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Briefing note

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- MAS responds to feedback on proposed amendments to Securities and Futures (Exemption from Requirement to Hold Capital Markets Services Licence) Regulations
- Recent Clifford Chance briefings: Brexit – Passporting and equivalence implications for the UK insurance sector; and more. Follow this link to the briefings section.

Benchmarks: EU Commission designates Euribor as a critical index

An EU Commission Implementing Regulation (2016/1368) designating the euro interbank offered rate (Euribor) as a critical benchmark has been published in the Official Journal. The EU Benchmarks Regulation (2016/1011) provides additional requirements for benchmarks considered as critical to ensure their integrity and strength, and to reduce risk to users, markets and the economy of the European Union.

Euribor measures unsecured inter-bank offered rates in the euro area and the Commission estimates that the benchmark underpins more than EUR 180,000 billion worth of contracts, greatly exceeding the EUR 500 billion threshold used to determine a benchmark as a critical benchmark.

The Implementing Regulation entered into force on 13 August 2016.

MiFIR: EU Commission adopts RTS 22

The EU Commission has adopted regulatory technical standards (RTS) on transaction reporting under MiFIR, following publication of final draft RTS 22 by the European Securities and Markets Authority (ESMA) in September 2015.

The RTS specify rules on harmonised reporting of transactions to competent authorities, in particular setting out necessary details which need to be reported and the notion of reportable transactions and orders.

The RTS will enter into force on the twentieth day following their publication in the Official Journal.

EBA welcomes EU Commission proposal to bring virtual currency entities in scope of Anti-Money Laundering Directive

The European Banking Authority (EBA) has published an opinion making recommendations to support consistent pan-EU implementation and supervision of the EU Commission's proposal to bring virtual currency exchange platforms and custodian wallet providers within the scope of the fourth Anti-Money Laundering Directive.

The opinion is addressed to the EU Commission, Parliament and Council, and sets out a series of proposals for them to consider before finalising amendments to the fourth Anti-Money Laundering Directive (AMLD 4). In particular, the EBA recommends that:

- implementation deadlines for the amendments should be set in a way that facilitates their consistent implementation across the EU, and in a way that enables competent authorities to exchange information more easily and efficiently;
- national sanction powers as proposed in the Commission's amendments should be retained, while transactions in virtual currencies should remain outside of the scope of the Payment Services Directive; and
- measures that clarify the regulatory status of virtual exchange platforms and custodian wallet providers should be implemented in order to avoid risks of misrepresentation, including whether these entities should be allowed to carry out regulated financial activities at the same time as carrying out virtual currency transactions.

CRD 4: EBA publishes results of Single Rulebook Q&A review

The EBA has published the outcome of a review of its Single Rulebook Q&As, which provides an overview of possible errors, inconsistencies as well as fundamental issues in relation to the Capital Requirements Regulation (CRR) and the Capital Requirements Directive (CRD 4). The review includes both a general assessment and more specific findings, which are further detailed in twelve annexes.

The EBA will use the results of the review in discussions on the CRR/CRD 4 review.

CRD 4: ECB publishes addendum to guide on options and discretions

The European Central Bank (ECB) has published an addendum to the guide on options and discretions (O&Ds) available in Union law relating to the harmonisation of banking supervision for significant banks in the euro area. The addendum addresses eight O&Ds under CRD 4 and CRR and is intended to supplement the existing guide, which was published on 24 March 2016. The ECB intends to publish a consolidated version of the guide which will

include the addendum and the approach for the recognition of institutional protection schemes later in 2016. Alongside the addendum, the ECB has also published a feedback statement on comments received to its consultation on a draft version of the addendum.

FSB launches peer review on G20/OECD corporate governance principles

The Financial Stability Board (FSB) has launched a peer review on the implementation of the G20/OECD Principles of Corporate Governance, which is intended to assess how FSB member jurisdictions have applied the principles to publicly listed, regulated financial institutions. The objective of the review is to identify effective practices and areas of progress, as well as noting gaps and areas of weakness, in order to inform the OECD's work to revise its assessment methodology.

As part of the peer review, the FSB has called for feedback from financial institutions, industry and consumer associations and other stakeholders on issues relating to the design of corporate governance frameworks. Feedback should be submitted by 9 September 2016. The FSB intends to publish the final review early in 2017.

Retail banking: CMA publishes market investigation final report

The Competition and Markets Authority (CMA) has published its final report following its retail banking market investigation, which sets out a package of measures that the CMA intends to impose on banks to remedy the finding that older and larger banks do not have to compete hard enough for customers business, whereas newer and smaller banks find it difficult to grow.

The measures include requiring banks to:

- implement 'Open Banking' by 2018, which is a reform that will enable consumers to share their data with other banks in order to manage accounts with multiple providers through a single digital app and compare products on the basis of their own requirements;
- publish objective information on the quality of their service on their websites and in branches based on a range of quality metrics; and
- send out prompts to customers to review what they are getting from their bank and alerts to customers going into unarranged overdrafts to inform them of a grace period to avoid charges.

The CMA will now carry out work to implement the remedies alongside other relevant regulators.

AMF consults on prohibition of advertising of Forex products, binary options and some CFDs

The French Autorité des marchés financiers (AMF) has launched a consultation on the introduction into its General Regulation of the categories of contracts targeted by the prohibition on advertising of certain financial contracts deemed highly speculative and risky to private individuals by electronic means, introduced by the 'Sapin II' bill on transparency, the fight against corruption and the modernisation of the economy (which will enter into force after it is voted on by Parliament and enacted into law).

In order to complete the relevant regulatory framework, the AMF proposes to add a provision to Book I of its General Regulation entitled 'Supervisory measure on marketing communications concerning financial contracts', worded as follows:

'Under article L. 533-12-8 of the French monetary and financial code, marketing communications regarding the following financial contracts shall be prohibited:

- binary option contracts; or
- contracts that promote a direct or indirect investment in the foreign exchange market (Forex or currency market); or
- contracts for difference (CFD) that have a leverage greater than five;

and financial contracts that have an economic effect equivalent to those stated above.'

Comments on the consultation are due by 30 September 2016.

BaFin issues general order regarding reporting of supervisory financial information by CRR-credit institutions to German Central Bank

Based on Regulation (EU) 2015/543 of the European Central Bank of 17 March 2015 on reporting of supervisory financial information, the German Federal Financial Supervisory Authority (BaFin) has published a general order defining the dates on which CRR credit institutions have to submit their supervisory financial information to the German Central Bank.

BaFin consults on remuneration ordinance for institutions

BaFin has published a draft ordinance to amend the remuneration ordinance for institutions. The amendment is intended to implement the EBA guidelines dated 27 June 2016 on sound remuneration policies and disclosures

under Article 74 (3) and Article 75 (2) of CRD 4 and Article 450 of the CRR.

Comments on the draft ordinance may be submitted to BaFin until 12 September 2016.

BaFin, Deutsche Bundesbank and FMSA issue joint interpretation guideline on insolvency classification of certain obligations of CRR-institutions

BaFin, the German Central Bank and the Federal Agency for Financial Market Stabilisation (FMSA) have issued a joint interpretation guideline in order to clarify the status of structured debt instruments and money market instruments.

By introducing section 46f para 5 of the German Banking Act (KWG), which applies from 1 January 2017, the Single Resolution Mechanism Act created a new insolvency ranking class. The obligations of this new ranking class are subject to bail-in before all other obligations under section 38 of the German Insolvency Code (InsO) are bailed in.

The joint interpretation guideline clarifies that structured debt instruments which fulfil the requirements of section 46f para 6 sentence 2 and para 7 KWG and money market instruments do not fall under the new insolvency ranking class and are therefore not subject to prior bail-in.

Belgium approves new framework for distribution of OTC derivatives to retail clients

A Royal Decree of 21 July 2016 approving a regulation of the Financial Services and Markets Authority (FSMA) has been published in the Moniteur belge. The regulation sets out a new framework for the distribution in Belgium of OTC derivatives to consumers. Consumers are natural persons acting outside the scope of their professional activities. The regulation does not, however, apply to consumers who are treated as professional clients under MiFID.

First, the distribution of certain types of OTC derivatives to consumers through electronic trading platforms will no longer be permitted. The ban covers binary options, derivative contracts with a maturity of less than an hour, and derivative contracts with leverage. However, the prohibition only applies to OTC derivatives and not to derivatives traded on a regulated market or an MTF.

Second, the regulation also prohibits certain distribution methods which are deemed too aggressive for consumers. Marketing techniques such as cold calling through external call centres, offering gifts or bonuses based on the transactions carried out, or allowing consumers to credit funds through a credit card, may no longer be used when offering OTC derivatives to consumers through an electronic trading platform.

The regulation will come into force on 18 August 2016.

Bank of Italy publishes Ministerial Decree on implementation of Article 120 of Consolidated Banking Act regarding accrual of interest

The Bank of Italy has published Ministerial Decree No. 343, dated 3 August 2016, implementing Article 120, paragraph 2 of the Consolidated Banking Act relating to the accrual of interest in transactions carried out in banking activity.

The Decree has been published following a proposal by the Bank of Italy and the Commissione Nazionale per le Società e la Borsa (Consob) and applies to some transactions entered by intermediaries and their clients under Title VI of the Consolidated Banking Act. In particular, the Decree sets out rules and limits on the frequency of the accrual of interest applicable to loans on credit cards, bank accounts and credit facilities. The Decree also introduces some provisions applicable to contracts already in place and the alignment of these to the newly introduced limits.

Italian Government approves Legislative Decree to amend local legislation to reflect CSDR

The Council of Ministers has approved a Legislative Decree to amend Italian legislation in accordance with the Central Securities Depositories Regulation (CSDR). To reflect the provisions of the CSDR, which is directly applicable and legally binding in all Member States, the Italian legislature has approved a Legislative Decree which:

- confirms that the Bank of Italy and Consob are the national authorities responsible for this matter; and
- strengthens and increases applicable administrative sanctions.

The Legislative Decree also amends certain provisions of the Consolidated Finance Act governing post-trading activities, and clarifies the scope of certain rules pursuant to the European Market Infrastructure Regulation (EMIR) for the protection of guarantees in case of default.

Italian Government preliminarily approves text of Legislative Decree amending local legislation to reflect SSM Regulation

The Council of Ministers has preliminarily approved the text of a Legislative Decree that will adapt national legislation to Regulation (EU) No. 1024/2013 conferring specific tasks to the European Central Bank concerning policies relating to

the prudential supervision of credit institutions of the Member States participating in the Single Supervisory Mechanism (SSM Regulation).

In response to the SSM Regulation, which is directly applicable and legally binding in all Member States, the Italian legislature has acted to amend local legislation to:

- reflect the division of responsibilities between the Bank of Italy and the European Central Bank; and
- remove provisions of law that are incompatible with the new European framework.

The preliminarily approved text is still subject to amendment before finalisation.

Spanish Ministry of Economy and Competitiveness publishes preliminary draft law on real estate credit agreements

The Ministry of Economy and Competitiveness has published a preliminary draft law on real estate credit agreements, which aims to incorporate into the Spanish legal regime the provisions included in Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010.

The law will apply to agreements entered into between borrowers and natural or legal persons that carry out any of the following activities professionally:

- granting of loans or credit with a mortgage guarantee over a property by means of deferred payment, opening of credit or any other equivalent financing method;
- granting of loans or credit the main purpose of which is the acquisition or conservation of plots of land, buildings already constructed or planned buildings; and
- intermediation for the conclusion of one of the agreements to which the previous paragraphs refer.

New law to incentivise and facilitate investments in Turkish market published in Official Gazette

A new law has been published in the Official Gazette dated 9 August 2016 in connection with the 10th development plan of the Turkish government. The law introduces amendments to certain codes which are intended to create a more favourable investment environment in Turkey and attempts to eliminate ambiguities and reduce costs.

The most extensive restructuring under the new law has been made to the tax codes (including in relation to stamp tax, income tax, corporate tax, VAT, property tax) and to the law on charges in order to establish a more investor friendly regime. Major changes to the tax codes and laws include:

- enhanced incentives for sukuk (Islamic bonds) and financial lease transactions with broad tax and fee exemptions ranging from corporate tax to property tax;
- expansion of the scope of the stamp tax exemption to new transactions and documents (e.g. share transfers);
- limiting applicability of stamp tax to only one original copy (as opposed to each original);
- tax deductions for R&D projects;
- tax exemptions for the market activities of pension funds, mutual funds, venture-capital investment funds and trusts;
- exemptions from taxes and charges for investments with investment incentive certificates;
- exemptions from charges for certain arbitration proceedings; and
- recognition of unified system for tax and social security declarations.

In addition to the changes to the current tax regime, the new law also amends various other codes, including the Turkish Commercial Code, to introduce:

- more restrictive conditions for the acceptance of postponement of bankruptcy with new application methods and time periods;
- more comprehensive requirements for issuance and use of cheques in a bid to enhance the tradable nature of cheques in daily commercial life;
- a reduction in company and branch establishment costs;
- recognition of issuance of bank letters of guarantee with electronic signature; and
- changes in the social security legislation in relation to contributions and premium payments.

The purpose of the changes to the legislation is mainly to support the investment climate in Turkey with decreased transaction costs, create a more equal environment for all types of financial institutions, increase investments in interest-free financial products, attract international investments, establish a clearer and more transparent tax regime for potential investors, and encourage R&D activities.

The amendments take effect on various different dates between 2016 and 2018.

FSC announces plan to nurture mega-investment banks in Korea

The Financial Services Commission (FSC) has announced its plan to nurture mega-investment banks in Korea with equity capital of more than KRW 10 trillion by allowing a broader range of new business for securities firms with a larger amount of equity capital. Under the plan:

- new financing channels will be allowed for securities firms to raise sufficient capital for corporate financing — e.g. issuance of promissory notes, introduction of an 'Investment Management Account' (IMA) to utilise a pool of customers' deposits for investments;
- regulatory amendments will be made to facilitate risk-underwriting activities by securities firms — e.g. separate NCR standards (NCR-II) to be applied to long-term corporate lending and securities firms to be allowed to lend companies up to 100% of their equity capital;
- securities firms will be permitted an expanded business scope for corporate financing — e.g. internalisation of order executions for unlisted company stock, foreign exchange operations, property-backed trust business, etc.; and
- co-operation between securities firms and policy banks will be strengthened to support their global activities in overseas investments and merger and acquisitions (M&As).

The FSC intends to gather feedback on the plan from the industry and experts in August 2016. Based on the feedback, the plan will come into effect starting from 2017 after relevant laws have been revised.

MAS responds to feedback on proposed amendments to Securities and Futures (Exemption from Requirement to Hold Capital Markets Services Licence) Regulations

The Monetary Authority of Singapore (MAS) has published its responses to the feedback it received on its proposal in the Consultation Paper on Proposed Amendments to the Securities and Futures (Exemption from Requirement to Hold Capital Markets Services Licence) Regulations to exempt remote clearing members (RCMs) which clear futures contracts on Singapore-based central counterparties (Singapore CCPs) from the requirement to hold a Capital Markets Services (CMS) licence in respect of trading in futures contracts under the Securities and Futures Act (SFA), subject to certain conditions.

Amongst other things, the MAS has clarified the following:

- Singapore CCPs will have to ensure that they have adequate risk management and default management procedures to handle the default of an RCM;
- the MAS will limit Singapore CCPs' total clearing exposure to RCMs by imposing additional capital requirements on Singapore CCPs with significant clearing exposure to RCMs;
- Singapore CCPs will only be allowed to admit RCMs that are appropriately licensed in a jurisdiction that is comparable to Singapore's regulatory regime for clearing members;
- a financial institution that has an affiliate carrying on business in providing financial services in Singapore will not qualify for the exemption. An overseas financial institution and its Singapore affiliate will also not be eligible to apply for an approval under paragraph 9 of the Third Schedule to the SFA if the purpose is to allow the overseas financial institution to clear trades of Singapore-resident customers on Singapore CCPs;
- the condition that restricts an RCM from serving any Singapore-resident customers does not preclude the RCM from responding to unsolicited enquiries or applications from persons in Singapore; and
- the definition of 'resident in Singapore' will be refined to exclude persons who are considered as resident for the purposes of tax assessment, but have since relocated out of Singapore, and to include companies that have a physical presence in Singapore even if they are managed and controlled by persons outside Singapore.

RECENT CLIFFORD CHANCE BRIEFINGS

Brexit – Passporting and equivalence implications for the UK insurance sector

The implications of Brexit for EEA authorised insurers, reinsurers and intermediaries, including those currently authorised in the UK, will largely depend on the legal agreements governing the basis of the UK's future relationship with the EU. Although these are subject to negotiations, there are some certainties in the UK's favour: a respected regulatory system, the likelihood of securing Solvency II equivalence, and an environment of conservative capital management – all of which make the UK a stable and competitive participant in global insurance markets.

Access to the Single Market for UK authorised insurers, reinsurers, and intermediaries and to the UK market for those authorised in the rest of the EEA will continue until the lapse of the two year exit period following a notification under Article 50 of the Treaty on European Union (TEU) or at an earlier date agreed between the UK and the EU. Article 50 now looks unlikely to be triggered until at least the end of 2016. Before exit and before the necessary legal agreements are agreed, uncertainty will remain.

This briefing paper provides a preliminary view on the potential longer term position in the insurance sector and the factors for insurers to take into account in their contingency planning.

https://www.cliffordchance.com/briefings/2016/08/brexit_passportingandequivalenceimplication.html

MAS publishes revised Guidelines on Outsourcing

The Monetary Authority of Singapore (MAS) has published the revised Guidelines on Outsourcing, which replace the previous Guidelines on Outsourcing and IT Outsourcing Circular published by MAS. The Guidelines provide institutions with guidance on sound practices for risk management of their outsourcing arrangements.

This briefing paper discusses the Guidelines and the key differences between the revised Guidelines and the previous Guidelines.

https://www.cliffordchance.com/briefings/2016/08/mas_publishes_revisedguidelinesonoutsourcing.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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