

# International Regulatory Update

09 – 13 January 2017

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### International Regulatory Group Contacts

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

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

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

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

[Paul Landless](#) +65 6410 2235

[Mark Shipman](#) + 852 2826 8992

[Donna Wacker](#) +852 2826 3478

### International Regulatory Update Editor

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

To email one of the above, please use [firstname.lastname@cliffordchance.com](mailto:firstname.lastname@cliffordchance.com)

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

[www.cliffordchance.com](http://www.cliffordchance.com)

- KRX to introduce member margin rules to stock markets
- Recent Clifford Chance briefings: 'Insurtech'; and more. [Follow this link to the briefings section.](#)

### Maltese EU Council Presidency sets out work programme

The Maltese Presidency of the EU Council has published its [work programme](#), which has been developed under the current Trio Programme based on the Strategic Agenda agreed by the European Council in June 2014.

On financial services, the Presidency has identified its priorities as:

- continuing discussions on the Capital Markets Union (CMU) action plan and taking forward outstanding elements;
- finalising Council discussions on the CMU proposals on securitisation;
- reaching political agreement in trilogue negotiations on the European Venture Capital (EuVECA) and European Social Entrepreneurship Funds (EuSEF) legislation;
- progressing the Commission's proposals to amend the Capital Requirements Regulation (CRR), Bank Recovery and Resolution Directive (BRRD) and Single Resolution Mechanism Regulation (SRMR);
- continuing work on legislative proposals on central counterparties (CCPs); and
- continuing work at technical level on the European Deposit Insurance Scheme (EDIS) proposal while aiming to progress risk reduction measures in the banking proposals.

Malta holds the rotating Presidency of the EU Council until 30 June 2017.

### MiFIR: ESMA publishes opinion on product intervention powers

The European Securities and Markets Authority (ESMA) has published an [opinion](#) on the scope of product intervention powers under MiFIR.

Under MiFIR, ESMA and national competent authorities (NCAs) may temporarily prohibit or restrict the marketing, distribution or sale of certain financial instruments in the EU, including units or shares in UCITS and alternative investment funds (AIFs), whether internally or externally managed, or financial instruments with certain specified

features, a type of financial activity or practice. The MiFIR intervention powers will only apply to MiFID investment firms marketing products which pose risks to retail investors, market integrity, and financial stability in the EU, but do not cover UCITS management companies and Alternative Investment Fund Managers (AIFMs).

In its opinion, ESMA intends to draw the attention of the EU institutions to the consequences of the possible lack of clarity it has identified around the exclusions to UCITS management companies and AIFMs from the scope of the powers. In particular, ESMA highlights the risk of arbitrage where a type of fund that is restricted or banned under MiFIR could be distributed through fund management companies if they decided to market or distribute the funds themselves.

### CRD 4: EBA publishes further recommendations on the equivalence of confidentiality regimes

The European Banking Authority (EBA) has published [amending recommendations](#) on the equivalence of non-EU supervisory authorities to the confidentiality regime set out in the Capital Requirements Directive (CRD 4). These recommendations include additional non-EU supervisory authorities to the EBA's first set of recommendations, which were published in April 2015.

These recommendations are designed as a guide for EU authorities in their assessment of the equivalence of confidentiality regimes of third country supervisory authorities to facilitate their participation in supervisory colleges overseeing international banks.

The following third country authorities have been added to the recommendations:

- the Australian Prudential Regulation Authority;
- the Reserve Bank of Australia;
- the Hong Kong Monetary Authority;
- the Bank of Japan;
- the Japan Financial Services Agency; and
- the Central Bank of the Republic of Kosovo

The recommendations will be translated into the official languages of the EU and published on the EBA website. Competent authorities must report whether they comply within two months of the publication of the translations. The recommendations apply from 12 January 2017.

### ECB consults on TARGET Instant Payments Settlement user requirements document

The European Central Bank (ECB) has launched a [consultation](#) on the user requirements document (URD) for a TARGET instant payment settlement (TIPS) service. The document is intended to set out the principles and functionalities of TIPS.

The Eurosystem has launched an investigation to identify how it can best support the emergence of instant payments and TIPS is intended to offer instant settlement services to its participants when an originator instructs the transfer of funds to a beneficiary, primarily in EUR. Technical implementation of TIPS is intended to be currency agnostic, in order also to support possible settlement of non-EUR central bank money.

TIPS will be designed as a harmonised and standardised pan-European service with common functionality across different jurisdictions and offer a flexible participation structure that can support different business models without compromising the speed and efficiency requirements stipulated by the SEPA Instant Credit Transfer (SCT Inst) scheme which the European Payments Council (EPC) has developed for instant EUR payments.

A decision on whether to develop TIPS is expected in June 2017 and, if agreed, TIPS should become operational in November 2018.

Comments on the consultation are due by 24 February 2017.

### FSB publishes recommendations to address structural vulnerabilities from asset management activities

The Financial Stability Board (FSB) has published its [policy recommendations](#) to address risks to global financial stability from structural vulnerabilities associated with asset management activities. The FSB consulted on its proposed recommendations in June 2016 and in the final recommendations the FSB has incorporated responses to the consultation addressing specific structural vulnerabilities, in particular:

- liquidity mismatch between fund investments and redemption terms and conditions for open-ended fund units;
- leverage within investment funds;
- operational risk and challenges at asset managers in stressed conditions; and

- securities lending activities of asset managers and funds.

The FSB intends to regularly review progress in the implementation of the recommendations. Separately, IOSCO is expected to finish its work on the liquidity recommendations by the end of 2017 and on leverage measures before the end of 2018.

### MiFID2: FCA publishes user guide to authorisations and notifications

The Financial Conduct Authority (FCA) has published a [user guide](#) on applications and notifications under MiFID2. The guide does not make any policy proposals or amend or qualify any rules and guidance in the FCA Handbook, but is intended to help firms decide which MiFID-related notifications and applications they should make ahead of MiFID2 applying from 3 January 2018.

The guide sets out details of applications for:

- new authorisation for investment firms or data reporting service providers;
- recognition of investment exchanges;
- Variation of Permissions (VoPs); and
- change of legal status.

The deadline for applications for authorisation of investment firms, data reporting service providers and VoPs will be 3 July 2017 to ensure they are assessed by 3 January 2018. In relation to notifications, the guide sets out details of providing regulatory information by authorised firms, recognised investment exchanges and others, including passporting notifications. The deadline for notifications of cross-border service passports will be 2 December 2017 to enable the FCA to send these to EEA regulators by 3 January 2018.

In each chapter, the FCA indicates the date by which firms should submit an application or notification and, where relevant, which forms should be used. The FCA has also confirmed that the Authorisation Gateway for draft applications for FCA solo regulated firms will open from 30 January 2017.

### EMIR: BaFin publishes guidance on intragroup exemption notifications

The German Federal Financial Supervisory Authority (BaFin) has published a [guidance notice](#) and templates for notifications pursuant to Article 11 para 6 to 10 of the European Market Infrastructure Regulation (EMIR)

regarding exemptions from the margin requirement in intragroup situations under Article 11 EMIR.

The notice summarises the exemptions and explains relevant pre-conditions.

#### **BaFin publishes circular on minimum requirements for risk management of capital management companies**

BaFin has published a [circular](#) on minimum requirements for risk management of capital management companies (Kapitalverwaltungsgesellschaften) (KAMaRisk). The circular revises and replaces the previous BaFin circular on minimum requirements for risk management of investment companies (InvMaRisk).

In particular, the circular adapts the minimum requirements to Commission Delegated Regulation No 231/2013 which supplements the Alternative Investment Fund Managers Directive (AIFMD) and specifies certain organisational, risk management and outsourcing requirements of the Delegated Regulation.

The circular also sets out minimum requirements for the risk management of alternative investment fund (AIF) capital management companies which grant cash loans for account of the AIF or invest in unsecuritised loans. These requirements are primarily based on the requirements for credit business set out in BaFin's minimum requirements for risk management of banks (MaRisk) as adapted to the particularities of collective portfolio management.

#### **Luxembourg Central Bank regulation enters into force**

A new regulation of the Luxembourg Central Bank (BCL) 2016/ N° 22 has entered into force. The regulation was [published](#) in the Luxembourg official journal (Mémorial A) on 28 December 2016.

The Regulation amends BCL Regulation 2014/ N° 18 to implement the modifications made to the European Central Bank (ECB) Guideline on supplementary temporary measures concerning the refinancing operations of the Eurosystem and the eligibility of guarantees (ECB/2014/31).

The regulation entered into force on 2 January 2017.

#### **Law implementing Mortgage Credit Directive in Luxembourg enters into force**

A new law on credit agreements for consumers relating to residential immovable property and a supplementary Grand Ducal regulation modifying the regulatory part of the Luxembourg Consumer Code, have entered into force. The

law and regulation were both [published](#) in the Luxembourg official journal on 28 December 2016.

The law implements the Mortgage Credit Directive (2014/17/EU - MCD) in Luxembourg through new provisions in the Luxembourg Consumer Code, including, but not limited to:

- standard pre-contractual information for consumer borrowers through a European standardized information sheet (ESIS);
- a pre-contractual obligation to assess the creditworthiness of the consumer;
- rules for the calculation of the annual percentage rate of charge (taux annuel effectif global (APRC)); and
- an early repayment right for consumers, in case of exercise of which, the creditor is entitled to compensation for the costs incurred, limited to a certain level.

The law applies to credit agreements secured by either a mortgage or another comparable security or right on residential immovable property or to credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or planned building. The law also introduces the immovable property credit intermediary as a new category of a regulated financial sector professional, benefitting from the European passport under the MCD.

The Regulation contains an ESIS template, further specifications and instructions for its use and detailed rules for the calculation of the APRC.

The Law and the Regulation entered into force on 1 January 2017, subject to certain rules of transitional and retroactive application.

#### **MAR: CSSF publishes circular on ESMA market soundings guidelines**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a circular ([17/648](#)) on the implementation of ESMA guidelines on persons receiving market soundings under the Market Abuse Regulation (MAR) into Luxembourg regulation.

The circular is addressed to all market participants, in particular persons receiving market soundings, and sets out:

- factors that such persons have to take into account when information is disclosed to them as part of a market sounding in order to assess whether the information constitutes inside information;

- steps that such persons should take if inside information has been disclosed to them in order to comply with Articles 8 and 10 of MAR; and
- records that should be maintained in order to demonstrate compliance with Articles 8 and 10 of MAR.

The circular entered into force on 11 January 2017.

### Swiss Federal Council and FINMA launch consultation on Liquidity Ordinance and 'Liquidity risks – banks' circular

The Federal Council and the Swiss Financial Market Supervisory Authority (FINMA) have launched a [consultation](#) on the revised Liquidity Ordinance and FINMA Circular 2015/2 'Liquidity risks – banks'. The revisions reflect the minimum liquidity and funding requirements for banks under the Basel III framework. The main changes include:

- the introduction of a net stable funding ratio (NSFR), a new funding ratio which limits the risk of banks using short-term deposits and borrowings to fund lending activities. The new NSFR requirements will apply to banks of all sizes, but will take into account the size of each institution; and
- the relaxation of liquidity coverage ratio (LCR) requirements for small banks and banks with a domestic-market orientation, with a more consistent application of the principle of proportionality.

The consultation will end on 10 April 2017 and the new requirements are scheduled to come into force on 1 January 2018.

### Singapore Parliament passes Securities and Futures (Amendment) Bill 2016

The [Securities and Futures \(Amendment\) Bill 2016 \(Bill\)](#) has been moved for its second reading and passed by Parliament. The Bill incorporates a wide range of amendments and follows a number of consultations issued by the Monetary Authority of Singapore (MAS) in recent years.

In particular, the Bill completes the MAS' two-phase review to implement OTC derivatives regulatory reforms, in line with recommendations made by the Financial Stability Board (FSB) and G20 to strengthen regulation of OTC derivatives markets following the 2008 global financial crisis. The Bill also introduces amendments aimed at enhancing regulatory safeguards for retail investors, enhancing the credibility and transparency of the capital markets, and

strengthening the MAS' ability to take enforcement action against market misconduct.

Key provisions in the Bill include:

- regulation of OTC derivatives – the Bill will extend the scope of the Securities and Futures Act (SFA) to OTC derivatives by empowering the MAS to regulate market operators and capital markets intermediaries in respect of their OTC derivatives activities. Regulatory oversight of commodity derivatives, currently under the Commodity Trading Act, will consequently be transferred to the SFA. The MAS will also be empowered to require derivatives contracts that meet prescribed criteria to be traded on organised trading facilities (OTFs) or exchanges, instead of OTC;
- enhancement of regulatory safeguards for retail investors – the Bill will extend the scope of the SFA to non-conventional investment products that are in substance capital markets products, and will refine the definitions of accredited investors and institutional investors;
- enhancement of credibility and transparency of capital markets – the Bill will introduce requirements to enhance transparency on the level of short-selling in securities listed on approved exchanges and introduce a new regulatory framework for financial benchmarks; and
- strengthening of enforcement regime against market misconduct – the Bill will clarify the scope of the prohibition against false or misleading disclosures, introduce a statutory definition of 'persons who commonly invest' for prohibitions against insider trading, confer priority on the MAS' civil penalty claims over private unsecured claims that accrue subsequent to the contravention of the SFA, and standardise the civil penalty ceiling.

### MAS responds to feedback on proposals to exempt execution-related advice in respect of listed excluded investment products from Financial Advisers Act and updates notice on minimum entry and examination requirements for representatives of licensed financial advisers and exempt financial advisers

The Monetary Authority of Singapore (MAS) has published its [responses](#) to the feedback it received on its June 2016 public consultation on the proposed legislative amendments under the Financial Advisers Regulations to exempt execution-related advice (ERA) in respect of listed excluded investment products (EIPs) from the Financial Advisers Act

(FAA). The finalised regulations are expected to take effect in the first quarter of 2017.

In its responses, the MAS has provided clarification on, amongst other things:

- what would constitute financial advice for the purpose of ERA;
- in respect of the exemption from the FAA for the provision of ERA on listed EIPs, the types of rationale for the provision of ERA to the client considered acceptable and when the rationale should be provided, as well as the manner in which the written disclosure should be made; and
- the measures relating to dealers' oversight of trading representatives who provide ERA in respect of listed EIPs to clients.

The MAS has also updated the [Notice](#) on minimum entry and examination requirements for representatives of licensed financial advisers and exempt financial advisers (FAA-N13).

#### **MAS consults on proposed amendments to capital framework for securitisation exposures and interest rate risk in banking book**

The MAS has launched a [consultation](#) on proposed amendments to the capital framework for securitisation exposures and interest rate risk in the banking book set out in MAS Notice 637 on risk based capital adequacy requirements for banks incorporated in Singapore.

The proposed amendments would implement requirements for Singapore-incorporated banks that are consistent with the Basel Committee on Banking Supervision (BCBS) final standards on:

- revisions to the securitisation framework, published on 11 December 2014 and revised in July 2016; and
- interest rate risk in the banking book (IRRBB), published in April 2016.

The proposed amendments to the securitisation framework are intended to strengthen capital standards for securitisation exposures, while providing a preferential capital treatment for simple, transparent and comparable securitisations. The proposals also suggest criteria on what constitutes significant credit risk transfer. The consultation proposes that the amendments would take effect from 1 January 2018.

The proposed framework for IRRBB sets out Pillar 2 requirements for the identification, measurement,

monitoring and control of IRRBB, and disclosure requirements under prescribed interest rate shock scenarios. The proposals would take effect from 31 December 2017.

The amendments also include the International Development Association in the list of multilateral development banks in accordance with the BCBS Newsletter No. 19 published in November 2016.

Comments on the consultation are due by 10 February 2017.

#### **FSTB launches two consultations on legislative proposals to enhance regulatory regime for combating money laundering and terrorist financing**

The Financial Services and the Treasury Bureau (FSTB) has launched the following two consultation exercises on its legislative proposals to enhance the regulatory regime for combating money laundering and terrorist financing:

- a [consultation on enhancing transparency of beneficial ownership of Hong Kong companies](#) – the FSTB proposes to enhance the transparency of corporate ownership by requiring companies incorporated in Hong Kong under the Companies Ordinance to provide beneficial ownership information or declare that there are no people with significant control. The principal objectives of the statutory regime are to prevent the misuse of legal persons for money laundering and terrorist financing, and to ensure that there is adequate, accurate and up-to-date information on the beneficial ownership and control of legal persons for timely access by law enforcement agencies when the need arises; and
- a [consultation on enhancing anti-money laundering regulation of designated non-financial businesses and professions](#) – in accordance with the Financial Action Task Force requirements, the FSTB proposes to amend the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance to:
  - prescribe statutory customer due diligence and record-keeping requirements applicable to solicitors, accountants, real estate agents and trust or company service providers (TCSPs) when these professionals engage in specified transactions; and
  - introduce a licensing regime for TCSPs for the purpose of overseeing their compliance with anti-money laundering and counter-financing of terrorism requirements, whereby they will be

required to apply for a licence from the Registrar of Companies and satisfy a 'fit-and-proper' test before they provide trust or company service as a business to the public.

Comments on both consultations are due by 5 March 2017.

### **Bank of Thailand issues notifications regulating Specialised Financial Institutions**

The Bank of Thailand has issued a number of [notifications](#) to regulate Specialised Financial Institutions (being financial institutions established by law e.g. Government Savings Bank, Bank for Agriculture and Agricultural Co-Operatives, Government Housing Bank, Small and Medium Enterprise Development Bank of Thailand (SME Bank), Export-Import Bank of Thailand (EXIM Bank), and Secondary Mortgage Corporation). These notifications concern, among other things, good governance, supervision of credit and market risks and the single lending limit of Specialised Financial Institutions.

The aim of the single lending limit notification is to reduce the concentration of risk among particular Specialised Financial Institutions. The amount lent, invested or the creation of any other similar obligations or transactions in respect of one single person within one day shall be limited to:

- with respect to the Government Savings Bank, Bank for Agriculture and Agricultural Co-Operatives and Government Housing Bank, 15% of the total capital funds held by each of the relevant banks;
- in the case of the SME Bank, THB 500 million; and
- with respect to EXIM Bank and Secondary Mortgage Corporation, 25% of the total capital funds held by each of the relevant banks.

### **KRX to introduce member margin rules to stock markets**

The Korea Exchange (KRX) has [announced](#) that member margin rules, which have been applied to derivatives market only, will be introduced to stock markets as well to secure the settlement stability of stock markets.

Member margin is a deposit which member firms set aside to KRX for a guarantee of settlement. When members fail to meet the margin requirement or they are likely to, it will be considered as a settlement failure.

The decision is intended to meet global standards which have been established by international authorities since the global financial crisis regarding the risk managing ability of exchanges for clearing and settlement.

The plan is scheduled to be launched in June 2017.

## **CLIFFORD CHANCE BRIEFINGS**

### **Hot Topic Briefing – 'Insurtech'**

The insurance industry is often regarded as being less proactive than the banking industry in leveraging new technology, but many participants have long embraced technology and the use of 'big data' in systems and processes. What the industry has not seen a great deal of yet is the much hyped disruptor businesses.

That said 2016 saw a noticeable increase in investment by (re)insurers and third parties in insurtech projects. Technology that was once considered science fiction is fast becoming reality, from driverless cars to medical robots, but innovation can expose new legal and ethical issues which have implications for regulators, manufacturers, distributors and users of this technology.

This briefing paper discusses some of the issues affecting the rapidly evolving world of insurtech.

[https://www.cliffordchance.com/briefings/2017/01/hot\\_topic\\_briefing-insurtech.html](https://www.cliffordchance.com/briefings/2017/01/hot_topic_briefing-insurtech.html)

### **Indian Supreme Court upholds parties' choice to refer disputes to appellate arbitration**

The Indian Supreme Court in *Centrotrade Minerals & Metal Inc v Hindustan Copper Ltd* has again reinforced its pro-arbitration stance by upholding the validity of an arbitration clause that provided for recourse to an appellate arbitral tribunal. In doing so, the Court has accorded primacy to the principles of party autonomy and procedural flexibility which form the bedrock of international arbitration.

This briefing paper analyses the ruling in *Centrotrade Minerals* and the implications for parties which may consider incorporating appellate arbitration clauses into their dispute resolution provisions.

[https://www.cliffordchance.com/briefings/2017/01/indian\\_supreme\\_courtupholdspartieschoicet.html](https://www.cliffordchance.com/briefings/2017/01/indian_supreme_courtupholdspartieschoicet.html)

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