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Briefing note

# International Regulatory Update

## 19 – 23 June 2017

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- PRA consults on waiving disclosure requirements on composition of collateral for exposures to counterparty credit risk
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- Recent Clifford Chance briefings: The fintech market in Asia Pacific; and more. Follow this link to the briefings section.

**Benchmarks: EU Commission consults on Delegated Regulations**

The EU Commission has published for consultation four draft Delegated Regulations under the Benchmarks Regulation (2016/1011).

The draft Delegated Regulations relate to:

- the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds to be assessed;
- technical elements on the definitions laid down in paragraph 1 of Article 3 of the Regulation on public availability and administering the arrangements for determining a benchmark;
- the criteria of Article 20(1)(c)(iii) to be applied for assessing whether certain events would result in significant and adverse impacts on market integrity, financial stability, consumers, the real economy or the financing of households and businesses in one or more Member States; and
- the conditions to assess impacts of cessation or changing a benchmark, which sets out a non-exhaustive list of conditions to be taken into account by national competent authorities (NCAs) when considering the permission to use an existing benchmark which does not meet the requirements of the Benchmarks Regulation.

Comments on the draft Delegated Regulations are due by 20 July 2017.

**MiFID2: EU Commission consults on proposed Delegated Regulation to clarify systematic internaliser definition**

The EU Commission has published for consultation a draft Delegated Regulation amending Commission Delegated Regulation (EU) 2017/565 (MiFID2 Delegated Regulation) with respect to the systematic internaliser definition.

The Commission has drafted the proposal based on the empowerment under Article 4(2) of MiFID2, which grants the Commission the power to adopt delegated acts to specify some technical elements of the definitions laid down in Article 4(1) and it is intended to clarify the precise scope of the definition of systematic internaliser to ensure uniform application of this term and avoid circumvention. The initiative is a response to alleged industry activity that builds on current ambiguity in relation to 'trading on own account when executing client orders'.

Feedback on the proposal is due by 18 July 2017.

**EU Commission publishes feedback statement on operations of ESAs**

The EU Commission has published a feedback statement on its consultation on the operations of the European Supervisory Authorities (ESAs), which comprise the European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and European Securities and Markets Authority (ESMA), established under the three ESA Regulations. The consultation covered the ESAs':

- tasks and powers;
- governance;
- supervisory architecture; and
- funding.

**MiFIR: ESMA consults on approach to implementing trading obligation for derivatives**

ESMA has launched a consultation on its revised approach for implementing the trading obligation (TO) for derivatives under MiFIR. The consultation follows the publication of a discussion paper in September 2016.

The TO for derivatives under MiFIR is closely linked to the clearing obligation under the European Market Infrastructure Regulation (EMIR). Once a class of derivative needs to be centrally cleared under EMIR, ESMA must determine whether these derivatives, or a subset of them, should be traded on a regulated market, multilateral trading facility (MTF), organised trading facility (OTF) or an equivalent third-country trading venue. The consultation paper sets out ESMA's approach for determining which derivatives should be subject to the TO based on feedback and comments received from stakeholders responding to the discussion paper, including a proposal on how to phase-in the TO for derivatives and its approach concerning the instrument register to be maintained by ESMA.

The consultation paper also includes a new data analysis of those derivatives that are subject to the clearing obligation under EMIR, in particular fixed-to-float single currency interest rate swaps (IRS) and index credit default swaps (CDS).

ESMA's draft RTS are set out in Annex IV of the consultation paper. Comments on the consultation are due by 31 July 2017.

**MiFID2: RTS on passporting published in Official Journal**

A Commission Delegated Regulation (2017/1018) setting out regulatory technical standards (RTS) on information to be notified by investment firms, market operators and credit institutions under MiFID2 has been published in the Official Journal.

The RTS relate to notifications for the exercise of:

- the freedom to provide investment services and activities; and
- the right of establishment that apply to investment firms, market operators and, where foreseen, credit institutions.

To ensure coherence between those provisions and to facilitate a comprehensive view for firms, all RTS for notification of information required by Title II, Chapter III of MiFID2 have been set out in a single Regulation.

The Regulation will enter into force on 7 July 2017.

**MiFID2: ITS on authorisation of data reporting services providers published in Official Journal**

A Commission Implementing Regulation (2017/1110) laying down implementing technical standards (ITS) with regard to the standard forms, templates and procedures for the authorisation of data reporting services providers and related notifications under MiFID2 has been published in the Official Journal.

The Delegated Regulation is intended to ensure a common understanding and enforcement among Member States' competent authorities of the authorisation process regarding the provision of data reporting services as well as to ensure efficient information flows.

The Implementing Regulation will enter into force on 13 July 2017 and will apply from 3 January 2018.

**MiFID2: ITS on format of position reports published in Official Journal**

A Commission Implementing Regulation (2017/1093) laying down ITS with regard to the format of position reports by investment firms and market operators has been published in the Official Journal.

The ITS relate to the format of the weekly report on aggregate positions held by different categories of persons for different commodity derivatives or emissions allowances, or derivatives thereof, traded on trading venues.

The ITS will enter into force on 11 July 2017 and will apply from 3 January 2018.

**CRR: EBA consults on treatment of structural FX**

The European Banking Authority (EBA) has published a discussion paper on the application of the structural FX provision pursuant to Article 352(2) of the Capital Requirements Regulation (CRR). The consultation outlines the rationale behind the treatment of structural positions as well as broader issues related to the structural FX concept, such as the actual nature of FX risk, considering both the accounting and regulatory perspectives. The consultation also covers the potential inconsistencies in the articulation of the FX requirements in the CRR.

Comments are due by 22 September 2017.

**EBA launches 2016 CVA risk monitoring exercise and publishes draft amending technical standards on CVA proxy spread**

The EBA has announced that it has put on hold its draft guidelines on the treatment of credit value adjustment (CVA) risk under the supervisory review and evaluation process (SREP), due to continued developments in the CVA risk framework at the international level. Instead, the EBA, through its 2016 CVA risk monitoring exercise, will focus on

monitoring the impact of transactions exempted from the CVA risk charge and assessing the impact of the revised international standards on CVA risk, in particular on the scope of exempted transactions, once the standards are made public.

Institutions included in the EBA list of institutions, for which the EBA is receiving COREP submissions, are required to participate in the exercise and provide the required data by 14 September 2017. The exercise will be based on data with reference date of 31 December 2016. A short report presenting the main results of the 2015 monitoring exercise has been published alongside the launch of the 2016 exercise.

The EBA has also published draft amending RTS on CVA proxy spread under the CRR. The RTS propose limited amendments to Commission Delegated Regulation (EU) 526/2014 for determining proxy spread and limited smaller portfolios for CVA risk. In particular they specify cases where alternative approaches can be used for the purposes of identifying an appropriate proxy spread and LGDMKT.

**ECB publishes emergency liquidity assistance agreement**

The European Central Bank (ECB) has published the text of the agreement on emergency liquidity assistance (ELA), dated 17 May 2017, with the aim of further increasing transparency. ELA is intended to provide central bank money to solvent financial institutions that are facing temporary liquidity problems, outside of normal Eurosystem monetary policy operations.

The agreement sets out:

- a definition of ELA;
- the allocation of responsibilities, costs, and risks for ELA operations; and
- a framework for provision and exchanges of information and the control of liquidity effects to prevent any provision of ELA from interfering with the objectives and tasks of the European System of Central Banks (ESCB).

The document acknowledges that ELA must be in compliance with the prohibition of monetary financing under Article 123 of the Treaty on the Functioning of the European Union (TFEU).

The agreement replaces the document on ELA procedures published by the ECB in October 2013.

**EMIR: ECB amends statute to allow for enhanced powers proposed by EMIR review**

The Governing Council of the European Central Bank (ECB) has adopted a recommendation to amend Article 22 of the statute of the European System of Central Banks and of the ECB. This amendment is intended to provide the ECB with a clear legal competence in the area of central clearing, allowing the Eurosystem to exercise the powers that are foreseen for central banks issuing a currency under the European Market Infrastructure Regulation (EMIR) review.

The powers include an enhanced role for central banks of issue in the supervisory system of central counterparties (CCPs), particularly with regard to the recognition and supervision of systemically important third-country CCPs clearing significant amounts of euro-denominated transactions.

The Recommendation has been sent to the EU Parliament and the EU Council for the adoption of a Decision amending Article 22. The EU Commission will issue an opinion on the recommendation.

**Basel Committee reports on countercyclical capital buffer implementation**

The Basel Committee on Banking Supervision (BCBS) has published a document which examines how a range of jurisdictions have implemented their countercyclical capital buffer (CCyB) policies. The CCyB was introduced by BCBS as part of the Basel III reforms and is intended to help protect the banking sector from periods of excess aggregate credit growth that have been associated with a build-up of system-wide risk.

The review, which uses information gathered from a survey conducted by BCBS and its website on CCyB decisions, details various national CCyB policy frameworks and operational aspects, highlighting their various discretionary elements. It sets out the areas in which the frameworks differ markedly, such as:

- their governance structures;
- the number of indicators used to identify periods of excess credit and systemic risk;
- the degree of reliance on formal (rather than judgmental) approaches in making CCyB decisions; and
- their communication and reciprocity practices.

The document also emphasises the importance of the implementation imperative of the Basel standards and clarifies implementation of domestic CCyB policies. Finally,

the document sets out some issues that were identified in the context of the cross-jurisdiction comparisons, which the BCBS suggests could be further discussed over the medium term as experience with the CCyB policy is gained.

**IOSCO publishes report on order routing incentives**

The International Organization of Securities Commissions (IOSCO) has published its final report on order routing incentives. The report examines the regulatory conduct requirements for brokers or firms to manage conflicts of interest associated with routing orders and obtaining best execution, how these requirements interact with market practices in different jurisdictions to shape order routing incentives and how these incentives influence the behaviour of intermediaries towards their clients.

The report focuses on three primary types of incentive arrangements or commercial practices:

- monetary incentives paid or received by brokers to or from third parties;
- internalisation and use of affiliated venues for commercial benefits of a broker; and
- provision of goods and services bundled with execution by brokers, such as research.

Given the existing regulation and the forthcoming reforms (for example, under MiFID2), IOSCO has concluded no further work is currently required beyond this report.

**FSB consults on sound compensation practices**

The Financial Stability Board (FSB) has published a consultation paper setting out supplementary guidance to the FSB principles and standards on sound compensation practices. Once finalised, the guidance will aim to provide firms and supervisors with a framework to consider how compensation practices and tools, such as in-year bonus adjustments, malus and clawback, can be used to reduce misconduct risk and address misconduct incidents.

The consultation highlights considerations that are relevant for firms and supervisors in terms of governance of compensation and misconduct risk, effective alignment of compensation and misconduct risk and supervision of compensation and misconduct risk.

Comments are due by 20 August 2017.

**Chancellor delivers Mansion House speech and BoE Governor discusses liberalising services**

The Chancellor of the Exchequer, The Rt Hon Philip Hammond MP, has delivered the annual Mansion House speech. Among other things, the Chancellor discussed Brexit, including an overview of the Government's objectives for the negotiations:

- securing a comprehensive agreement for trade in goods and services;
- negotiating mutually beneficial transitional arrangements; and
- agreeing frictionless customs arrangements to facilitate trade across borders, including the land border on the island of Ireland.

The Chancellor commented that meeting these objectives may involve the deployment of new technology and called for an implementation period, outside the Customs Union, but with current customs border arrangements remaining in place until new-long term arrangements are ready.

The speech also focussed on the financial services sector, in particular seeking to address concerns about oversight of financial markets once Britain leaves the EU, including the EU Commission's proposal on supervision of central counterparties (CCPs). The Chancellor set out his view that avoiding fragmentation of financial services would be of benefit to the economies of Europe and set out three principles for approaching the challenge of fragmentation:

- a new process for establishing regulatory requirements for cross-border business between the UK and the EU reflecting international standards;
- reciprocal cooperation arrangements that prioritise financial stability, which enable timely and coordinated risk management on both sides; and
- a permanent, reliable basis for the firms regulated under these regimes.

Following the Chancellor's speech, the Governor of the Bank of England, Mark Carney, delivered his speech focussing on the challenge of global imbalances. Among other things, the speech called for a global examination of trade in services as a potential solution to current trade and current account imbalances. He highlighted his view that Brexit in general and financial services in particular may be key tests for the global capacity to build a path to stronger, more sustainable growth.

The speech highlighted the barriers to liberalising services and set out how global standards and regulatory cooperation could help, especially in light of international minimum standards and intensified supervisory cooperation relating to the post-crisis financial reforms. Dr. Carney focussed on the specific example of CCPs in London and set out the view that an innovative, cooperative and

reciprocal agreement on central clearing would promote competitive financing in the euro area and maintain the resilience of the UK and global financial systems.

**MiFID2: Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 laid before Parliament**

The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (SI 2017/701) have been laid before Parliament. The Regulations are the 'main regulations' referred to in HM Treasury's (HMT's) transposition note on MiFID2 published in February 2017.

The Regulations implement parts of MiFID2 and MiFIR in the UK and, among other things, designate the Financial Conduct Authority (FCA), Prudential Regulation Authority (PRA) and Bank of England (BoE) as the competent authorities in the UK responsible for carrying out the duties of competent authorities under MiFID2 and MiFIR. The Regulations also contain amendments to the Financial Services and Markets Act 2000 (FSMA), secondary legislation made under FSMA and other primary and secondary legislation in order to implement MiFID2/MiFIR, as well as minor amendments to the Companies Act and Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 relating to the implementation of the Market Abuse Regulation (MAR).

The Regulations will come into force on the dates set out in Section 1, with certain provisions coming into force on 29 June 2017, 3 July 2017 and 31 July 2017; the Regulations will come into force for all other purposes on 3 January 2018.

**MiFID2: Data Reporting Services Regulations 2017 laid before Parliament**

The Data Reporting Services Regulations 2017 (SI 2017/699) have been laid before Parliament. The Regulations implement the authorisation and organisational requirements for data reporting service providers (DRSPs) under Title V of MiFID2 by creating a new regulatory regime.

The new regime applies to approved publication arrangements (APAs), consolidated tape providers (CTP) and approved reporting mechanisms (ARMs) and governs their verification, authorisation and supervision by the Financial Conduct Authority (FCA). The FCA is also granted powers to enforce the new regime as required under Title VI.

The Regulations come fully into force on 3 January 2018. Some provisions are subject to early commencement on 3 July 2017 (see regulation 2), such as those that ensure that the FCA has the necessary powers to authorise or vary the permission of firms undertaking data reporting services under MiFID2.

**MiFID2: FCA reminds firms to apply for permissions now**

The FCA has called on firms to submit applications for permissions under MiFID2 as a matter of urgency. The FCA's statement highlights that most applications are not complete when they are submitted, and that firms should submit applications as a matter of urgency in order to help the FCA identify any further information that is required to complete the application.

As a result of MiFID2, firms should submit a complete application for authorisation or variation of permission. The FCA cannot guarantee that any application completed after 3 July 2017 will be determined by 3 January 2018. The statement sets out the consequences for firms who undertake regulated activities without the required permissions under the Financial Services and Markets Act 2000 (FSMA), which may face civil, regulatory and/or criminal consequences.

Firms affected by MiFID2 are encouraged to refer to the FCA's application and notification user guide and direct any questions to the FCA.

**Benchmarks Regulation: FCA consults on changes to Handbook**

The FCA has published a consultation paper (CP17/17) on changes to the Handbook in line with the Benchmarks Regulation. The changes mostly involve removing domestic rules that are superseded by the Benchmarks Regulation.

Some of the key proposals will impact:

- the Approved Persons Regime (APR) and Senior Managers Regime (SMR);
- prudential requirements;
- notifications of suspected manipulation;
- rights to make representations about compulsion decisions;
- third country contributors; and
- applications.

Comments are due by 22 August 2017.

**PRA consults on recovery planning**

The PRA has published a consultation paper (CP9/17) proposing a new supervisory statement (SS) to replace SS18/13 'Recovery Planning' and amendments to SS8/16 'Ring-fenced Bodies (RFB)'.

The proposals, which are relevant to UK banks, building societies, PRA-designated investment firms and qualifying parent undertakings to which the PRA Rulebook's Recovery Planning Part applies, relate to:

- key recovery plan components and considerations;
- recovery planning for UK subsidiaries of non-EU banks; and
- clarifying the PRA's expectations with regard to recovery planning for groups containing an RFB.

The consultation closes on 12 September 2017 and the PRA intends to publish a final policy statement in the second half of 2017.

**PRA consults on waiving disclosure requirements on composition of collateral for exposures to counterparty credit risk**

The PRA has launched a consultation on proposals to waive the requirement to disclose the template 'EU CCR5-B – Composition of collateral for exposures to CCR' (CCR5-B) of the EBA's guidelines on disclosure requirements under Part Eight of the CRR. The proposals are:

- the establishment of a quantitative threshold for waiving disclosure of CCR5-B for firms when either collateral received or collateral posted is below the threshold;
- the PRA's expectation on the measure to be used to monitor compliance with the threshold;
- the establishment of principles for firms to consider when determining whether to exercise discretions on disclosure, including the effectiveness of covert liquidity assistance and the benefits of the lag in disclosure of liquidity assistance; and
- the removal of Supervisory Statement SS11/14 'CRD IV: compliance with the European Banking Authority's Guidelines on disclosure of encumbered and unencumbered assets' when new EBA RTS on disclosure of encumbered and unencumbered assets come into force.

Through these proposals the PRA intends to reduce the risk that firms' compliance with the EBA guidelines could enable the use or non-use of liquidity assistance to be deduced.

The proposed waiver will apply to disclosures from 31 December 2017, when the EBA guidelines are implemented.

Comments on the proposals are due by 21 August 2017.

**EMIR: BaFin publishes draft circular specifying information to be provided under Art. 32 para. 4**

The German Federal Financial Supervisory Authority (BaFin) has published a list specifying the information which has to be provided when notifying the intention to acquire or dispose of a qualifying holding in a CCP or to increase or decrease a holding reaching or exceeding 10%, 20%, 30%, 50% or falling below such thresholds.

The list is important for the supervisory authorities to assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition pursuant to Art. 32 of the European Market Infrastructure Regulation (EMIR).

The consultation period ends on 30 July 2017.

**Legislative decree implementing AMLD 4 published in Italian Official Gazette**

Legislative Decree No. 90 of 25 May 2017, implementing Directive 2015/849/EU on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directives 2005/60/EC and 2006/70/EC and implementing Regulation 2015/847/EU on information accompanying transfers of funds and repealing Regulation No. 1781/2006/EC, has been published in Ordinary Supplement No. 28 of the Official Gazette of the Italian Republic (Gazzetta Ufficiale della Repubblica Italiana) No. 140.

The legislative decree establishes stricter provisions concerning the fight against money laundering and terrorist financing. Amongst other things, it:

- strengthens the role of the Anti-mafia and Antiterrorism Directorate (Direzione antimafia e antiterrorismo);
- extends the category of 'politically exposed person' in order also to capture mayors of municipalities with more than 15,000 inhabitants and the top management of companies these municipalities invest in; and
- reorganises the administrative sanctions regime into a system of effective, proportionate and dissuasive measures.

The legislative decree will enter into force on 4 July 2017.

**ELTIFs: Italian Ministry of Economy and Finance consults on draft legislative decree adapting national legislation**

The Ministry of Economy and Finance has launched a public consultation regarding a draft legislative decree intended to adapt national legislation to the provisions of Regulation (EU) 2015/760 on European long-term investment funds (ELTIFs).

Comments are due by 11 July 2011.

**Parliamentary committee of inquiry on banking and financial system established in Italy**

The Italian Chamber of Deputies has approved a draft law – previously approved, as a consolidated text, by the Senate – concerning the establishment of a parliamentary committee of inquiry on the banking and financial system.

Amongst other things, the committee will investigate:

- the effects arising from the global financial crisis and the consequences of the worsening in the sovereign debt;
- the management of credit institutions which are or have been recipients – including indirectly – of public resources, or have undergone recovery and resolution mechanisms;
- the effectiveness of the supervisory activities for the bank and financial system, conducted by the competent authorities, with regard to protection of savings, arrangements for the implementation of rules and instruments of governance – specifically concerning the application and the suitability of interventions, sanctioning powers and instruments of governance – as well as the suitability of risk management and market transparency protection; and
- the adequacy of the national and European legal and regulatory framework concerning the banking and financial system as well as compliance, with the aim of preventing and managing banking crises.

**New Luxembourg law implementing Payment Accounts Directive published**

A new law of 13 June 2017 implementing Directive 2014/92/EU on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (Payment Accounts Directive) and modifying the Luxembourg law of 15 December 2000 on postal financial services (as amended) has been published in the Luxembourg official journal (Mémorial A).

The law establishes rules on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, in particular:

- the right for all consumers legally residing in the EU to open a payment account with a credit institution or payment service provider offering services in Luxembourg in order to perform essential operations, such as receiving their salary, pensions and allowances or payment of utility bills etc.;
- easier comparison of fees charged for payment accounts in Luxembourg through standardised documentation and guaranteed access to fee comparison via the website of the Luxembourg supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF); and
- a new procedure for switching payment accounts to another service provider in Luxembourg, and facilitating the process of closing a Luxembourg bank account and opening it in another Member State.

Furthermore, the CSSF has been empowered as the Luxembourg competent authority to ensure the application and enforcement of the law.

The law entered into force on 18 June 2017, subject to certain rules of transitional application.

**AMAC seeks public comments on investor suitability management of fund distributors**

The Asset Management Association of China (AMAC) has published a consultation draft of the Implementing Guidelines on the Investor Suitability Management of Fund Distributors (for Trial Implementation).

The following aspects of the guidelines are worth noting:

- the guidelines will apply to fund managers and other licensed fund distributors who publicly or privately distribute fund products or provide relevant services (Fund Distributors);
- Fund Distributors are required to establish suitability management policies, including mechanisms for investors classification, fund products/services risk assessment and suitability matching of fund products/services and investors;
- investors should be classified into professional investors and general investors. Professional investors

include (i) financial institutions, subsidiaries of securities companies, subsidiaries of futures companies and private fund managers that have duly filed or registered with the relevant industry associations; (ii) investment products duly issued by institutions under (i); (iii) pension funds, social security funds, QFIIs and RQFIIs; and (iv) other entities, organisations and individuals that satisfy a set of eligibility requirements in terms of assets volume, securities investment experience, etc. General investors are non-professional-investors that may invest in funds;

- Fund Distributors shall determine the risk level of the funds products/services by taking into consideration relevant factors such as (i) the governance structure, capitalisation, internal control and risk control measures of the fund managers, and (ii) the investment objective, performance record, valuation and pricing mechanism and leverage arrangement of the fund products/services; and
- Fund Distributors shall determine and carry out suitability matching between fund products/services and investors.

Comments were due by 21 June 2017 and the effective date set out in the draft guidelines is 1 July 2017.

**PBoC issues Bond Connect rules**

The People's Bank of China (PBoC) has issued the Interim Administrative Measures on the Connection Cooperation for the Mainland and Hong Kong Bond Markets, which set out the fundamental legal structure for the Bond Connect program. The Interim Measures are substantially the same as the consultation draft circulated by PBoC in May 2017.

The following points in the Interim Measures are worth noting:

- the Interim Measures apply to northbound trading. As for southbound trading, separated rules will be issued;
- trading and settlement activities should comply with the regulations and business rules of the jurisdiction where such activities take place;
- overseas investors investing in the China inter-bank bond market (CIBM) through the Bond Connect shall trade through trading platforms recognised by PBoC and hold their bonds through a nominee account structure;
- the onshore bond depository and settlement institutions provide delivery-versus-payment (DvP) settlement services;
- overseas investors can invest both RMB and foreign exchange currencies in CIBM. For investments in foreign currencies, the relevant RMB purchase and sale activities should be handled through qualified Hong Kong RMB clearing banks and participation banks; and
- cross-border regulatory cooperation will be established to regulate business activities and combat non-compliance under the Bond Connect.

**ASIC consults on proposed guidance on crowd-sourced funding**

The Australian Securities and Investments Commission (ASIC) has released two consultation papers which propose guidance for public companies and intermediaries (such as equity crowd funding platforms) which will assist with using the new crowd-sourced funding (CSF) regime commencing on 29 September 2017.

The new CSF regime will enable eligible public companies (unlisted public companies limited by shares with annual turnover or gross assets up to AUD 25 million) to make offers of ordinary shares to investors using online platforms set up by Australian financial services licensed intermediaries.

The new CSF regime, in limiting its scope to only certain public companies, will mean that more than 99.7% of currently registered companies are excluded. The Federal Government is presently conducting a public consultation on extending the CSF regime to proprietary companies (the most common type of company in Australia).

**Japan and Australia cooperate on fintech**

The ASIC and the Japan Financial Services Agency (JFSA) have completed a framework for co-operation to promote innovation in financial services in Japan and Australia. The new framework will enable ASIC and the JFSA to share information and support the entry of new fintech businesses into each other's markets.

The new co-operation framework follows the entry by ASIC into a number of referral and information-sharing agreements, including with the MAS, UK FCA, Ontario Securities Commission and HK SFC.

## RECENT CLIFFORD CHANCE BRIEFINGS

**The fintech market in Asia Pacific**

The use of technology to deliver, enhance or 'disrupt' financial services is transforming the sector. This briefing paper is designed to assist navigation of the complex regulatory framework for fintech products across Asia Pacific.

https://www.cliffordchance.com/briefings/2017/06/the_fintech_marketinasiapacific.html

**English law choice prevails over foreign mandatory laws**

The ability to use foreign mandatory law to escape from the consequences of an English law contract is very limited. In particular, the use of an international standard form of contract may on its own be enough to prevent the application of a foreign law.

This briefing paper discusses the Court of Appeal's decision in Dexia Crediop SpA v Comune di Prato [2017] EWCA Civ 428.

https://www.cliffordchance.com/briefings/2017/06/english_law_choiceprevailsoverforeig.html

**Supreme Court continues its restrictive approach to personal jurisdiction, barring 'mass actions' by plaintiffs from multiple states against an out-of-state corporate defendant**

On 9 June 2017, continuing a trend, the US Supreme Court issued an opinion that once again clarified – and narrowed – the sorts of contacts that can subject a defendant to personal jurisdiction in a specific state, a constitutional requirement in all US litigation.

This briefing paper discusses the Supreme Court's decision in Bristol-Myers Squibb Company v. Superior Court of California.

https://www.cliffordchance.com/briefings/2017/06/supreme_court_continuesitsrestrictiveapproac.html