CLIFFORD CHANCE

Briefing note

International Regulatory Update

09 – 13 May 2016

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BRRD: EU Commission adopts RTS on business reorganisation plans

The EU Commission has adopted a Commission Delegated Regulation setting out regulatory technical standards (RTS) specifying the minimum elements of a business reorganisation plan and the minimum contents of the reports on the progress in the implementation of the plan under the Bank Recovery and Resolution Directive (BRRD).

Among other things, the RTS require reorganisation plans to address the causes of an institution's failure and set out how the firm will be restored to long-term viability so that by the end of the reorganisation period, at the latest, the institution is capable of fulfilling its internal capital adequacy assessment process under the Capital Requirements Directive (CRD 4), all relevant prudential and other regulatory requirements on a forward-looking basis and has a viable and sustainable business model.

Money market funds: EU Council Presidency publishes compromise proposal

The EU Council Presidency has published a compromise text for the proposed regulation on money market funds (MMFs).

EU Parliament tables virtual currencies report for plenary

The EU Parliament has published a report on virtual currencies, which has been tabled as a motion for a resolution at the EU Parliament's plenary session. The report was adopted by the ECON Committee on 26 April 2016 and, among other things, proposes a taskforce overseen by the EU Commission, which would monitor developments in a precautionary way, and 'smart regulation' in this area so as not to stifle innovation, but propose recommendations for legislation to regulate the virtual currencies sector where necessary.

The report will be voted on by the Parliament's plenary session before being sent to the Commission for consideration.

CRR: EU Parliament adopts proposal on exemptions for commodity dealers

The EU Parliament has adopted the proposed regulation regarding exemptions for commodity dealers under the Capital Requirements Regulation (CRR) at first reading.

Articles of the CRR exempting commodity dealers from large exposures requirements and own funds requirements are scheduled to expire on 31 December 2017. The deadline was set in order to allow regulators to determine a prudential regulation adapted to the risk profile of commodity dealers, although it now appears unlikely that any resulting legislation from a review by the EU Commission, which is not expected to be completed before the end of the year, will be drafted and adopted before the exemption expires. The proposed regulation therefore extends the existing exemptions in the CRR to 31 December 2020 to take into account the amount of time that will be necessary to conclude the review and to prepare, adopt and apply any legislation that may result from it.

The proposal will now be forwarded to the EU Council, the Commission and national parliaments.

CRR: Delegated Regulation on derogations concerning currencies with constraints on availability of liquid assets published in Official Journal

A Commission Delegated Regulation (2016/709) supplementing the CRR with regard to regulatory technical standards specifying the conditions for the application of the derogations concerning currencies with constraints on the availability of liquid assets has been published in the Official Journal.

The Regulation will enter into force on 2 June 2016.

ESAs publish opinion on amended ITS on mapping External Credit Assessment Institutions' credit assessments

The Joint Committee of the European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), has published an opinion on the EU Commission's proposed amendments to draft Implementing Technical Standards (draft ITS) on the mapping of External Credit Assessment Institutions' (ECAIs') credit assessments under the CRR and Solvency II Directive.

The proposed amendments to the draft ITS set out a less conservative approach to the requirements for mapping ECAIs, favouring competition aspects over prudential considerations. The ESAs disagree with this approach as they believe this will increase the risk to financial stability and that the initial draft ITS had reached a good balance of prudential objectives and market competition.

CRR: EBA consults on draft guidelines on LCR disclosure

The EBA has launched a consultation on its draft guidelines on the liquidity coverage ratio (LCR) disclosure. The guidelines harmonise and specify the qualitative and quantitative information that institutions are required to disclose on liquidity and on the LCR.

The draft guidelines include:

- a qualitative and quantitative harmonised table for the disclosure of information on liquidity risk management as laid down by the CRR; and
- quantitative and qualitative harmonised templates, with their corresponding instructions, for the disclosure of information on the LCR composition.

Comments to the consultation close on 11 August 2016. The application of the guidelines is expected to take place not earlier than 30 June 2017.

CRD 4: EBA agrees with Commission's amendments to ITS on benchmarking of internal approaches

The EBA has published an opinion agreeing with the EU Commission's proposed amendments to the EBA implementing technical standards (ITS) on benchmarking the internal approaches EU institutions use to calculate own funds requirements for market and credit risk, as required by the Capital Requirements Directive (CRD 4). These ITS, which were published on 2 March 2015, specify that institutions should apply benchmarking portfolios, templates, definitions and IT solutions in their annual market and credit risk benchmarking exercises.

The Commission's amendments aim to incorporate some issues discussed with EBA staff during the 2014-2015 benchmarking exercise, to correct errors and inconsistencies in the original draft ITS and to clarify the instructions in the annexes of the final draft ITS. The EBA has expressed its agreement with these amendments. The amended ITS will allow the EBA to run its 2016 exercise based on the data requirements specified within them. All EU institutions using internal approaches to calculate capital requirements will be subject to an assessment of their internal approaches and must submit data on those portfolios to their competent authorities by close of business on 30 June 2016.

The EBA has also recommended adopting a more flexible approach to dealing with future amendments to the ITS and CRD 4. It proposes changing the current process, in which benchmarking portfolios and detailed reporting templates and instructions are adopted as part of Commission Implementing Acts, and instead allowing the EBA to regularly update the portfolios, templates and instructions itself.

Project Innovate: FCA's regulatory sandbox opens for applications

The Financial Conduct Authority (FCA) has opened applications to the first cohort of the regulatory sandbox, which is intended to be a safe space in which businesses can test innovative products, services, business models and delivery mechanisms in a live environment without immediately incurring the usual regulatory consequences of engaging in the activity in question.

The FCA will offer eligible firms a range of options to use the sandbox in cases where:

- an unauthorised firm would need to become authorised before being able to test their innovation in a live environment. Successful applicant firms will be offered a tailored authorisation process and granted restricted authorisation to allow them to test their ideas;
- authorised firms are seeking clarity around applicable rules before testing an idea that does not easily fit into the existing regulatory framework, for which the FCA will consider, where appropriate, individual guidance, waivers or modifications of FCA rules or no enforcement action letters; and
- technology firms are seeking to provide services to FCA regulated firms that require clarity around applicable rules before testing.

The FCA has requested that applications from eligible firms demonstrate that the idea to be tested is a genuine innovation, there is a consumer benefit from the idea and that the development is at a stage where it is ready for testing.

The FCA will agree reporting requirements for firms testing their products in the sandbox on an individual basis and will grant firms four weeks to produce and submit a final report, to which it will provide written feedback. The FCA also intends to publish findings from the sandbox to inform the wider industry, but will review what can be published on a case-by-case basis.

Applications are due by 8 July 2016 and the FCA will contact all applicants by mid-August to inform them of whether they have been accepted. Applications for the second cohort will open in November 2016 with a deadline of mid-January 2017.

Fintech bridge between UK and Singapore announced

The FCA and the Monetary Authority of Singapore's (MAS) Financial Technology and Innovation Group have signed a regulatory cooperation agreement as part of the UK's fintech bridge with Singapore.

The UK Government's intention to establish 'fintech bridges' with priority markets was announced by Economic Secretary to the Treasury Harriet Baldwin MP in April 2016. The agreement with Singapore is the first fintech bridge and establishes:

- how the two regulators plan to share and use information on financial services innovation in their respective markets and refer firms to their counterpart regulator; and
- help UK and Singaporean fintech firms and investors expand into the others' market.

CRD 4: PRA consults on Pillar 2 liquidity

The Prudential Regulation Authority (PRA) has published a consultation paper (CP21/16) on Pillar 2 liquidity requirements, which may be set by competent authorities in addition to the Pillar 1 liquidity coverage requirement (LCR) under CRD 4. It is relevant to all UK banks, building societies and PRA-designated investment firms.

The consultation seeks feedback on the PRA's proposed approach to three aspects of Pillar 2 liquidity: intraday risk; debt buyback; and non-margined derivatives. The specific approaches proposed are as follows:

- the level of application for setting requirements under Pillar 2 will be aligned to the Pillar 1 approach;
- when disclosing information about their liquidity position, firms should note that their publically disclosed liquidity coverage ratios include high quality liquid assets (HQLA) required to cover Pillar 2 risks, with no further specific disclosure on their Pillar 2 requirements unless required by law;
- assessment of liquidity risk associated with debt buyback and non-margined derivatives will be based on supervisory discretion directed by the firm's outstanding debt or exposures; and
- assessment of intraday liquidity risk will be based on the firm's maximum net debits, stress testing framework, key characteristics and the markets it operates in.

The PRA intends for these proposed Pillar 2 approaches to address liquidity risks not fully captured under Pillar 1 and to further assess and mitigate sources of liquidity risk.

The paper also provides an overview of the PRA's current thinking on two aspects of Pillar 2 which the PRA plans to consult on in the future: cash flow mismatch risk and overall calibration. The paper seeks early views from the industry on these proposed future developments.

Comments on the consultation are due by 12 August 2016.

House of Commons Public Accounts Committee calls for regulatory action on financial services mis-selling

The House of Commons Public Accounts Committee has published a report on financial services mis-selling following an inquiry. The report relates, in particular, to payment protection insurance (PPI) mis-selling claims and the actions of the FCA as lead regulator of financial services firms' conduct, the Financial Ombudsman Service (FOS) in relation to its dispute resolution between individual consumers and firms, and HM Treasury (HMT) as the Government department responsible for designing the regulation and redress framework for financial services.

Overall, the Committee has concluded that there are substantial and continuing risks that financial services could be mis-sold to consumers in the future and that more should be done to tackle cultural issues related to mis-selling. The report sets out six recommendations for:

- the FCA to outline the actions it intends to take to improve the culture in financial services firms and report to the Committee on their effectiveness in a year's time;
- the FCA to set out what more it will do to ensure firms check consumer understanding of the products they purchase and their rights to claim compensation and report to the Committee in a year's time;

- HMT and the Ministry of Justice to report publicly on the effectiveness of their actions in reducing the role of claims management companies in PPI compensation, in response to the Committee's finding that GBP 5 billion of PPI compensation has gone to claims management firms through fees. The Committee has also called for the FCA and HMT to set out measures to reduce the role of claims management firms in possible future mis-selling schemes;
- indicators on the extent of mis-selling, due to findings that the FCA's current complaints data does not identify when mis-selling took place and does not draw together information that could show whether FCA actions are reducing mis-selling;
- the FOS to set out a timetable for reducing and ultimately eliminating the backlog of PPI claims and report on their progress; and
- HMT to develop a timetable for proposing legislation to give the National Audit Office access to FCA information so that it can carry out full examinations for value for money.

German Federal Council adopts draft law implementing Market Abuse Directive and other EU laws

The German Federal Council (Bundesrat) has adopted a draft law on the implementation of the following EU directives and regulations under the title Financial Markets Renewal Act (Finanzmarktnovellierungsgesetz):

- Directive 2014/57/EU on criminal sanctions for market abuse (CSMAD);
- the Market Abuse Regulation (EU) No 596/2014 (MAR);
- the Central Securities Depositories Regulation (EU) No 909/2014 (CSDR); and
- Regulation (EU) No 1286/2014 on packaged retail and insurance-based investment products (PRIIPs).

Amongst other things, the draft law significantly increases possible fines for market manipulation and implements a communication platform for whistleblowers.

The draft law will now be forwarded to the German President (Bundespräsident) for signature and publishing.

Italian Ministry of Economy and Finance consults on amendments to Consolidated Financial Act for implementation of MiFID2, MiFIR and CSDR

The Italian Ministry of Economy and Finance (MEF) has published a consultation document (in two parts) setting out proposed amendments to legislative decree no. 58/1998 (the Consolidated Financial Act) intended to implement MiFID2, MiFIR and the CSDR.

In particular, the implementation of MiFID2, MiFIR and the CSDR has led to the complete restatement of Part III of the Consolidated Financial Act, with a view to rationalising its structure and making it easier for different types of supervised entities to understand their respective obligations.

The consultation ends on 9 June 2016.

CONSOB consults on practices for issuers and distributors offering or distributing financial instruments

The Commissione Nazionale per le Società e la Borsa (CONSOB) has published three consultation documents on practices for issuers and distributors and on information to be provided as part of the offer, listing and distribution of financial instruments.

In particular, the consultation documents propose the introduction of:

- a set of guidelines regarding the inclusion and preparation of a 'warnings for the investor' paragraph to be included in public offer/admission to trading prospectuses, which are intended to increase the degree of protection for investors, in accordance with the general principles of MiFID2;
- a set of principles and key information to be provided to retail customers in the distribution of financial products; and
- a set of recommendations intended to draw firms' attention to the importance of having operating systems and measures capable of ensuring that the distribution of the financial instruments takes place according to transparent, efficient and effective mechanisms taking into account the price, costs and the time to conclude operations.

Comments need to be submitted by 8 June 2016.

Bank of Spain amends circulars on standards of public and confidential financial information and financial statement formats and the Risk Information Center

The Bank of Spain has issued Circular 4/2016, of 27 April, amending Circular 4/2004, of 22 December, to credit institutions on standards of public and confidential financial information and financial statement formats and Circular 1/2013, of 24 May, on the Risk Information Center. Circular 4/2016 adapts Circular 4/2004 to the European regulatory framework on financial information and modifies Circular 1/2013 by updating its information requirements.

The aim of the circular is to update Annex IX of Circular 4/2004, which sets out the general framework for credit risk management regarding accounting.

Circular 4/2016 introduces updates in the following sections of Circular 4/2004:

- general framework for credit risk management;
- classification of transactions depending on the insolvency credit risk;
- insolvency credit risk coverage; and
- foreclosed real estate assets or received in payment of debts.

This update reinforces the accounting criteria applicable to (i) the policies, methodologies and procedures for credit risk management, (ii) account classification of transactions depending on the credit risk and (iii) individual and collective estimates of provisions.

Circular 4/2016 will enter into force on 1 October 2016.

AFM report warns index hugging may harm investors' interests

The Netherlands Authority for the Financial Markets (AFM) has published a report on 'index hugging' by investment funds and the consequences for investors. Index hugging (also known as 'closet indexing') exists where an investment fund is presented as an actively managed fund and charges the costs of an actively managed fund, while in reality staying close to a benchmark.

The AFM has found that 8% of Dutch equity funds may potentially be regarded as index huggers. The AFM is of the view that funds that qualify as index huggers do not sufficiently take investors' interests into account. In particular, the AFM states that when a fund follows a benchmark too closely, the potential added value for investors is too small to justify the higher costs.

The AFM aims to have no index hugging funds being offered in the Netherlands. The AFM notes that its report is in line with a public statement by the European Securities and Markets Authority (ESMA) on 2 February 2016, in which ESMA called national supervisors to take action against index hugging. The AFM has indicated that index huggers should either bring information disclosure and costs in line with the relatively limited active management or, alternatively, change the investment policy such that the fund delivers what it promises. The conclusion might also be that the fund has no right to exist.

Luxembourg Parliament votes on Bill of law reforming legal publication rules

The Luxembourg Parliament has voted for the adoption of Bill of law 6624 reforming the rules of legal publication in respect of companies and associations. Subsequent to this first vote, the Luxembourg Parliament has requested the Council of State to provide an exemption to the second vote so that Bill 6624 can be passed into law.

The new regime provides for the replacement of the Mémorial C by a new official electronic platform of central publication, the Recueil Electronique des Sociétés et Associations (RESA), which is to be managed by the Luxembourg Register of Commerce and Companies (RCS) and will be available on its website as of 1 June 2016. In the context of the reform, the procedure of publication in respect of companies and associations is expected to be simplified and rationalised in comparison with the current formalities applicable to publication in the Mémorial C. Moreover, publications via RESA will be free of charge.

The new publication rules and procedures will apply from 1 June 2016 to all Luxembourg companies, including investment fund vehicles of the corporate type (SICAVs, SICAFs and SICARs) and management companies. The new rules also require the registration of Luxembourg mutual funds (FCPs) with the RCS. However, FCPs created before 1 June 2016 will have a six month period to comply with this new requirement, meaning that registration must take place at the latest by 30 November 2016. Such registration will require the provision of the latest version of the management regulations of the FCP and of a specific registration form.

UCITS V: implementing law published in Mémorial A

The law of 10 May 2016 implementing Directive 2014/91/EU on undertakings for collective investment in transferable securities as regards depositary functions, remuneration policies and sanctions (UCITS V) has been published in the Luxembourg official journal (Mémorial A).

The new law also provides for a number of other changes to the Luxembourg legislation applicable to investment funds other than UCITS, namely in relation to the depositary regime of so called 'Part II UCIs', the audit of accounting documents of Luxembourg-authorised alternative investment fund managers (AIFMs) by an independent auditor and the cross-border provision of noncore MIFID investment services by Luxembourg-authorised AIFMs.

The law of 10 May 2016 will enter into force on 1 June 2016.

Polish Financial Supervision Authority sets out position on registers of investment fund participants

The Polish Financial Supervision Authority (KNF) has presented a standpoint in which it emphasises that, pursuant to the applicable provisions of law, an investment fund may only keep one register of the fund's participants. Furthermore, the fund may not delegate only certain activities connected with the keeping of the register of participants to one or more entities. The KNF notes that there is no provision that would allow investment funds to keep several registers of fund participants.

Therefore, the KNF expects that if any irregularities are found in this respect, investment fund companies will adjust the existing solutions to the provisions of law in force.

Swiss Federal Council adopts amendment of too-big-to-fail provisions

The Swiss Federal Council has adopted amendments to the current too-big-to-fail provisions under the Capital Adequacy Ordinance which will make Switzerland one of the countries with the highest capital requirements in the world for global systemically important banks.

Under the amendments, systemically important banks have to satisfy the following requirements:

- going concern requirements – the banks are required to have sufficient capital to ensure that even under stress scenarios they do not require state support or have to be restructured or wound up. The going concern requirements consist of a basic requirement for all systemically important banks, as well as a progressive component, depending on the degree of the bank's systemic importance, which is measured according to the market share and size criteria in the current system. The basic requirement for the leverage ratio is 4.5%, and 12.9% for risk-weighted assets. Based on the current benchmarks, the going concern requirements for the two biggest Swiss banks will be 5% for the leverage ratio and 14.3% for risk-weighted assets after taking into account the progressive component; and
- gone concern requirements – in addition to the going concern requirements, systemically important banks operating internationally are also required to hold additional capital to guarantee that their restructuring or continuation of systemically important functions in a functioning unit and their wind-up of other units could be carried out without recourse to public resources. The gone concern requirements mirror the going concern requirements. For the two biggest Swiss banks, this means that they will have to maintain an additional 5% for the leverage ratio and an additional 14.3% for risk-weighted assets. These requirements currently do not apply to domestic Swiss banks and the specific need for gone concern requirements for these banks will be the subject of the Federal Council's next evaluation report, which is to be adopted by the end of February 2017.

The amendments will come into force on 1 July 2016 and the new requirements have to be met by the end of 2019. The Federal Council will also implement a parliamentary motion which called for the Federal Council to be given the mandate to govern the capital requirements for all banks and thereby ensure that capital requirements for systemically important banks and other banks are strictly proportionate.

SAFE issues circular on further facilitating trade and investment and enhancing authenticity verification

The State Administration of Foreign Exchange (SAFE) has issued a 'Circular on Further Facilitating Trade & Investment and Enhancing Authenticity Verification', aiming to support the reasonable utilization of foreign exchange (FX) by market participants while maintaining orders for the FX market. The Circular allows more flexibility for banks to sell FX, clarifies the documentation verification requirements for intermediary trades, and also provides for the following key developments:

- FX forwards provided by banks to their customers can now be settled on a net basis;
- Chinese-funded non-financial institutions are allowed to convert FX foreign debt proceeds into RMB for the same usages under the regime for foreign-invested enterprises; and
- documentation verification requirements for repatriating profit by a foreign-invested enterprise are clarified and unified. Where the repatriation amount exceeds USD 50,000, a board resolution (or partners' resolution for partnership enterprises) on profit distribution, a tax return form (original copy), and the relevant supporting financial statements shall be provided for verification.

PBOC Guangzhou Branch expands cross-border use of RMB in Guangdong Free Trade Zone

The Guangzhou Branch of the People's Bank of China (PBOC) has issued a 'Circular on Supporting the China (Guangdong) Free Trade Zone (GD FTZ) to Expand the Cross-border Use of RMB'. Effective as of its issuance date, the Circular clarifies the following areas, whiling confirming that all favourable policies relating to cross-border use of RMB and capital account opening are applicable within the GD FTZ:

- individuals within the GD FTZ can make RMB cross-border payments and receipts under current account transactions and direct investments through instructions to the account bank, subject to the bank's review and/or verification based on 'three principles of cross-border business';
- the Circular lowers the revenue threshold for cross-border intra-group cash pooling arrangements and sets the macro prudence parameter (MPP) at 1 for the time being;
- where a GD FTZ financial institution or enterprise issues RMB bonds outside China, the proceeds can be used in China within a cap being the issuance amount multiplying a MPP, which is currently set at 1; and
- lending Panda bond proceeds by the issuing offshore parent company to its wholly-owned subsidiaries within the GD FTZ or other group companies are exempted from the foreign debt administration.

KRX to provide disclosure service in English for foreign investors

The Korea Exchange (KRX) has announced that it will encourage KRX-listed companies to provide disclosure of more items in English and rectify the information asymmetry between domestic and foreign investors.

To incentivise more companies to adopt this measure, the KRX will announce 169 English Disclosure Leading Companies out of a total of 770 KOSPI Market companies. The companies will be selected based on their need for and capability of English disclosure. The KRX will actively encourage these companies to provide English disclosure, especially of 174 items selected among all the 374 disclosure items. Such disclosure items include both mandatory disclosure items and voluntary disclosure items related to business performance.

The KRX will also designate and announce English Disclosure Leading Companies and Model Cases to encourage companies to disclose in English as much as possible. The designated leading companies will be given the same incentives which are given to the leading disclosure companies. They will also enjoy benefits in case a fine is imposed on them for unfaithful disclosure.

The list of leading companies and selected 174 items will be announced in May 2016 and the incentive system will be enforced in 2017.

Thai Ministry of Finance lifts threshold for PPP projects from Baht 1,000 million to Baht 5,000 million

The Thai Ministry of Finance (MOF) has issued a ministerial regulation to increase the threshold for projects which are required to comply with the procedures under the Private Investment in State Undertaking Act B.E. 2556 (public-private partnerships) (PPP Act) from Baht 1,000 million to Baht 5,000 million. In response to this change, the State Enterprise Policy Office has also issued a regulation on the rules and procedures for a project with a value less than the 'Specified Project Value' (Baht 5,000 million as of 26 April 2016) to cover projects which are not required to comply with the procedures under the PPP Act.

CLIFFORD CHANCE BRIEFINGS

Spring has Sprung – A New Remedy for Late Payment of Insurance Claims

On 4 May 2016, the Enterprise Act 2016 received royal assent. The Enterprise Act amends the Insurance Act 2015 by introducing section 13A, which creates an implied term in every insurance contract that an insurer pays any sums due to its insured within a 'reasonable time'. This means that insureds will be able to claim damages if insurers unreasonably delay paying claims.

When section 13A of the Insurance Act comes into effect (on 4 May 2017), if an insurer breaches the implied term, the insured may seek damages for the losses suffered because of the insurer's failure to pay out on time in addition to enforcing payment of the claim (and recovering interest on the unpaid claim). In contrast, the current position is that if the insurer fails to pay a claim in a 'reasonable time', there is no remedy for the delay. All that the insured can seek to recover is the insured amount and interest. This is the case even where an insured has suffered loss as a result of being out of pocket while its insurer considers the claim. The Enterprise Act is welcome news for insureds; the expectation is that insurers will handle claims with efficiency and expediency so as not to fall short of the obligation to pay within a 'reasonable time'.

This briefing paper discusses the new obligation on insurers.

http://www.cliffordchance.com/briefings/2016/05/spring_has_sprunganewremedyforlatepaymen.html

Luxembourg Law of 10 May 2016 implementing the UCITS V Directive

The Luxembourg law of 10 May 2016 was published in the Luxembourg official journal, the Mémorial A, on 12 May 2016 and will enter into force on 1 June 2016. The new law implements Directive 2014/91/EU on undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions (UCITS V Directive) and also introduces a number of changes to the Luxembourg legislation applicable to investment funds other than UCITS.

This briefing paper discusses the law.

http://www.cliffordchance.com/briefings/2016/05/luxembourg_law_of10may2016implementingth.html

CMA announces further liberalisation of the Saudi equity market in 2017

The Saudi Capital Market Authority (CMA) announced on 3 May 2016 three initiatives designed to improve international participation in the Saudi equity market and the settlement infrastructure of the Saudi Stock Exchange (Tadawul):

- changes to the rules governing the investment by qualified foreign financial institutions (QFIs) in Saudi listed shares (QFI Rules) that should facilitate greater levels of foreign interest in Saudi listed shares;
- moving from a T+Zero settlement cycle to the internationally recognised T+2 standard for securities settlement; and
- the introduction of securities lending regulations and covered short selling of Saudi listed shares.

These changes will be the subject of new regulations and rules that will be published by the CMA and Tadawul in the first half of 2017. It has not been stated as to when any public consultation on the detailed proposals will take place.

This briefing paper provides an explanation of the three initiatives.

http://www.cliffordchance.com/briefings/2016/05/saudi_cma_announcesfurtherliberalisationofth.html

CSRC clarifies beneficial ownership issue under QFII/RQFII regime – an effort to include A-shares in the MSCI index

Lack of clarity on ownership of securities invested through separate accounts is one of three key concerns that MSCI had when they decided not to include A-shares in the Emerging Market Index. On 6 May 2016, the China Securities Regulatory Commission (CSRC) issued an FAQ after its weekly press conference which recognized the concepts of 'nominee holder' and 'beneficial owner of securities', and further clarified its position on the rights and interests of beneficial owners of securities held in the nominee accounts opened by QFII/RQFII.

This briefing paper discusses the FAQ.

http://www.cliffordchance.com/briefings/2016/05/csrc_clarifies_beneficialownershipissueunde.html

PBoC Implements Nationwide Macro-prudential Management on Cross-border Financing

In early 2016, the People's Bank of China (PBoC) introduced a pilot macroprudential management system for cross-border financing (MP Financing Management System) which specifically applied to 27 designated banks and non-financial enterprises registered in four free trade zones in Shanghai, Tianjin, Guangzhou and Fujian (FTZ). On 3 May 2016, the PBoC issued the Circular on Implementing Overall Macro-prudential Management System for Nationwide Cross-border Financing (New Circular) to extend the MP Financing Management System nationwide.

This briefing paper discusses the New Circular and its impact on the conduct of cross-border financing activities.

http://www.cliffordchance.com/briefings/2016/05/pboc_implements_nationwidemacro-prudentia.html

Beyond Switzerland – Managing tax-related risks to global institutions arising out of US person accounts

For nearly a decade, the Tax Division of the US Department of Justice (DOJ) and the Internal Revenue Service (IRS) have been focused on investigating and prosecuting Swiss financial institutions for assisting US customers in evading US tax by maintaining unreported offshore accounts. The DOJ has acted against numerous individual institutions and private banks, demanding fines, penalties, interest, and restitution. The DOJ also has, through an agreement with the Swiss government covering the entire banking industry, accepted voluntary disclosures of US customer activity from scores of Swiss banks, resulting in additional hundreds of millions in fines. In addition, the IRS initiated a Voluntary Disclosure Program providing partial amnesty to individual taxpayers who came forward.

A significant consequence of these investigations and programs has been the disclosure of thousands of previously confidential customer names to the US government. Many of these US clients in the meantime are said to have fled to institutions in other offshore jurisdictions, including Southeast Asia, the Middle East, and Latin America, and the disclosure of transfer records in the Swiss investigations has identified many of those institutions. As a result, DOJ's investigations of offshore bank accounts maintained by US persons are focusing on an ever-widening circle of non-US banks.

This briefing paper discusses DOJ's ongoing investigation into unreported offshore accounts.

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