

# International Regulatory Update

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## IN THIS WEEK'S NEWS

- Ukraine: EU Council announces six month extension to sanctions
- EMIR: Delegated Regulation extending derivatives exemption from central clearing requirements for pension funds published in Official Journal
- Basel Committee and EBA publish results of Basel III monitoring exercise as of 31 December 2014
- IOSCO publishes implementation review of principles for oil price reporting agencies
- IOSCO Task Force on Cross-Border Regulation publishes final report
- APEC finance ministers launch Cebu Action Plan
- APEC advances Asia Regional Funds Passport Scheme
- Ring-fencing: FCA and PRA consult on transfer schemes
- PRA consults on audit committee requirements under revised Statutory Audit Directive
- BRRD: Italian implementation moves one step closer
- Bill implementing BRRD and DGSD 2 in Luxembourg published
- CSSF issues circular on amount of guaranteed deposits as of 31 July 2015
- New Bill of law amending Luxembourg legal framework regarding transparency requirements for issuers of securities and prospectuses published
- SAFE issues new policies on multinational corporations' foreign exchange cash pooling
- NDRC issues notice to reform administration regime of offshore bond issuance
- PRC ministerial authorities announce policy changes concerning foreign investments in real estate industry
- State Council issues guidance opinions to promote development of financial leasing industry
- HKMA issues circular on cyber security risk management
- FSS and FSC implement new guidelines for banks' internal control and compliance functions
- Recent Clifford Chance briefings: ELTIFs; CPI-linked Bonds; and more. Follow this link to the briefings section. [Follow this link to the briefings section.](#)

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### **Ukraine: EU Council announces six month extension to sanctions**

The EU Council [has announced](#) a six month extension to EU restrictive measures regarding the situation in Ukraine. The asset freezes and travel bans against 149 individuals and 37 entities remain unchanged under the extension, legal acts for which will be published in the Official Journal on 15 September 2015.

The sanctions will remain in place until 15 March 2016.

### **EMIR: Delegated Regulation extending derivatives exemption from central clearing requirements for pension funds published in Official Journal**

[Commission Delegated Regulation \(EU\) 2015/1515](#) of 5 June 2015 as regards the extension of the transitional periods relating to pension scheme arrangements (PSAs) has been published in the Official Journal. The Delegated Regulation extends the existing exemption under the European Market Infrastructure Regulation (EMIR) for PSAs until 16 August 2017.

### **Basel Committee and EBA publish results of Basel III monitoring exercise as of 31 December 2014**

The Basel Committee on Banking Supervision (BCBS) [has published the results](#) of its latest Basel III monitoring exercise. The study is based on the reporting process set up by the Committee to periodically review the implications of the Basel III standards for banks. A total of 221 banks participated in the current study, comprising 100 large internationally active banks (Group 1 banks, defined as internationally active banks that have Tier 1 capital of more than EUR 3 billion) and 121 other banks (Group 2 banks).

Data as of 31 December 2014 shows that all large internationally active banks met the Basel III risk-based capital minimum requirements and the Common Equity Tier 1 (CET 1) target level of 7%. Moreover, capital shortfalls relative to the higher Tier 1 and total capital target levels have been further reduced. No capital shortfall was identified for Group 2 banks included in the sample for the CET 1 minimum of 4.5%.

The monitoring exercise also covered the liquidity coverage ratio (LCR), which came into effect on 1 January 2015, and the Net Stable Funding Ratio (NSFR). The data identifies 98% of sample banks reported an LCR at or above the initial 60% limit while 92% of Group 1 banks and 93% of Group 2 banks reported an NSFR at or above 90%.

The European Banking Authority (EBA) [has separately published the results](#) of its own Basel III monitoring exercise on the European banking system. The EBA study provides aggregate results on capital and liquidity ratios and the leverage ratio (LR) for 364 banks in the EU, 53 of which are globally active institutions with Tier 1 capital in excess of EUR 3 billion categorised as Group 1 banks and 311 banks are other banks categorised as Group 2. The report highlights the impact of the fully-implemented Capital Requirements Directive and Regulation (CRD 4/CRR) on capital and risk weighted assets (RWA) and full implementation of the Basel III framework on liquidity ratios (LCR and NSFR) and leverage ratio.

### **IOSCO publishes implementation review of principles for oil price reporting agencies**

The International Organization of Securities Commissions (IOSCO) [has published its second annual implementation review](#) of the principles for oil price reporting agencies (PRAs), which were published in October 2012 following a request from G20 Leaders. The report sets out the results of monitoring PRA's implementation of the principles, including their assurance reports and operational changes, as well as analysis of impact of the IOSCO PRA principles on physical oil markets prepared jointly by the International Energy Association (IEA), International Energy Forum (IEF) and Organization of Petroleum Exporting Countries (OPEC).

IOSCO, the IEA, IEF and OPEC have decided not to carry out further annual implementation reviews as the PRAs were found to have implemented the principles into their management policies and operational practices. The organisations will continue to monitor PRAs through the results of subsequent external assurance reviews and their ongoing engagement with PRAs.

### **IOSCO Task Force on Cross-Border Regulation publishes final report**

The IOSCO Task Force on Cross-Border Regulation has published its [final report](#). The Task Force was established in June 2013 to assist policy-makers and regulators in addressing the challenges posed by globalised securities markets.

The report highlights the trend in cross-border regulation towards more bilateral and occasionally multilateral engagement and sets out steps that are intended to support cross-border regulation and to ensure IOSCO considers cross-border issues more in its work, including greater engagement with the G20 and the Financial Stability Board (FSB).

The report also includes a toolkit of three broad types of cross-border regulatory options, which are addressed to regulators and policy-makers dealing with cross-border issues.

#### **APEC finance ministers launch Cebu Action Plan**

Finance ministers of the Asia-Pacific Economic Cooperation (APEC) [have launched the Cebu Action Plan](#) (CAP), a roadmap for a more sustainable financial future for the Asia-Pacific region. The CAP, which will be submitted to the APEC Leaders, has four pillars:

- promoting financial integration;
- advancing fiscal reforms and transparency;
- enhancing financial resilience; and
- accelerating infrastructure development and financing.

The members of APEC are optimistic that the CAP will be taken in the next meetings as a living body of continuing work in their bid for a more prosperous, financially integrated, transparent, resilient, and connected Asia-Pacific.

#### **APEC advances Asia Regional Funds Passport Scheme**

APEC has announced that Australia, South Korea, New Zealand, Thailand, Japan, and the Philippines have signed the [Statement of Understanding](#) for the Asia Regional Funds Passport (ARFP), a multilateral arrangement that will facilitate the cross-border offering of eligible collective investment schemes in the participating economies.

The statement signals the commitment of these economies to join the Passport ahead of its commencement in 2016. The statement also notes the intention of signatories to ensure that all APEC economies are able to participate in the Passport when it begins or at a time appropriate to their circumstances.

The next milestone will be the signing of the Memorandum of Cooperation by participating securities regulators by the end of 2015. The signatories aim to launch the pilot implementation in 2016. The ARFP will remain open for participation by subsequent eligible economies from such time as is appropriate to their particular circumstances.

#### **Ring-fencing: FCA and PRA consult on transfer schemes**

The Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) have both launched consultations on ring-fencing and ring-fencing transfer schemes (RFTSs). RFTSs were introduced by the Banking Reform Act 2013 and are intended to enable firms to

restructure their businesses to comply with ring-fencing rules by 1 January 2019.

The [FCA guidance consultation \(GC15/5\)](#) sets out the FCA's proposed guidance on its approach to implementing ring-fencing and the RFTS process. The [PRA consultation](#) sets out its draft statement on policy on implementing the ring-fence, including the PRA's new powers in respect of RFTSs.

Comments on both consultations are due by 30 October 2015.

#### **PRA consults on audit committee requirements under revised Statutory Audit Directive**

The PRA has launched a consultation ([CP34/15](#)) on its proposed rules to implement the audit committee requirements of Article 39 of the Statutory Audit Directive as amended by Directive 2015/56/EU.

The requirements apply to entities with transferable securities admitted to trading on a regulated market in the EU, Capital Requirements Directive (CRD) credit institutions, and insurance undertakings that are subject to Solvency II. The draft rules seek to implement these requirements for those public interest entities that the PRA is responsible for regulating.

Comments close on 18 December 2015, and the PRA plans to consider the feedback and publish a policy statement in Q2 2016. The proposed requirements will apply to financial years commencing on or after 17 June 2016.

#### **BRRD: Italian implementation moves one step closer**

Further to the Italian Treasury consultation which ended on 12 August 2015, the Italian Government [has approved the two draft legislative decrees](#) intended to implement the Bank Recovery and Resolution Directive (BRRD) in Italy. The two draft legislative decrees remain subject to further internal steps and opinions needed from special committees.

Although the decrees are not yet available, it is envisaged that the mid November 2015 deadline set by the Italian Parliament – through the publication of the 'Legge di delegazione europea 2014' (the law mandating the Italian Government to implement, amongst others, the BRRD) – for the Italian Government to implement the BRRD will be met.

### Bill implementing BRRD and DGSD 2 in Luxembourg published

A [new Bill of law](#) on the recovery and resolution of credit institutions and certain investment firms, which implements the BRRD in Luxembourg, has been lodged with the Luxembourg Parliament. The Bill designates the Commission de Surveillance du Secteur Financier (CSSF) as the competent Luxembourg resolution authority. In order to prevent any conflict of interests with the CSSF's supervisory powers, under the Bill the CSSF's resolution powers would be exercised by a new internal body, the 'Resolution Council', supported in its tasks by a new resolution service.

The Bill further implements the revised Deposit Guarantee Schemes Directive (DGSD 2) by adapting the Luxembourg deposit guarantee and investor compensation system to the new institutional framework. The main innovation consists in replacing the current private ex post financing system with a new public ex ante financing system. The new public system (the Luxembourg Deposits Guarantee Fund) would replace the current Luxembourg Deposits Guarantee Association (AGDL). The CSSF will be in charge of the deposit guarantee and investor compensation systems through a new department, the 'Council of protection of depositors and investors'. Other changes relate to the repayment term of depositors, which is reduced from 20 to 7 working days, as well as to the elimination of any distinction between important and small/medium-sized companies, each benefiting from a guarantee of up to EUR 100,000.

### CSSF issues circular on amount of guaranteed deposits as of 31 July 2015

The CSSF has issued a new [Circular 15/619](#) concerning the amount of guaranteed deposits as of 31 July 2015. The Circular requests Luxembourg credit institutions and Luxembourg branches of non-EU/EEA credit institutions to provide information in relation to guaranteed deposits as of 31 July 2015, in line with Article 20(4) of Commission Delegated Regulation 2015/63 of 21 October 2014 under DGSD 2 relating to the ex ante resolution financing system and with Article 10(3) of the bylaws of the AGDL which were amended recently in order to integrate certain essential provisions of DGSD 2 into such bylaws, before the AGDL is replaced by a public deposit protection system.

Circular 15/619 has been issued in the context of the reform of the Luxembourg deposit guarantee system currently being undertaken by the Luxembourg legislator

through Bill of law No. 6866 implementing, amongst others, the DGSD 2, which was lodged with the Luxembourg Parliament on 3 September 2015.

The information has to be reported to the CSSF by 31 September 2015 in the format foreseen and in accordance with the detailed instructions annexed to the Circular. A member of the authorised management of the credit institution appointed as being in charge of AGDL matters has to approve the information before it is reported.

### New Bill of law amending Luxembourg legal framework regarding transparency requirements for issuers of securities and prospectuses published

A [new Bill of law](#) providing dispositions amending the current Luxembourg legal framework regarding transparency measures has been lodged with the Luxembourg Parliament. The Bill mainly implements EU Directive 2013/50 amending the Transparency Directive 2004/109/EC and the Prospectus Directive 2003/71/EC. The Bill foresees corresponding amendments to the Luxembourg transparency law of 11 January 2008 and the Luxembourg prospectus law of 10 July 2005.

The proposed changes include amendments intended to:

- clarify and simplify the determination of the home Member State of a third country issuer or of issuers that have not informed competent authorities of the choice of home Member State within the three month deadline;
- reduce administrative fees related to the publication of information by lifting the requirement for publication of quarterly reports and by extending the deadline for publication of half-yearly reports to three months after half-year end; and
- strengthen the sanctioning powers of the Luxembourg competent supervisory authorities.

### SAFE issues new policies on multinational corporations' foreign exchange cash pooling

The State Administration of Foreign Exchange (SAFE) has issued the ['Provisions for the Centralised Operation and Management of Foreign Exchange Funds by Multinational Corporations'](#) to further promote the capital utilisation efficiency of multinational corporations (MNCs) within China. The Provisions were internally issued by SAFE on 5 August 2015 and publicly announced on 2 September 2015.

The Provisions supersede the previous MNC foreign exchange cash pooling policies issued by SAFE in 2014 (the 2014 Provisions). While both the new Provisions and

the 2014 Provisions allow MNCs within China to open domestic foreign exchange master accounts (DMA) and international foreign exchange master accounts (IMA) to process foreign exchange funds transferring among their offshore and onshore group members, the Provisions introduce several changes including that:

- the quota for remittance from IMA to DMA can be either the aggregated foreign debt amount of the onshore participating group members of an MNC or the net asset value of the MNC, which is subject to the choice of eligible MNCs; and
- usage of the funds deposited into the DMA within China has been expanded to include repayment of loans, etc.

The Provisions became effective from 5 August 2015.

#### **NDRC issues notice to reform administration regime of offshore bond issuance**

Further to the announcement by the State Council in May 2015 that the approval requirement for offshore issuances of RMB or foreign currency bonds by domestic enterprises would be removed, the National Development and Reform Commission (NDRC) has issued the ['Notice on Promoting the Reforms of the Filing and Registration System of Foreign Debt Issuance by Enterprises'](#), which provides detailed rules to implement the State Council's policy. Among others, the following aspects of the Notice are worth noting:

- the need for the NDRC's approval of the quota of offshore bond issuances by domestic enterprises has been removed;
- instead, pursuant to the Notice, eligible domestic enterprises should perform certain filing procedures with the NDRC or its local agent prior to issuance of offshore RMB/foreign exchange bonds (with a term of more than 1 year) or borrowing medium and long term RMB/foreign exchange international commercial loans offshore;
- offshore bond issuance/borrowing by foreign subsidiaries of domestic enterprises are also subject to the filing requirements under the Notice; and
- in accordance with the Notice, proceeds from the offshore bond issuance/borrowing can be used within or outside China and use of the proceeds towards major construction projects and investment in key industries, such as 'One Belt and One Road' project, will be encouraged.

The Notice became effective from 14 September 2015.

#### **PRC ministerial authorities announce policy changes concerning foreign investments in real estate industry**

The Ministry of Housing and Urban-Rural Development, the Ministry of Commerce and four other ministries have jointly circulated the ['Notice on the Adjustment of Policies Concerning Market Access and Administration of Foreign Investments in the Real Estate Industry'](#) to introduce a number of policy changes in this area, including the following:

- the registered capital/total investment ratio applicable to a foreign invested real estate company (RE FIE) is brought in line with other ordinary foreign invested companies (i.e. the more stringent ratio imposed by an earlier regulation and effective from 2006 is removed);
- an RE FIE is no longer required to fully contribute its registered capital before it can take onshore/offshore loans and/or settle foreign currency loans;
- foreign individuals who study or work in the PRC are permitted to buy self-used properties on an as-needed basis (where previously, only foreign individuals who have studied or worked in the PRC for more than 1 year are permitted to buy self-used commercial real properties) – this is, however, still subject to the applicable restrictions on the purchase of houses in each locality; and
- the Notice confirms that RE FIEs can now directly make foreign exchange registrations for direct investments with banks (as opposed to foreign exchange authorities) in accordance with applicable rules.

The Notice took effect immediately.

#### **State Council issues guidance opinions to promote development of financial leasing industry**

The General Office of the State Council has issued the ['Guidance Opinions on Supporting the Healthy Development of the Financial Leasing Industry'](#), setting out guidance in eight key areas to innovate financial services and encourage the development of the industry. Among other things, the Guidance Opinions set out the following:

- private investment will be encouraged;
- qualified financial leasing companies are encouraged to expand capital raising channels by public offering, issuance of preferred shares and subordinated debts to replenish capital;



- multiple channels will be available for qualified financial leasing companies to raise funds, including bond issuance and asset securitisation; and
- foreign debt approval procedures will be simplified and financial leasing companies will be granted cross-border RMB financing quota.

#### **HKMA issues circular on cyber security risk management**

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) to authorised institutions to draw their attention to the importance of proper cyber security risk management and provide general guidance on the matter.

Noting that authorised institutions should have already put in place controls and processes to manage technology risks in general, the HKMA highlights that cyber security risk management still warrants authorised institutions' special attention. The circular states that, as the Board and senior management of an authorised institutions have the responsibility of, amongst other things, protecting the authorised institutions' critical assets including sensitive information of its customers, they are expected to play a proactive role in ensuring effective cyber security risk management in the authorised institution, covering at least the following areas:

- risk ownership and management accountability – clear ownership and management accountability of the risks associated with cyber attacks and related risk management measures should be established, which should cover not only the IT function but also all relevant business lines;
- periodic evaluations and monitoring of cyber security controls – as the threats of cyber attacks are evolving in nature, the Board should request the senior management to evaluate periodically the adequacy of the authorised institutions' cyber security controls, having regard to emerging cyber threats and a credible benchmark of cyber security controls endorsed by the Board;
- industry collaboration and contingency planning – since cyber attacks could aim at multiple institutions within a short period of time, the senior management should designate relevant function(s) of the authorised institution to explore appropriate opportunities of collaborating with other institutions and/or the Police in both sharing and gathering cyber threat intelligence in a timely manner; and

- regular independent assessment and tests – given the technical nature of cyber security, the HKMA emphasises that it is crucial that there are sufficient cyber security expertise and resources within the responsible function(s) of the authorised institution to exercise effective and ongoing checks and balances against the above-mentioned evaluations and monitoring of cyber security controls carried out by the senior management as well as the contingency planning efforts related to cyber attacks.

#### **FSS and FSC implement new guidelines for banks' internal control and compliance functions**

The Financial Services Commission (FSC) and Financial Supervisory Service (FSS) [have announced](#) their decision to implement new guidelines for banks' internal control and compliance functions to ensure the effectiveness of internal controls in the banking sector.

The implementation of the new guidelines follows the work by a joint taskforce that the FSC and the FSS operated with the banking community from October 2014 to January 2015. In particular, given the enactment of the 'Law on Corporate Governance of Financial Institutions' (Corporate Governance Law) at the end of July 2015, with its implementation scheduled on 1 August 2016, the new guidelines reflect the provisions pertaining to the enhancement of the chief compliance officer's (CCO's) standing and role within the organisation to ensure smooth adoption of the law by banks.

Under the new guidelines, banks are required to:

- appoint an inside director or executive officer as CCO and guarantee his or her two-year term;
- give their CCO the freedom not to report violations to the audit committee when deemed unnecessary to ensure his or her job independence;
- staff their compliance function appropriately to ensure effective examination of internal controls, and its current personnel status is disclosed; and
- create an internal control committee chaired by the chief executive officer (CEO) to raise his or her interest in compliance.

The new guidelines are effective from 17 September 2015, except the first two regarding the CCO which will be implemented on commencement of the Corporate Governance Law.

## RECENT CLIFFORD CHANCE BRIEFINGS

### CPI-linked Bonds – a growing opportunity?

Some 5 years after the Coalition Government first announced its decision to move from the Retail Prices Index (RPI) to the Consumer Prices Index (CPI) to determine the statutory indexation of pension benefits, the Sterling bond market has finally seen an initial cluster of CPI-linked bonds being issued between May and August of this year.

This briefing paper considers the factors behind this development and the opportunities for the further development of CPI-linked funding.

[http://www.cliffordchance.com/briefings/2015/09/cpi-linked\\_bondsagrowingopportunity.html](http://www.cliffordchance.com/briefings/2015/09/cpi-linked_bondsagrowingopportunity.html)

### ELTIFs – the UK prepares for launch

The European Long-Term Investment Funds Regulation (ELTIFs Regulation), which is intended to increase the amount of long-term, non-bank finance available to companies and projects in the European Union, will apply in all Member States from 9 December 2015.

The UK has recently taken steps to prepare for the introduction of ELTIFs, with the publication by the FCA on 3 September 2015 of a consultation paper on the changes to the FCA Handbook which are necessary for ELTIFs to operate effectively.

This briefing paper discusses the main changes to the Investment Funds Sourcebook that will affect the AIFMs and depositaries of ELTIFs and outlines the legislative steps that are necessary to introduce the ELTIFs regime in the UK by the December 2015 deadline.

[http://www.cliffordchance.com/briefings/2015/09/european\\_long-terminvestmentfundsregulation.html](http://www.cliffordchance.com/briefings/2015/09/european_long-terminvestmentfundsregulation.html)

### Single sided reporting for OTC derivatives in Australia – Final regulations published

At the end of May 2015, the Government released for industry comment the Corporations Amendment (Central Clearing and Single-Sided Reporting) Regulation 2015 to, amongst other things, implement the single sided reporting exemption. The final Regulations have recently been published. The part of the Regulations dealing with single-sided reporting will commence on 1 October 2015.

This briefing paper provides an update to our July 2015 briefing on the draft Regulations (Single-sided reporting for OTC derivatives in Australia: When does it apply?) and discusses the changes that were made in the final Regulations.

[http://www.cliffordchance.com/briefings/2015/09/single\\_sided\\_reportingforotcderivatives.html](http://www.cliffordchance.com/briefings/2015/09/single_sided_reportingforotcderivatives.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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