

International Regulatory Update

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- SFC reminds licensed corporations of requirements on selling of complex bonds and high-yield bonds
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Banking Union: EU Council confirms agreement with EU Parliament

The Permanent Representatives Committee has [approved](#), on behalf of the EU Council, a compromise agreed with the EU Parliament on a regulation establishing a single resolution mechanism for failing banks. This enables the Parliament to approve the text at first reading before it adjourns for elections in May 2014. The EU Parliament's first reading is scheduled for its plenary session on 14 to 17 April. The EU Council plans to subsequently adopt the regulation without further discussion.

EMIR: EU Commission responds to ESMA request for clarification of derivative definition

The EU Commission has [responded](#) to a European Securities and Markets Authority (ESMA) letter which requested clarification for the definition of a derivative or derivative contracts under the European Market Infrastructure Regulation (EMIR).

In its response, the EU Commission confirms that FX forwards fall within the scope of the Markets in Financial Instruments Directive (MiFID) and consequently also of EMIR. It acknowledges the need for further clarity about the precise separation between FX forward contracts and currency spot contracts under MiFID. Therefore:

- DG Market will assess the options for action to ensure a consistent application of MiFID;
- the delivery periods that are appropriate in the FX forwards market will be considered;

- the notion of 'commercial purpose' of the conclusion of a derivatives contract cannot be introduced for currency derivatives;
- the Commission is not going to prejudge its imminent work in MiFID 2 via delegated acts by developing any Level II measures under MiFID 1 in relation to the definition of commodity forwards that can be physically settled; and
- ESMA is requested, as part of its preparatory work to advise the Commission under MiFIR, to assess the status of physically settled commodity forwards.

EU Commission publishes communication on crowdfunding in the EU

The EU Commission has published a [communication](#) entitled 'Unleashing the potential of crowdfunding in the European Union', together with related [FAQs](#) and a [summary of responses](#) to its October 2013 crowdfunding consultation.

The EU Commission sets out its proposals for future action on crowdfunding in the EU. Amongst other things, the Commission proposes to:

- carry out a study in 2014 to explore market developments;
- promote industry best practices and standards, and facilitate the development of a quality label to build trust with users;
- establish the European Crowdfunding Stakeholder Forum expert group, to advise the Commission;
- hold workshops with national regulators to discuss obstacles to convergence of national regulations on financial return models;
- closely monitor the development of the crowdfunding market and legal developments;
- regularly assess whether further EU action such as legislative action is needed; and
- closely follow international developments and support efforts to promote regulatory convergence of approaches at international level.

The Commission intends to report back on progress in the course of 2015.

ECON Committee publishes report on European Long-Term Investment Funds Regulation

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has published its [report](#) on the EU Commission's proposed Regulation on European Long-Term Investment Funds. The proposed regulation

sets out a new investment fund framework designed for investors who want to put money into companies and projects for the long term. These private funds would only invest in businesses that need money to be committed to them for long periods of time.

ECON Committee adopts recommendation for second reading of recast Deposit Guarantee Schemes Directive

The ECON Committee has published a [recommendation for second reading](#) on the EU Council's position at first reading with a view to the adoption of the proposed Directive recasting the Deposit Guarantee Schemes Directive (recast DGSD). The EU Parliament is expected to adopt the final text of the recast DGSD, without amendment, at second reading at its plenary session to be held from 14 to 17 April 2014.

ESMA publishes final report on revision of guidelines on ETFs and other UCITS issues

Following a consultation launched in December 2013, the European Securities and Markets Authority (ESMA) has published its [final report](#) on the revision of the provisions on diversification of collateral in its guidelines on exchange traded funds (ETFs) and other undertakings for collective investment in transferable securities (UCITS) issues.

The final guidelines modify the rules on collateral diversification in paragraph 43(e) of the existing guidelines and introduce some further consequential changes. Under the new guidelines, UCITS that receive collateral from any one issuer of more than 20% of its net asset value are required to make additional disclosures, and ESMA further requires that collateral must be diversified across at least six different issues.

The guidelines in Annex I of the report will be translated into the official EU languages and published on the ESMA website. Once translated there will be a two-month period during which National Competent Authorities must notify ESMA on whether they comply or intend to comply with the guidelines.

ESMA issues good practices for structured retail product governance

ESMA has published an [opinion](#) on structured retail products, setting out good practices for firms when manufacturing and distributing these products.

These good practices that product providers could put in place to improve their ability to deliver on investor protection in particular focus on:

- the complexity of the structured retail products they manufacture and distribute;
- the nature and range of investment services and activities undertaken in the course of business; and
- the type of investors they target.

ESMA expects national competent authorities to embed these good practices in their supervisory approaches to structured retail product providers.

ESMA publishes competent authorities' co-operation arrangements and information exchange guidelines

ESMA has published [guidelines](#) on co-operation arrangements and information exchange between competent authorities and between competent authorities and ESMA.

They provide for competent authorities to enter into and comply with the provisions of a multilateral memorandum of understanding (MMoU). The MMoU provides a general framework for co-operation arrangements and information exchange. The guidelines are intended to ensure that competent authorities make every effort to comply with the provisions of the MMoU and that ESMA is informed of any non-compliance.

The guidelines apply from 26 March 2014. The new MMoU enters into force on 29 May 2014 and updates the existing MMoU on the Exchange of Information and Surveillance of Securities Activities

AIFMD: ESMA publishes technical advice to EU Commission on Article 67(3)

ESMA has published a [final report](#) on its technical advice to the EU Commission on the information that competent authorities should provide to ESMA pursuant to Article 67(3) of the Alternative Investment Fund Managers Directive (AIFMD).

The final report describes the background of the proposal followed by the timing for the provision of the information to ESMA. It also lists the information that the competent authorities should provide quarterly to ESMA. The list of information is divided into three parts:

- the information about the functioning of the passport for EU AIFMs;
- the functioning of the national private placement regime for non-EU AIFs and non-EU AIFMs; and

- reference to the issues arising from the functioning of both systems.

EBA finalises guidelines on the applicable notional discount rate for variable remuneration under CRD 4

The European Banking Authority (EBA) has published [final guidelines](#) on the applicable notional discount rate for variable remuneration under Article 94(1)(g)(iii) of the CRD 4 Directive. The guidelines are intended to support EU Member States in the calculation of the ratio between the variable and fixed component of total remuneration and refer to services or performance provided from 2014 onwards.

The final guidelines include feedback on the EBA's public consultation on the discount rate for variable remuneration, which it launched in October 2013.

EBA consults on a revised XBRL Taxonomy for supervisory reporting

The EBA has launched a [consultation](#) on a revised version of its [XBRL Taxonomy](#) for supervisory reporting, which incorporates additional reporting requirements for asset encumbrance, non-performing exposures and forbearance. The consultation aims at ensuring that the data national competent authorities collect from credit institutions and investment firms is transmitted to the EBA in a uniform and consistent manner. Comments are due by 14 April 2014.

EBA publishes final draft RTS on own funds (Part IV)

The EBA has published final [draft regulatory technical standards](#) (RTS) on own funds (Part IV) aimed at setting harmonised criteria for instruments with multiple distributions. Three draft RTS relate to Article 28(5) of the Capital Requirements Regulation (CRR), which mandates the EBA to specify whether and when multiple distributions would constitute a disproportionate drag on own funds, and the meaning of preferential distributions.

The RTS will be part of the Single Rulebook in banking aimed at enhancing regulatory harmonisation in the EU and at strengthening the quality of capital.

HM Treasury consults on bank levy banding

HM Treasury has published a [consultation paper](#) setting out the case for a revenue neutral change to the mechanism by which banks are charged under the bank levy, which would move away from the existing system of headline rates and towards a banding approach.

Under this approach, banks would be allocated into different bands according to their chargeable balance sheet

equity and liabilities, with each band then corresponding to a pre-set charge paid by all banks within that band.

Views are sought on the overall concept of banding, including the extent to which it would improve the predictability and sustainability of bank levy receipts and address some of the concerns that have been raised around its existing design.

The consultation sets out the key considerations in using the bank levy to meet the UK's obligations under the EU Bank Recovery and Resolution and Deposit Guarantee Scheme directives.

Comments are due by 8 May 2014 with the intention to introduce legislation at the Report Stage of Finance Bill 2014, which is expected to take place in early July. The changes would then take effect for chargeable periods beginning on or after 1 January 2015.

Guernsey Financial Services Commission and FINMA sign MoU on distribution of investment funds to retail investors

The Guernsey Financial Services Commission (GFSC) has signed a [memorandum of understanding](#) (MoU) with the Swiss Financial Market Authority (FINMA) on the distribution of investment funds to retail investors. Key elements of the MoU include the exchange of information, cross border on-site visits and assistance in the enforcement of each jurisdiction's laws.

The agreement follows amendments made to the Swiss Collective Investment Schemes Act relating to the distribution of foreign funds to retail investors in or from Switzerland.

AIFMD: Italian Delegated Act is published

[Legislative Decree](#) no. 44 of 4 March 2014 has been published in the Italian Official Gazette. The Legislative Decree implements the Alternative Investment Fund Managers Directive (AIFMD) by amending, amongst other things, Legislative Decree no. 58/1998 (the Italian Financial Act). The Legislative Decree includes a transitional regime relating to the managing and marketing of Italian or foreign AIFs.

The Legislative Decree enters into force on 9 April 2014. The Commissione Nazionale per le Società e la Borsa (CONSOB), the Bank of Italy and the Treasury should shortly publish the relevant second-level provisions detailing the framework introduced by the Legislative Decree.

AIFMD: general concepts for AIFMD implementation law adopted in Poland

The Polish Council of Ministers has [adopted](#) the general concepts for a law implementing the AIFMD in Poland. Following the general concepts, in relation to non-UCITS investment funds, the AIFMD will be implemented by adding the additional requirements under the AIFMD to the Polish Act on Investment Funds currently in force. In relation to other entities which come under the scope of the AIFMD, a separate act on alternative investment fund managers is planned.

The final implementation is scheduled for Q4 2014.

AIFMD: Implementing Act comes into force in Finland

The Act on Alternative Investment Fund Managers came into force on 15 March 2014. The Act implements the AIFMD in Finland. Guidance has not yet been issued in English. We understand that the [new legislation](#) includes transitional provisions relating to the managing and marketing of Finnish or foreign AIFs to professional investors. If a Finnish or foreign AIF was marketed to professional investors before 15 March 2014, this marketing can continue without a licence until 22 July 2014. However, a notification must be delivered to the Finnish Financial Supervisory Authority (the Finnish FSA) by 15 April 2014.

The management of closed-ended funds can also be continued without a licence, but this also requires that a notification be sent to the Finnish FSA by 15 April 2014.

China Securities Depository and Clearing Corporation allows privately-offered funds to open securities accounts

The China Securities Depository and Clearing Corporation (CSDCC) has issued the 'Circular on the Account Opening and Settlement by Privately-offered Investment Funds' to allow privately-offered investment funds (Private Funds) that have been filed with the Asset Management Association of China (AMAC) to open securities accounts with the CSDCC. The [Circular](#) became effective on 25 March 2014. Among other things, the following key aspects are worth noting:

- the fund manager or the fund custodian (if applicable) of a Private Fund may open securities accounts for the Private Fund at CSDCC. Each Private Fund may open one securities account for trading on the Shanghai Stock Exchange and Shenzhen Stock Exchange respectively;

- registration of the fund manager and filing of the Private Fund with AMAC are required before any securities account at CSDCC can be opened for the Private Fund;
- securities accounts of a Private Fund should be opened in the format of 'Name of fund manager – Name of Private Fund';
- CSDCC requires a Private Fund to close its securities account if it is liquidated or fails to conduct any trading activities within six months after the account is opened;
- Private Funds shall not open securities accounts solely for the purpose of IPO subscription or trading risk warning stocks (ST shares); and
- securities accounts of the Private Funds may be settled through the securities companies or the custodians. Where the securities accounts are settled by the custodians, special trading units should be adopted and prior written approval from the stock exchanges will be required.

SFC and OCI warn of money laundering and terrorist financing risks associated with virtual commodities

Further to its January 2014 guidance on measures to mitigate the money laundering and terrorist financing risks associated with virtual commodities such as Bitcoin, the Securities and Futures Commission (SFC) has [issued a circular](#) to licensed corporations and associated entities to draw their attention to the advisory issued by the Hong Kong Government on 14 March 2014 warning the public of various risks associated with any trading or dealing in virtual commodities.

The SFC reminds licensed corporations and associated entities again to exercise increased vigilance commensurate with money laundering and terrorist financing risks associated with virtual commodities. In particular, licensed corporations and associated entities are advised to exercise caution in assessing relevant money laundering and terrorist financing risks when establishing or maintaining business relationships with potential or existing customers who are operators of schemes or businesses related to virtual commodities, and take additional customer due diligence measures and perform enhanced ongoing monitoring of activities for the account of any such customer to detect suspicious transactions. Licensed corporations and associated are also reminded of their statutory duty to report suspicious transactions to the Joint Financial Intelligence Unit.

The Office of the Commissioner of Insurance (OCI) has [also issued a circular](#) to all authorised insurers drawing

their attention to the government's advisory on virtual commodities, and reminding them to exercise increased vigilance commensurate with money laundering and terrorist financing risks associated with virtual commodities.

Hong Kong and US sign tax information agreement

Hong Kong and the US have signed an [agreement](#) for exchange of information relating to taxes. This is the first tax information exchange agreement (TIEA) signed by Hong Kong, after the legal framework for entering into the TIEAs with other jurisdictions was put in place in July 2013. The TIEAs provide for exchange of information by the Inland Revenue Department (IRD) upon request made by another jurisdiction in relation to the assessment or enforcement of tax matters. Instead of having the exchange of information provision included as part of the comprehensive agreements for avoidance of double taxation (CDTAs) signed by Hong Kong with other jurisdictions before, the TIEAs provide for exchange of information on a stand-alone basis.

Further, the TIEA with the US provides the necessary basis for Hong Kong to provide for exchange of information upon requests made in relation to the information reported by financial institutions in Hong Kong to the US under the US Foreign Account Tax Compliance Act (FATCA). FATCA requires US persons, including those who live outside the US, to report to the US tax authorities their financial accounts held in other jurisdictions, and requires foreign financial institutions including those in Hong Kong to report the financial information in respect of their US clients. Subject to the completion of the ongoing discussions, Hong Kong intends to enter into an intergovernmental agreement with the US to lay down the arrangements which help facilitate compliance by the financial institutions in Hong Kong. As a complementary measure, the signing of a TIEA with the US will allow the US tax authorities to file a request to the IRD for exchange of information under specified conditions.

The Financial Services and the Treasury Bureau (FSTB) has indicated that the TIEA will become effective after Hong Kong has completed the necessary legislative procedures for bringing the agreement into force.

SFC reminds licensed corporations of requirements on selling of complex bonds and high-yield bonds

In response to some common issues identified from its recent on-site inspections, the SFC has [issued a circular](#) to licensed corporations reminding them of their obligations in relation to the selling process for bonds with special

features and high-yield bonds (complex/high-yield bonds). In particular, the SFC reminds all licensed corporations that sell complex/high-yield bonds to:

- conduct proper product due diligence to ensure that the firm understands the important aspects of complex/high-yield bonds;
- explain the key features and risks of complex/high-yield bonds and provide relevant and material information to the client;
- implement a proper suitability assessment process to ensure that complex/high-yield bonds which the firm solicits or recommends a client to buy are reasonably suitable to the client in all the circumstances;
- disclose the trading profit made from a back-to-back transaction to the client prior to or at the point of entering into the transaction; and
- put in place adequate supervisory controls to ensure compliance with all relevant regulatory requirements in relation to the sale of complex/high-yield bonds.

The SFC has advised licensed corporations to pay due regard to the issues and guidance set out in the [Appendix](#) of the circular, and critically review their policies and procedures to address any issues that are relevant to their firms with a view to improving compliance.

The HKMA has [also issued a circular](#) to all registered institutions to draw their attention to the SFC circular on selling of complex/high-yield bonds. Registered institutions are advised to pay due regard to the issues and guidance set out in the SFC's circular, and to review and enhance their policies, procedures and controls to address any issues that are relevant to their institutions.

HKEX concludes consultation on proposed changes to connected transaction rules

The Stock Exchange of Hong Kong Limited (SEHK), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEx), has published its consultation conclusions on the following proposed changes to the listing rules set out in the consultation papers of 26 April 2013 on:

- proposed changes to the [connected transaction rules](#); and
- proposed changes to align the [definitions of connected person and associate](#) in the rules.

According to the SEHK, most of its proposals to simplify the connected transaction rules will be adopted. However, the proposals in the following areas will not be adopted or will be adopted only partly:

- transactions with connected persons at the subsidiary level – these will be exempt from the independent shareholder approval requirement, but remain subject to the disclosure requirement;
- monetary limits for the de minimis exemptions – SEHK will increase the monetary limit for fully exempt connected transactions to HKD 3 million but retain the monetary limit of HKD 10 million for connected transactions exempt from the shareholder approval requirement;
- deeming provision – SEHK has decided not to adopt the proposal to specify that the deeming provision will cover a shadow director or de facto controlling shareholder of an issuer, and any person who is accustomed to acting according to a connected person's direction or instruction; and
- continuing connected transactions – SEHK has decided not to adopt: (a) the proposal to codify in the Rules the current waiver practice to allow an issuer to obtain a shareholder mandate for continuing connected transactions over a period in lieu of a framework agreement; and (b) the proposal to allow percentage caps for continuing connected transactions of a revenue nature.

Proposals to align the definitions of connected person and associate in other parts of the Rules also received support from a majority of the respondents, and will be implemented in a number of areas

The rule amendments will be effective from 1 July 2014.

In addition, the SEHK has published a [guidance letter](#) on the pricing policies in agreements for continuing connected transactions and their disclosure; and a new series of frequently asked questions ([FAQs](#)) on rule requirements relating to connected transactions, which include new FAQs relating to the rule amendments to be effective on 1 July 2014.

MAS publishes the Securities and Futures (Reporting of Derivatives Contracts) (Amendment) Regulations 2014

The Monetary Authority of Singapore (MAS) has published the Securities and Futures (Reporting of Derivatives Contracts) (Amendment) Regulations 2014 to amend the

Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013. The amendments relate to:

- provisions relating to a significant derivatives holder;
- provisions regarding the deferred reporting of counterparty information in certain cases;
- the First Schedule on derivatives information to be reported; and
- the Second Schedule which contains reporting commencement dates for various classes of specified derivatives and specified persons under the Securities and Futures Act (SFA).

The amendment regulations are effective from 31 March 2014.

CFTC issues no-action letter extending time-limited relief on MTFs

The Commodity Futures Trading Commission (CFTC) has issued a [no-action letter](#) extending temporary no action relief with respect to swaps trading on EU Multilateral Trading Facilities (MTFs). The letter provides relief for MTFs from the swap execution facility (SEF) registration required by the Commodity Exchange Act (CEA) and CFTC regulations, and for parties to swap transactions executed according to the rules of MTFs detailed in the CEA.

This short term relief will expire upon on the earlier of 11:59pm EDT on May 14, 2014 or the CFTC's Division of Market Oversight's issuance of a letter acknowledging receipt of, and granting an MTF's long-term relief request.

SEC Director Higgins addresses conference on European Securities Regulation

Keith F. Higgins, Director of the US Securities and Exchange Commission (SEC) Division of Corporation Finance, has delivered a [keynote address](#) before the Practising Law Institute's London conference on European Securities Regulation.

Higgins began by reviewing SEC rulemakings that have been implemented since the passage of the 2012 JOBS Act. He then discussed possible future concerns, including some involving foreign issuers. Currently, foreign companies seeking access to the US capital markets are subject to the same basic regulatory framework as US companies when it comes to offering and selling securities. In terms of exempt offerings, Rule 144A has historically been a popular capital-raising method for foreign companies. Higgins stated that the SEC is very interested in seeing if market practices for these offerings will change

in response to the new ability to use general solicitation in Rule 144A offerings.

Higgins also stated that the SEC understands that foreign companies sometimes face challenges that US companies do not. Higgins characterized the SEC as open to helping foreign issuers address such challenges wherever possible, whether by providing Rule 144(i) guidance for Canadian Capital Pool Companies that report in Canada but not in the United States, or by allowing foreign issuers subject to the US proxy rules to avoid filing a preliminary proxy statement for routine matters that require shareholder votes under foreign law.

RECENT CLIFFORD CHANCE BRIEFINGS

EMIR – illustrative implementation timeline – update March 2014

The implementation timetable for the EU derivatives reforms has advanced. The EU regulation on OTC derivatives, central counterparties and trade repositories (EMIR) came into force on 16 August 2012 and regulatory and implementing technical standards under EMIR on risk mitigation applied from 15 March and 15 September 2013.

The reporting of OTC and exchange traded derivatives to trade repositories started on 12 February 2014 and reporting of valuation data on positions and collateral is set to begin on 12 August 2014. The first EU central counterparty (CCP) was authorised under EMIR on 18 March 2014, starting the obligations that apply to clearing members, the consultation process on mandatory clearing and, potentially, the 'frontloading' period for some OTC derivatives. Other CCPs will be authorised or recognised during 2014 and the first clearing obligations could take effect by the end of 2014, subject to phase-in.

The RTS applying EMIR to transactions between non-EU entities has been published in the OJ and its main provisions will apply from 10 October 2014. The European Supervisory Authorities are expected to consult shortly on the EMIR rules requiring the margining of uncleared OTC derivatives and these are expected to apply from 1 December 2015, in line with the BCBS-IOSCO final framework.

This update of our illustrative timeline shows when the obligations under EMIR could begin to apply. It includes summaries of the compliance schedules for the confirmation rules and the backloading of reports of pre-existing derivative transactions, as well as a summary

of the transitional provisions under the Capital Requirements Regulation for treatment of existing central counterparties as 'qualifying central counterparties' for regulatory capital purposes.

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

AIFMD marketing for third country managers – deadlines and dilemmas

The AIFMD transitional period will end at the latest on 22 July 2014. Many third country managers have relied on this 'grace period' since the AIFMD was transposed in most EEA countries in July 2013 and have only recently taken their first tentative steps towards registering under the AIFMD's private placement rules (known as the 'Article 42 requirements') which will apply after July 2014. However, these registration processes have proved far from straightforward, hindered by diverging requirements and lack of clarity.

This briefing examines some of the practical issues that have arisen and the deadlines that should be borne in mind as the expiry of the grace period looms on the horizon.

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

Elephant spotting – Risk Retention under the CRR

This briefing explores a number of key themes which are becoming apparent around financings of loan portfolio acquisitions and 'businesses' generally, in relation to the new EU regulatory capital regime and its recasting of the securitisation risk retention rules. In this context, we also consider the requirement for tranching to determine the distribution of losses 'during the ongoing life of the transaction' as a threshold for a transaction being a securitisation and look at Recital 50 of the CRR and the financing of physical assets.

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

Collective actions in Belgium

The Belgian parliament has approved a new bill introducing a brand new action for collective redress under Belgian law. The bill forms part of the new Belgian Code of Economic Law, and will enter into force on date still to be determined by Royal Decree. The entry into force is, however, expected to take place before the summer.

This briefing discusses this bill.

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

Reintroduction of exemptions for leased aircraft in Russia

The Customs Union (which consists of Russia, Belarus and Kazakhstan) has reintroduced exemptions from customs duties and VAT that were available for the most popular types of aircraft leased to Russian companies.

This briefing discusses these exemptions.

http://www.cliffordchance.com/briefings/2014/03/reintroduction_ofexemptionsforleasedaircraft0.html

M&A in Russia under English law – Are we bound by this term sheet?

A high proportion of M&A transactions involving (directly or indirectly) Russian assets are carried out under English law. Parties to a transaction will often execute a term sheet in the early stages of a deal, long before transaction documents are drafted, agreed and executed, which will generally set out the basic agreed commercial framework between the parties in anticipation of the long-form transaction documents. Are such term sheets binding? Does a party retain the ability to walk away? Can one party hold the other to the bargain?

This briefing addresses these questions in the context of providing a broader insight into the use of term sheets.

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

FSTB consults on open-ended fund companies

The Financial Services and the Treasury Bureau (FSTB) has published a consultation paper on open-ended fund companies (Consultation Paper). The proposals aim to enhance Hong Kong's legal infrastructure for investment fund vehicles by introducing a new open-ended fund company (OFC) structure. The Government hopes that, through the introduction of this additional structure, Hong Kong's asset management industry would be further developed when market participants are offered more choice and better flexibility in establishing and operating funds domiciled in Hong Kong, which are currently limited to unit trust structures.

The consultation period will end on 19 June 2014.

This briefing discusses this consultation.

http://www.cliffordchance.com/content/cliffordchance/briefings/2014/03/fstb_consults_onopen-endedfundcompanies.html

Amendment to the Money Lending Business Regulations – effective from 1 April 2014

The Money Lending Business regulations were amended on 24 March 2014, with the amendment effective from 1 April 2014. The amendment exempts loans made between certain group entities from the regulatory requirements under the Money Lending Business Act of Japan. The amendment will help to facilitate intra-group loans, and in particular is intended to facilitate the establishment of cash management systems in entity groups. In addition, the amendment exempts loans made by a joint venture partner to its joint venture entity from the regulatory requirements.

This briefing discusses these regulations.

http://www.cliffordchance.com/content/cliffordchance/briefings/2014/03/amendment_to_themoneylendingbusiness0.html

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

So much for statutory and contractual rights – Delaware Bankruptcy Court limits secured creditor's right to credit bid to 'foster competitive bidding'

In 'In re Fisker Auto. Holdings, Inc., et al.', the US Bankruptcy Court for the District of Delaware capped the right of a secured lender to credit bid its nearly \$170 million claim at \$25 million — the amount it paid for the debt at an open auction. The primary impetus for the court's limitation on the secured creditor's statutory auction currency appears to have been that, absent such limitation, another bidder would have bowed out of the process, much to the consternation of the Official Committee of Unsecured Creditors. Thus, the court held that 'for cause,' as used in the limiting language of Section 363(k), allows the derogation of contractual and statutory rights to distributive priority simply to advance the putative interests of an otherwise subordinate class of creditors. Stated differently, rather than to take a holistic view of the benefits the proposed sale would yield to the estate, the court fell victim to the perception that the unsecured creditors are the estate and, in the process, dealt a serious blow to the policy considerations that the Bankruptcy Code is meant to protect.

This briefing discusses this decision.

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