metro was at a respectable premium to the unaffected share price and was approved by 72% of its stockholders pursuant to the recommendation of a seven-member board of which six members were 'facially independent, disinterested outside directors.' The terms of the transaction were negotiated by a special committee comprised of three of those independent directors. The chair of the special committee was a co-founder of a hedge fund that held over 12% of the target's stock, which appeared to align his interests strongly with those of other stockholders. The lead financial adviser chosen by the special committee was authorized to offer stapled financing to prospective bidders, but only after the special committee discussed the possible pros and cons of such an arrangement and decided to manage the cons by appointing a reputable co-adviser that would not participate in acquisition financing. The lead financial adviser did not in fact provide acquisition financing to the successful private equity bidder. That adviser did provide acquisition financing for a sale of Rural Metro's principal competitor that was negotiated around the same time, but that private equity buyer was a competitor of the buyer of Rural Metro.

Notwithstanding these facts, the stockholder challenge addressed in the Rural Metro decision resulted in liability for the financial adviser, findings of fiduciary breaches by Rural Metro's directors and scathing judicial commentary regarding the conduct of bankers and directors alike.

This briefing discusses the key issues arising from the Chancery Court's decision.

http://www.cliffordchance.com/content/cliffordchance/briefings/2014/03/rural_metro_morelessonsonpracticestoavoi.html