

International Regulatory Update

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If you would like to know more about the subjects covered in this publication or our services, please contact:

International Regulatory Group Contacts

[Chris Bates](#) +44 (0)20 7006 1041

[Nick O'Neill](#) +1 212 878 3119

[Marc Benzler](#) +49 69 7199 3304

[Steven Gatti](#) +1 202 912 5095

[Mark Shipman](#) + 852 2826 8992

[Donna Wacker](#) +852 2826 3478

International Regulatory Update Editor

[Joachim Richter](#) +44 (0)20 7006 2503

To email one of the above, please use firstname.lastname@cliffordchance.com

Clifford Chance LLP, 10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

Payment services: EU Parliament plenary votes in favour of MIF Regulation

The EU Parliament has [passed](#) the proposed Regulation on Interchange Fees for Card-based Payment Transactions (MIF Regulation) at its plenary session.

The regulation will introduce:

- maximum fees for consumer debit and credit cards, to be 0.3% of the transaction value for credit card transactions and 0.2% of the transaction value for cross-border debit card transactions. For domestic transactions, Member States will be able to apply the 0.2% cap to the annual weighted average transaction value of all domestic transactions within a card scheme;
- rules that allow retailers to choose which cards to accept; and
- new transparency rules for all transactions which are intended to remove major obstacles to technological innovation.

The new rules will not apply to three-party card schemes in circumstances where the card is both issued and processed within the same scheme. Commercial cards that are used only to pay business expenses will also be exempt from the new rules.

The regulation still needs to be endorsed by the Council of the EU.

European Long-term Investment Funds: EU Parliament reaches agreement

The EU Parliament has [adopted](#) the proposed regulation on European Long-Term Investment Funds (ELTIFs).

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

The regulation still needs to be endorsed by the Council of the EU and will apply six months after its entry into force.

BRRD: EBA publishes technical advice on bank resolution procedures and consults on requirements for business reorganisation plans

The European Banking Authority (EBA) has published technical advice addressed to the EU Commission on resolution procedures for EU banks under the Bank Recovery and Resolution Directive (BRRD). Three

separate sets of technical advice have been published, which relate to possible delegated acts on:

- [critical functions and core business lines](#);
- deferral of extraordinary [ex-post contributions](#) to financial arrangements; and
- the circumstances when [exclusions from the bail-in](#) tool are necessary.

Alongside the technical advice on critical functions and core business lines, the EBA has also published a [comparative report](#) on the approach taken by 27 EU cross-border banking groups, which identifies key strengths and weaknesses in banks approaches and is intended to help banks identify best practice and their position in relation to peers.

With respect to ex-post contributions to the 'resolution fund' provided by the BRRD, the EBA advises that ex-post contributions should only be allowed by national authorities in exceptional cases based on analysis of an institution's solvency and liquidity. The technical advice on bail-in exemptions recommends that these should be considered on a case-by-case basis and that exclusions should be used restrictively in order to ensure that exceptions to the principles of equitable treatment of creditors of the same class and no creditor worse off (NCWO) are limited.

The EBA [has also launched a consultation](#) on its draft Regulatory Technical Standards (RTS) on the content of business reorganisation plans and progress reports and guidelines on the assessment of the plans under the BRRD. Comments are due by 9 June 2015.

EMIR: ESMA amends opinion on draft RTS on clearing obligation for interest rate swaps

The European Securities and Markets Authority (ESMA) has published a [revised opinion](#) on its draft RTS on the clearing obligation for interest rate swaps (IRS). ESMA's draft IRS RTS had originally been sent for endorsement to the EU Commission by 1 October 2014. On 29 January 2015, the Commission responded with a corrigendum notification, which informed ESMA of its intention to endorse the draft RTS with amendments.

This opinion revises ESMA's earlier opinion published on 29 January 2015. Besides incorporating practical issues raised by the Commission corrigendum notification, the revised opinion does not introduce material changes compared to the original opinion nor were the actual draft IRS RTS modified.

EMIR: ESMA and Monetary Authority of Singapore publish memorandum of understanding regarding CCPs

ESMA and the Monetary Authority of Singapore (MAS) have entered into a [memorandum of understanding](#) regarding central counterparties (CCPs) established in Singapore and authorised by the MAS that have applied to ESMA for recognition as CCPs under the European Market Infrastructure Regulation (EMIR).

The memorandum of understanding is intended to establish cooperation arrangements as regards the covered CCPs and provide ESMA with adequate tools to monitor the ongoing compliance by the covered CCPs with the recognition conditions.

Benchmarks: FCA publishes policy statement on regulation of seven additional benchmarks

The Financial Conduct Authority (FCA) has published a policy statement ([PS15/6](#)) on its framework for regulating and supervising seven additional benchmarks following recommendations from the Fair and Effective Markets Review (FEMR) being implemented jointly between HM Treasury, the Bank of England and the FCA. Seven major UK-based financial benchmarks in the fixed income, commodity and currency (FICC) markets will be regulated under the regime established for the London Inter-bank Offered Rate (LIBOR) from 1 April 2015. The benchmarks are:

- the Sterling Overnight Index Average (SONIA);
- the Repurchase Overnight Index Average (RONIA);
- ISDAFIX;
- WM/Reuters (WMR) London 4pm Closing Spot Rate;
- London Gold Fixing (to be replaced by LBMA Gold Price);
- LBMA Silver Price; and
- ICE Brent.

The FCA policy statement sets out feedback to its consultation published on 22 December 2014 and includes the final rules for regulated benchmark administrators and submitters to benchmarks. The policy statement discusses the identification of benchmark submitters, in particular relating to auction participants, and the FCA has announced that it intends to provide further clarity in this area.

The instrument that will make necessary amendments to the FCA Handbook is included as an appendix to the policy statement; the changes will take effect on 1 April 2015.

Banking Act 2009: HM Treasury updates special resolution regime code of practice

HM Treasury has published an updated version of its [Banking Act 2009: special resolution regime code of practice](#). The code of practice provides guidance as to how and in what circumstances the authorities will use the special resolution tools under the Banking Act 2009. Section 1 of the code deals with banks, building societies, investment firms and banking group companies, while Section 2 deals with CCPs. The code of practice has been updated to reflect both changes to the Banking Act 2009 following the implementation of the BRRD and also the changes in the regulatory architecture, with the creation of the PRA and FCA.

CSDR: HM Treasury issues call for evidence on recognised clearing houses

HM Treasury has issued a [call for evidence](#) on recognised clearing houses. The Treasury is seeking views on how best to amend legislation applying to central securities depositories in the UK, as part of the domestic implementation process for the Central Securities Depositories Regulation (CSDR). Amongst other things, the Treasury is considering whether central securities depositories subject to CSDR authorisation requirements should continue to be regarded as clearing houses.

Responses are due by 8 May 2015.

Regulation amending Investment Regulation and Pension Funds Capital Investment Regulation published in Federal Gazette

A Regulation amending the Investment Regulation (Anlageverordnung) and the Pension Funds Capital Investment Regulation (Pensionsfonds-Kapitalanlageverordnung) [has been published](#) in the German Federal Gazette (Bundesgesetzblatt). The Investment Regulation regulates the investment of restricted assets (gebundenes Vermögen), in particular by insurance companies. Amongst other things, the regulation amends the following:

- the possibility to invest in or to grant money loans to EEA- and OECD-Member States or to grant secured money loans to companies located in these states;
- the investment in private equity funds (special AIF);
- real estate funds – special AIF and closed retail AIF are permitted funds;

- investments in domestic AIF and EU-AIF without material requirements regarding the AIFs' investment policy (subject to a threshold); and
- higher flexibility when investing in group companies.

The regulation became effective on 6 March 2015.

German Federal Government proposes draft ordinance on amendment of Restructuring Fund Ordinance

The German Federal Government [has proposed a draft](#) ordinance on the amendment of the Restructuring Fund Ordinance (Restrukturierungsfondsverordnung). The draft is intended to implement Commission Delegated Regulation (EU) 2015/63 by providing further details on the contributions to the resolution financing arrangements for Germany. The draft includes the provision of certain fixed contributions, details on the calculation method and the data to be provided to the German Federal Agency for Financial Market Stabilisation (FMSA), which is the resolution authority for Germany.

The consultation period ends on 18 March 2015.

Polish Financial Supervision Authority adopts assumptions for recommendation concerning rules of internal management in banks

The Polish Financial Supervision Authority (PFSA) has adopted the [assumptions for Recommendation Z](#) concerning the rules of internal management in banks.

The objective of the planned Recommendation Z will be to adjust the practices used by banks and identified as causes of irregularities or increased activity risk. The Recommendation will constitute a set of internal management best practices. In particular, the Recommendation will refer to matters such as organisational structure, tasks, responsibilities, composition and functioning of the supervisory board, management board and senior management, the rules of risk management and internal control, information systems and security, business continuity and transparency of the management system in the bank.

The draft of Recommendation Z will be sent for public consultation in the second half of 2015.

Polish Financial Supervision Authority adopts recommendation on liquidity risk management in banks

The PFSA has adopted [Recommendation P](#) on liquidity risk management in banks. The terms of Recommendation P take into account current international experiences

concerning the management of liquidity risk by banks, in particular the guidelines of the Basel Committee on Banking Supervision and European supervisory institutions.

The PFSA expects the recommendation to be implemented by banks by 31 December 2015.

HKMA issues revised SPM module on sound remuneration system

The Hong Kong Monetary Authority (HKMA) has issued a revised supervisory policy manual (SPM) module titled 'CG-5: Guideline on a Sound Remuneration System'. The [revised module](#) formally incorporates the relevant disclosure standards issued by the Basel Committee on Banking Supervision in its July 2011 paper on Pillar 3 disclosure requirements for remuneration. Under the Banking (Disclosure) Rules, locally incorporated authorised institutions must disclose the extent of their compliance, and explain any areas of non-compliance, with the disclosure requirements in CG-5.

Monetary Authority of Singapore (Freezing of Assets of Persons – Yemen) Regulations 2015 come into operation

The [Monetary Authority of Singapore \(Freezing of Assets of Persons – Yemen\) Regulations 2015](#) were gazetted on 3 March 2015 and came into operation on 6 March 2015. The Regulations assist in giving effect to Resolution 2140 (2014) of the Security Council of the United Nations.

The Regulations apply to all financial institutions in Singapore and impose obligations in relation to designated persons. A designated person is an individual or entity set out in the United Nations List (list of individuals or entities identified by the Security Council of the United Nations or the Committee as individuals or entities to whom or which any of the measures specified in paragraph 11 of the Resolution apply).

The Regulations provide for various matters including, amongst others:

- freezing of all funds, financial assets or economic resources of designated persons in the possession, custody or control (in Singapore) of the financial institution;
- duty of financial institutions which have possession, custody or control in Singapore of any funds, other financial assets or economic resources owned or controlled, directly or indirectly, by any designated person to inform the MAS of the same; and

- duty of financial institutions to provide information to the MAS about any transaction or proposed transaction in respect of any funds, other financial assets or economic resources owned or controlled, directly or indirectly, by any designated person.

The Regulations are effective from 6 March 2015.

RECENT CLIFFORD CHANCE BRIEFINGS

The PRIIPs KID Regime

From 31 December 2016, manufacturers and distributors of packaged retail and insurance-based investment products will have to comply with the PRIIPs KID Regulation, which came into force in all EU member states on 29 December 2014.

This briefing summarises the key features of the PRIIPs KID regime and anticipates some of the issues likely to arise as the Level 2 process unfolds.

http://www.cliffordchance.com/briefings/2015/03/the_priips_kid_regime.html

The A – Z of Fundraising

We are pleased to announce the launch of The A-Z of Fundraising, a joint publication between Private Equity International's Private Debt Investor publication and the Clifford Chance LLP global funds practice. The A-Z contains twenty-six insightful articles prepared by specialist funds lawyers from across Clifford Chance's global practice, covering topical commercial, legal, regulatory and tax issues arising in relation to private fundraisings today. Highlights include: Investor Protections; Gate Keepers; Litigation; Managed Accounts; Negotiations; Secondaries; BEPS; Key Executives; Questionnaires; Track Record; Valuations and more.

http://www.cliffordchance.com/briefings/2015/03/the_a_z_of_fundraising.html

The countdown begins – The Insurance Act 2015

On 12 February 2015, the Insurance Act 2015 received Royal Assent. This follows years of detailed Law Commission consultations and Parliamentary scrutiny and, as it amends key sections of the Marine Insurance Act 1906, it will be the first significant change to commercial insurance law in more than a century. Implementation follows an 18 month period, with the clock now counting down to 12 August 2016 – the date when the Act comes into force.

This briefing discusses the forthcoming changes under the Act.

http://www.cliffordchance.com/briefings/2015/03/the_countdown_begins_the_insurance_act_2015.html

Russia Changes Interest Deductibility Rules in Light of New Economic Reality

Clifford Chance has prepared a briefing paper discussing Russian Federal Law No. 32-FZ of 8 March 2015, which applies retroactively from January 2015 and modifies the interest deductibility rules in the aftermath of the significant depreciation of the Russian Rouble in 2014 followed by the dramatic increase of the prime rate by the Central Bank of Russia (CBR).

This briefing discusses further amendments to the thin capitalisation rules which are currently being considered by the Russian Parliament.

http://www.cliffordchance.com/briefings/2015/03/russia_changes_interestdeductibilityrules10.html

SFC wins first High Court case to wind up a Hong Kong listed company on public interest grounds

The Hong Kong High Court recently handed down its reasons for ordering on 26 February 2015 that China Metal Recycling (Holdings) Limited be wound up on public interest grounds. This briefing discusses the Court's decision.

http://www.cliffordchance.com/briefings/2015/03/sfc_wins_first_highcourt_caseto_windup_hong_kong.html

Negative interest rate benchmark implications under syndicated lending documentation

Whilst this has not yet occurred with benchmark rates in Australia, negative interest rate benchmarks are not unknown. The European loan market first grappled with the issue in 2011 when Swiss Franc LIBOR was reported as negative in some circumstances. Recent activity by European central banks has resulted in a preponderance of negative LIBORs for Swiss Francs and negative LIBORs and EURIBORs for Euro, sparking fresh concern about the potential effect on lending arrangements.

This briefing considers some of the key questions arising for lenders and borrowers in the syndicated loan market and the implications of a negative interest rate benchmark under syndicated lending documentation.

http://www.cliffordchance.com/briefings/2015/03/negative_interest_rate_benchmark_implication.html

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

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Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

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*Linda Widyati & Partners in association with Clifford Chance.