

International Regulatory Update

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PSD 2: EU Council and Parliament reach agreement

The Latvian EU Council Presidency and the EU Parliament have [reached a tentative agreement](#) on the second Payment Services Directive (PSD 2), which will repeal Directive 200/64/EC. The agreement was reached during an informal trilogue meeting in Brussels.

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The proposed PSD 2 will adapt the existing Directive and includes rules on:

- emerging payment services, including internet and mobile payments;
- payment security; and
- harmonisation of the supervisory framework by national competent authorities (NCAs).

The agreement still has to be confirmed by the Council once the full text of the Directive is finalised at technical level. The Directive will then be submitted to the Parliament for a vote in first reading, and to the Council for final adoption. Once the Directive has been adopted, Member States will have two years to transpose it into their national laws and regulations.

ECON Committee publishes report on proposed Benchmark Regulation

The EU Parliament Committee on Economic and Monetary Affairs (ECON) has published its [report](#), dated 10 April 2015, on the proposal for a regulation on indices used as benchmarks in financial instruments and financial contracts.

European Supervisory Authorities report on risks and vulnerabilities in EU financial system

The Joint Committee of the European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), has published its [fifth report](#) on risks and vulnerabilities in the EU's financial system.

The report states that despite the EU's economic performance improving somewhat in early 2015, the financial sector in general continues to be affected by a combination of factors such as low investment demand, economic uncertainty in the Eurozone and its neighbouring countries, a global economic slow-down and a low-interest rate environment.

The main risks affecting the financial system are considered to be:

- low growth, low inflation, volatile asset prices and their consequences for financial entities;
- search for yield behaviour exacerbated by potential rebounds;
- deterioration in the conduct of business; and
- increased concern about IT risks and cyber-attacks.

MiFID: ESMA issues guidelines on application of commodity derivatives definition

ESMA has published [guidelines](#) on the application of the definitions of commodity derivatives under C6 and C7 of Annex I of the Markets in Financial Instruments Directive (MiFID). The guidelines are intended to ensure a common, uniform and consistent application of the definitions across the EU.

BRRD: EBA publishes final guidance on recovery indicators

The EBA has published its [final guidelines](#) on indicators for the recovery and resolution plans of credit institutions and investment firms across the EU.

These provide the minimum list of qualitative and quantitative indicators that institutions should include in their recovery plans and will function as triggers for the recovery plans, as prescribed by the EU Bank Recovery and Resolution Directive (BRRD).

The guidelines are addressed to competent authorities and will enter into force on 31 July 2015. Following the publication of the English version, the EBA will make available the translations of the guidelines in all EU languages. Within two months from the publication of the translated guidelines, competent authorities shall confirm to the EBA their compliance status, which will be disclosed on the EBA website.

CRR: EBA consults on draft technical standards on mapping of ECAIs' credit assessments for securitisation positions

The EBA [has launched a consultation](#) on draft Implementing Technical Standards (ITS) on the mapping of External Credit Assessment Institutions' (ECAIs) credit assessments for securitisation positions. The draft ITS specify the correspondence or 'mapping' between credit ratings and credit quality steps that shall determine the allocation of appropriate risk weights to credit ratings issued by ECAIs on securitisations where the Standardised Approach (SA) or the Internal Ratings Based (IRB) approach for securitisations are used.

Comments are due by 7 August 2015.

EBA updates monitoring of Additional Tier 1 capital instruments

The European Banking Authority (EBA) has published an [update](#) of its first report on the monitoring of Additional Tier

1 (AT1) capital instruments issued by EU institutions. The updated report:

- illustrates the EBA's views on clauses that it recommends be avoided in the terms and conditions of AT1 instruments;
- clarifies the EBA's position on acceptable triggers for regulatory calls and the conditions for the inclusion of tax gross-up provisions in the terms and conditions of AT1 instruments;
- further details the triggers for loss absorption, in particular as concerns the Common Equity Tier 1 (CET1) that should be the basis for setting the triggers for AT1 instruments issued within a banking group; and
- elaborates on the rationale for disallowing contingent clauses where payments become mandatory if they lose the status of AT1 instruments.

The report is published as a draft final report. The EBA will exchange views with institutions and market participants and will hold a public hearing on 18 May 2015. The EBA expects to publish the final report by the end of May 2015.

EU Commission and CFTC target summer agreement on transatlantic CCP recognition issues

CFTC Chairman Timothy Massad and EU Commissioner Jonathan Hill have issued a [joint statement](#) following a meeting in Brussels at which they continued their discussions on a possible equivalence decision by the EU Commission for central counterparties (CCPs) that are regulated and supervised by the CFTC. According to the joint statement, the discussions are progressing and have been mutually satisfactory on the issue of the ability for both sides to potentially defer to each other's rules. Commissioner Hill and Chairman Massad agreed to continue their discussions with the aim of finalising an approach by the summer.

IOSCO consults on sound practices at large intermediaries for assessing credit risk

The International Organization of Securities Commissions (IOSCO) has published a [consultation report](#) on 'Sound Practices at Large Intermediaries: Alternatives to the Use of Credit Ratings to Assess Creditworthiness.'

The report proposes 13 sound practices for large market intermediary firms to consider in the implementation of their internal credit assessment policies and procedures. IOSCO believes that identifying sound practices regarding the suitable alternatives to credit ratings for assessing credit risk should reduce the potential overreliance of large

intermediaries on credit rating agencies (CRAs) and that this reduction would help increase investor protection, while contributing to market integrity and financial stability.

Comments should be submitted by 8 July 2015.

BaFin proposes draft ordinance amending Ownership Control Regulation and related guidance

The German Federal Supervisory Authority (BaFin) has proposed a [draft ordinance](#) amending the Ownership Control Regulation (Inhaberkontrollverordnung) and the respective BaFin guidance on the procedures pursuant to section 2c of the German Banking Act (Kreditwesengesetz) and section 104 of the German Insurance Supervisory Act (Versicherungsaufsichtsgesetz). The Ownership Control Regulation is amended to reflect the changes in the German Banking Act following the implementation of the Capital Requirements Regulation (CRR) and changes in the procedures for obtaining a certificate of conduct. The changes are explained in further detail in the corresponding BaFin guidance.

Comments are due by 5 June 2015.

CSSF issues circular on information to be submitted by Luxembourg AIFMs in relation to unregulated AIFs and/or non-EU regulated AIFs

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a [circular](#) on the information to be submitted by Luxembourg AIFMs in relation to any additional EU/non-EU unregulated AIFs and/or any additional non-EU regulated AIFs managed by them.

The circular applies to all Luxembourg AIFMs authorised by the CSSF under article 5 of the Luxembourg law of 12 July 2013 on alternative investment fund managers (AIFM Law) as well as to 'small' or 'sub-threshold' Luxembourg AIFMs which have been registered by the CSSF under article 3 of the AIFM Law, when these AIFMs start to manage additional unregulated AIFs established in Luxembourg, in another EU Member State or in a third country and/or additional regulated AIFs established in a third country (i.e. the circular does not apply to Luxembourg AIFMs managing regulated EU AIFs).

Under Circular 15/612, an AIF is 'unregulated' when it is not subject to prior authorisation and/or prudential supervision by a competent supervisory authority. Moreover, an AIF will qualify as 'additional AIF' within the meaning of Circular 15/612 when it has not been notified to the CSSF at the time of either the AIFM's authorisation/registration

procedure with the CSSF or of the update of the AIFM's authorisation/registration file with the CSSF.

The information is to be communicated to the CSSF using a specific form and includes the name of the AIFM as well as information on the relevant additional AIF managed, such as its name, nationality, address, national competent supervisory authority (if applicable), reference currency, type of shares/units, investment strategy, country(ies) where it is marketed to professional investors, name and address of its depositary bank, etc. Additional information is also required on the master AIF in case of master-feeder AIFs and, in case of multiple compartment AIFs, the relevant information will have to be communicated in relation to each new compartment. In addition, the last updated instruments of incorporation, issue document (where applicable) and annual report (if already established) of the relevant AIF will have to be annexed to the information form.

The [information form](#) and complementary documents must be sent to the CSSF within 10 business days following the date on which a Luxembourg AIFM begins to manage an additional unregulated AIF and/or non-EU regulated AIF. In this respect, the CSSF considers that an AIFM starts to manage an AIF at the latest on the date of signature or entry into force of the agreement whereby the AIFM is designated as the manager of the relevant additional AIF, even if such AIF is not launched yet.

Luxembourg AIFMs must also inform the CSSF if they stop managing unregulated AIFs and/or non-EU regulated AIFs. This notification must be made within 10 business days following the termination of management mandate, also by using a specific information form available on the CSSF website.

Bankruptcy (Amendment) Bill 2015 gazetted

The Financial Services and the Treasury Bureau (FSTB) has [announced](#) the gazettal of the Bankruptcy (Amendment) Bill 2015. The Bill is intended to introduce new arrangements under the Bankruptcy Ordinance to encourage bankrupts to fulfil their obligations in respect of the administration of bankruptcy estates by trustees-in-bankruptcy (TIB) and to better protect the interests of creditors.

Under the new arrangements, the court will be provided with discretion to determine, on application by a TIB on grounds that a bankrupt has failed to complete an initial interview and thereby caused prejudice to the administration of the bankrupt's estate, whether the period

counted towards the discharge from bankruptcy should be treated as not commencing to run until the bankrupt meets the relevant terms specified by the court when making such determination.

The new arrangements will replace the existing automatic mechanism under the Bankruptcy Ordinance for suspending the period counting towards a bankrupt's discharge from bankruptcy under specified circumstances when the bankrupt has left Hong Kong.

The Bill will be introduced into the Legislative Council for first and second readings on 13 May 2015.

MAS publishes framework for domestic systemically important banks in Singapore

The Monetary Authority of Singapore (MAS) has published its [framework](#) for identifying and supervising domestic systemically important banks (D-SIBs) in Singapore and the inaugural list of D-SIBs.

D-SIBs are banks that are assessed to have a significant impact on the stability of the financial system and proper functioning of the broader economy. All banks in Singapore will be assessed for their systemic importance annually based on their size, interconnectedness, substitutability and complexity. The framework builds on the MAS' existing supervisory impact assessment methodology. It is aligned with the principles set out by the Basel Committee on Banking Supervision (BCBS) for determining banks that are of domestic systemic importance.

The MAS has indicated that it will apply additional supervisory measures on banks designated as D-SIBs. Banks that have a significant retail presence in Singapore will be required to incorporate their retail operations locally. Locally-incorporated D-SIBs will need to meet higher capital requirements – a minimum Common Equity Tier 1 (CET1) capital adequacy ratio (CAR) of 6.5%, Tier 1 CAR of 8% and Total CAR of 10%, compared with the Basel III minimum requirements of 4.5%, 6% and 8% respectively. Other measures such as recovery and resolution planning, liquidity coverage ratio requirements, and enhanced disclosures will also apply, depending on the bank's operating model and structure. The MAS will allow a transition period for affected banks to comply with the requirements that are currently not in effect, such as the local incorporation requirement.

The following banks have been designated by the MAS as D-SIBs:

- DBS Bank;

- Oversea-Chinese Banking Corporation;
- United Overseas Bank;
- Citibank;
- Malayan Banking Berhad;
- Standard Chartered Bank; and
- The Hongkong and Shanghai Banking Corporation.

Capital Market Authority issues qualified foreign financial institution rules for Saudi stock market

The Saudi Capital Market Authority (CMA) has published the final form of its new Qualified Foreign Financial Institution Rules ([QFI Rules](#)) for the Saudi stock market. The rules come into effect on 1 June and trading for successfully registered Qualified Foreign Institutions and their successfully registered clients can begin on 15 June 2015.

In addition to the Rules, the CMA has published a suite of application forms and a [Frequently Asked Questions](#) document. Up to 10% of Saudi listed shares may be made available for ownership by foreign investors. The existing economic exposure route to Saudi listed shares for non-GCC investors via a total return swap entered into with a CMA Authorised Person is not affected by the implementation of the QFI Rules.

RECENT CLIFFORD CHANCE BRIEFINGS

Good Culture – what does it look like and how do you get there?

The importance of 'culture' has emerged as a key regulatory theme around the globe, as regulators, enforcement authorities and courts seek to promote cultural change in the financial services industry. These developments raise interesting and complex questions for firms around what is the 'right' culture, how do you measure

whether you have it, and whose responsibility it is to set the organisation's culture.

This briefing discusses the expectations of firms and what needs to be done.

http://www.cliffordchance.com/briefings/2015/05/good_culture_whatdoesitlooklikeandhowd.html

New regime applicable to the issuance of notes

On 28 April 2015, the Spanish Business Financing Promotion Act (Ley 5/2015, de 27 de abril, de Fomento de la Financiación Empresarial or LFFE) was published in the Spanish Official State Gazette. The LFFE introduces a series of measures with two objectives in mind. On one hand, it aims to make bank financing more accessible and flexible for small and medium-sized enterprises in order to boost the recovery of bank credit and on the other, its aim is to advance the development of alternative means of financing, establishing the necessary regulatory framework required to enhance sources of direct corporate financing or non-bank financing in Spain.

This briefing discusses the Act.

http://www.cliffordchance.com/briefings/2015/05/new_regime_applicable_to_the_issuance_of_notes.html

Perspectives on the new UAE Commercial Companies Law – What do you need to know?

The long awaited new UAE Commercial Companies Law (Federal Law No. 2 of 2015) has been published in the UAE Federal Official Gazette (Issue 577) dated 31 March 2015. The Law will enter into full force three months after its publication, i.e. on 1 July 2015.

This briefing discusses the new UAE Commercial Companies Law.

http://www.cliffordchance.com/briefings/2015/05/perspectives_on_the_new_uae_commercial_companies.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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