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Briefing note

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Estonian Presidency of the EU Council publishes work programme

The Estonian Presidency of the EU Council has published its work programme for 1 July 2017 – 31 December 2017, alongside specific programmes for the work of the Economic and Financial Affairs Council (Ecofin) and Justice and Home Affairs Council (JHA). Among other things, the Estonian Presidency intends for the work of the EU Council to build on the European Council's strategic agenda and the common goals formulated at the European Council summit in Rome, where the Rome Declaration was endorsed.

In its Ecofin work programme, the Estonian Presidency sets out its objectives to:

- encourage economic growth by restoring investment levels and removing barriers;
- ensure a competitive and fraud-proof tax environment; and
- secure an EU budget that contributes to the EU's priorities.

During the Estonian Presidency, Ecofin's activities will be divided into five groups:

- Banking Union and Capital Markets Union;
- taxation;
- EU budget and related issues;
- economic management of Europe; and
- future financing of the EU and the Economic and Monetary Union (EMU).

On the Banking Union, the Estonian Presidency intends to proceed with the risk reduction package while also laying the ground for establishing the European deposit insurance system (EDIS). The Presidency aims to reach a political agreement with the EU Parliament on certain urgent issues, including the hierarchy of creditors and the transition to IFRS 9, and reach a general approach in the Council on other parts of the risk reduction package. The Presidency also intends to progress with the Capital Markets Union (CMU), proposals resulting from the review of the European Market Infrastructure Regulation (EMIR) and proposals resulting from the review of micro- and macro-prudential supervision.

In relation to taxation, the Presidency intends to continue discussions relating to the proposal for a Council Directive on a Common Corporate Tax Base (CCTB), including an assessment of the impact of CCTB on tax revenues, competitiveness and the attractiveness of tax systems. The Presidency would also like to initiate a discussion on the challenges to achieving fair taxation of the digital economy.

The Estonian Presidency will also initiate discussions on the EU Commission's White Paper on the future of the EU, published in March 2017, in order to provide input to the possible exchange of views in the European Council in December 2017.

Capital Markets Union: EU Council publishes conclusions on mid-term review

The EU Council has published its conclusions on the EU Commission's mid-term review of the Capital Markets Union Action Plan.

Amongst other things, the EU Council has renewed its commitment to the action plan, which is aimed at securing the Capital Markets Union by the end of 2019. The conclusions also reconfirm the plan's priorities, which are to:

- attract more investment, including foreign investment, for European companies and infrastructure projects; and
- improve access to finance, in particular for European SMEs and start-ups, and especially in innovative industries.

The EU Council has welcomed the EU Commission's upcoming assessment of a potential EU framework for fintech, and also encourages the Commission to assess options for a modern framework for the resolution of investment disputes.

EU Council agrees action plan for non-performing loans

The EU Council has adopted conclusions on an action plan to address the problem of non-performing loans (NPLs).

The action plan aims to reduce stocks of NPLs and to prevent their future emergence. On the basis of a report prepared by a sub-group of the EU Council's financial services committee, the conclusions acknowledge the need for action regarding:

- bank supervision;
- the reform of insolvency and debt recovery frameworks;
- the development of secondary markets for NPLs; and
- restructuring of the banking industry.

The EU Council has invited EU institutions to carry out work on NPLs and intends to revert to the issue regularly, to take stock of the evolution of NPLs in Europe and to assess any progress which is made.

EU Commission consults on possible legislative measures on secondary markets for NPLs and protection of secured creditors from borrowers' default

The EU Commission has launched a consultation on the development of secondary markets for NPLs and distressed assets, and on the protection of secured creditors from borrowers' default.

The consultation relates to possible legislative measures on:

- the development of secondary markets for non-performing loans and distressed assets, which includes the loan servicing by third parties and the transfer of loans; and
- the protection of secured creditors from borrowers' default, specifically regarding the establishment of a new security right, labelled 'accelerated loan security'.

The consultation follows the Capital Markets Union Mid-term Review, which set out the Commission's intention to address the issue of NPLs, with an aim to allow banks to sell their NPLs to a larger pool of investors which may potentially lead to transaction prices that better reflect the underlying value of the assets.

Comments are due by 20 October 2017.

MiFID: EU Commission adopts RTS for proposed acquirers of investment firms

The EU Commission has published a Delegated Regulation setting out an exhaustive list of information to be provided by proposed acquirers of a qualifying holding in an investment firm.

The technical standards are based on draft standards submitted by the European Securities and Markets Authority (ESMA) on 23 March 2015. The RTS deal with the assessment of acquisitions and increases in qualifying holdings in investment firms under Article 10a(8) of MiFID1, which are applicable for the purposes of MiFID2.

Articles 2 to 12 of the Regulation detail the information to be provided by the proposed acquirer to the competent authority of the target entity, varying in accordance with the nature of the acquirer (legal person, natural person or trust) and the proposed acquisition. Article 13 sets out the reduced information requirements.

The information is aimed at ensuring that competent authorities are able to assess the acquisition and must be provided by the proposed acquirer at the time of initial notification.

MiFID2: ESMA consults on suitability guidelines

The European Securities and Markets Authority (ESMA) has launched a consultation on proposed guidelines on certain aspects of MiFID2 suitability requirements. The assessment of suitability forms part of the MiFID investor protection framework and the consultation paper builds on the text of the guidelines on suitability under MiFID1 issued in 2012, which have been substantially confirmed.

The draft guidelines are intended to implement certain aspects of MiFID2 suitability requirements and clarify and refine the 2012 guidelines where necessary. The consultation also seeks to broaden the guidelines in relation to:

- recent technological developments of the advisory market, including the increasing use of robo-advice;
- insights from studies in the field of behavioural finance; and
- ensuring the results of supervisory activities conducted by national competent authorities (NCAs) on suitability requirements are given relevance.

Comments on the consultation are due by 13 October 2017. ESMA expects to publish its final report in the first half of 2018.

Brexit: ESMA issues sector specific opinions on relocations from UK to EU27

ESMA has published three opinions setting out sector-specific principles aimed at supporting supervisory convergence in the context of requests from UK financial market participants seeking to relocate to the EU27. The sector specific opinions relate to investment management, investment firms and secondary markets and build on the general, cross-sectoral opinion published by ESMA in May 2017. The opinions are addressed to national competent authorities (NCAs) and are relevant for market participants considering relocating.

The opinions set out principles that seek to address regulatory and supervisory arbitrage risks related to relocation of entities, activities and functions following the UK's withdrawal from the EU, in particular relating to:

- investment management, based on the objectives and provisions of the UCITS Directive and Alternative Investment Fund Managers Directive (AIFMD) – this opinion addresses:
  - authorisation;
  - governance and internal control;
  - delegation; and
  - effective supervision;
- investment firms, based on the objectives and provisions of the MiFID framework – this opinion should also be read, where appropriate, together with the sector-specific opinion on secondary markets, and addresses:
  - authorisation;
  - substance requirements, including governance and outsourcing; and
  - effective supervision; and
- secondary markets – this opinion relates to trading venues relocating to the EU27 and seeking to outsource activities to their jurisdiction of origin, and in particular:
  - outsourcing arrangements;
  - due diligence;
  - substance of outsourcing of key and important activities to third countries;
  - performance of key and important activities in the EU27;
  - non-EU branches; and
  - effective supervision of outsourcing arrangements with third-country service providers.

ESMA writes to EU Commission on third-country regimes for financial services

ESMA has written to the EU Commission setting out its views on recent proposals for improvements in how the EU deals with third countries in the area of financial services.

ESMA takes note of the recent legislative proposal to amend EMIR, specifically as regards the requirements for the recognition of third country CCPs. ESMA believes that enhancing the implementation and monitoring of the equivalence decisions on third country regimes and regular monitoring of the relevant third country regulatory and supervisory framework by ESMA represents a significant improvement.

Mindful of the impacts of the UK's exit from the EU and the emergence of certain third country entities with a potential impact on EU financial stability, ESMA has invited the Commission to consider whether similar proposals should be considered for other market infrastructures, such as third country regimes for credit rating agencies, trade repositories, benchmarks, and possible trading venues and data providers. ESMA has offered its technical expertise to the Commission to assist in detailing the criteria to determine different risk categories for each type of entity and the corresponding regimes for each category.

EMIR: ESMA publishes final report on draft RTS on publication of derivatives data by trade repositories

ESMA has published its final report on technical standards on data to be made publicly available by trade repositories (TRs) under Article 81 of EMIR.

The draft RTS define the operational standards for aggregation and comparison of aggregate position data across TRs and aim to ensure that the market activity in derivatives traded both on and off venue is correctly identified and aggregated. The draft RTS set out several additional requirements to better specify and enhance the data quality made available publicly by TRs and also to allow the publication of certain aggregate figures for market participants that are required by EU regulations such as MiFID2 and the Benchmarks Regulation.

ESMA has submitted its final draft technical standards to the EU Commission, which has three months to decide whether or not to endorse them.

CSDR: ESMA consults on internalised settlement reporting guidelines

ESMA has published draft guidelines on internalised settlement reporting and the exchange of information between ESMA and competent authorities regarding internalised settlement under the Central Securities Depositories Regulation (CSDR).

Internalised settlement refers to transactions settled outside securities settlement systems operated by central securities depositories (CSDs). Each quarter, the CSDR requires settlement internalisers to report to the CSD national competent authorities (NCAs) in their jurisdiction the aggregated volume and value of all securities transactions that they settle outside securities settlement systems. CSDR Implementing Regulation (EU) 2017/393 specifies the templates and procedures for reporting and transmitting information on internalised settlement.

In order to ensure the common, uniform, and consistent application of Article 9 of the CSDR, ESMA has issued draft guidelines on internalised settlement reporting and on the exchange of information between NCAs and ESMA regarding internalised settlement. The draft guidelines aim to clarify the scope of the data that should be reported by settlement internalisers and the types of transactions and operations that should or should not be included.

Comments to the consultation are due by 14 September 2017. ESMA will consider the feedback it receives to the consultation and plans to finalise the guidelines by Q1 2018.

PSD2: EBA publishes final guidelines on authorisation and registration and on minimum monetary amount of indemnity insurance

The European Banking Authority (EBA) has published its final guidelines on the information to be provided by applicants intending to obtain authorisation as payment and electronic money institutions as well as to register as account information service providers (AISP) under the revised Payment Services Directive (PSD2).

The guidelines specify the detailed documentation that applicants are required to submit to national competent authorities for the purpose of authorisation as payment institutions or registration as AISPs. The guidelines are structured into four separate sets according to the type of services an applicant intends to provide:

- payment institutions;
- AISPs;
- electronic money institutions; and
- competent authorities.

Following feedback received from external stakeholders, the EBA streamlined the guidelines compared to the version proposed during the consultation, and further clarified the scope of the four separate sets as well as the application of proportionality for the purpose of these guidelines.

The EBA has also published its final guidelines on the criteria to be considered when stipulating the minimum monetary amount of the professional indemnity insurance (PII) or comparable guarantee for payment initiation and account information service providers under PSD2.

The guidelines set out criteria, indicators, calculation methods and a formula that competent authorities should use when granting authorisation to undertakings applying for the provision of payment initiation and/or approving the registration of undertakings applying for the provision of account information.

The guidelines will apply from 13 January 2018.

IFRS 9: ECON Committee backs five year transition

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has approved a five year phase-in period for the new International Financial Reporting Standard on financial instruments (IFRS 9).

In a vote on the proposed regulation on transitional provisions mitigating the introduction of IFRS 9, the ECON Committee approved the transition period in order to limit the impact on banks' own funds and large exposure treatment. It also approved:

- a dynamic approach to calculating the amount to be added back to the common equity tier 1 (CET1), which

allows for adjustments in accordance with portfolio changes and for risk to be re-assessed each year; and

- a three-year phase-out of the large exposure limit exemption for banks' exposures to public sector debt denominated in the currency of any other Member State.

The transition arrangements are needed from 1 January 2018, when IFRS 9 starts to apply. The ECON Committee therefore voted in favour of separating the proposed regulation from the EU Commission's broader review of the Capital Requirements Regulation (CRR).

Trilogue negotiations between the Parliament, the EU Council and the EU Commission are planned for late September/early October 2017.

European Union (Withdrawal) Bill given First Reading

The European Union (Withdrawal) Bill, also known as the Repeal Bill, has been introduced to the House of Commons and given its First Reading. The Bill will repeal the European Communities Act 1972 and convert existing EU law which applies directly, including EU Regulations and decisions, into domestic law as it applies in the UK on the date of the UK's exit from the EU. The Bill will also preserve the laws made in the UK to implement EU obligations, such as laws made to implement EU Directives.

Moreover, the Bill provides for temporary powers to correct deficiencies in the retained EU law where it does not function effectively as a result of leaving the EU, with corrections to be made by statutory instruments (SIs) under the powers in the Bill. SIs will need to have passed through the appropriate Parliamentary procedures before the UK leaves the EU.

The Bill is also intended to ensure that any question as to the meaning of EU-derived law will be determined in the UK courts by reference to Court of Justice of the European Union (CJEU) case law as it exists on the day the UK leaves the EU. The Bill provides that historic case law be given the same binding, or precedent, status in UK courts as decisions of the Supreme Court or (in relation to criminal cases in Scotland) the High Court of Justiciary.

The Government intends that the Repeal Bill will provide as much certainty and continuity as possible for businesses, workers and consumers. Alongside the Bill, the Department for Exiting the EU (DExEU) has published a series of factsheets, which cover:

- converting and preserving law;
- the correcting power;
- power to implement the withdrawal agreement;
- devolution;
- the Charter of Fundamental Rights;
- workers' rights;
- environmental protections; and
- consumer protections.

FCA consults on listing of sovereign controlled companies

The Financial Conduct Authority (FCA) has published a consultation paper (CP17/21) on creating a new premium listing category for sovereign controlled companies. The proposal aims to enable companies which may be subject to major privatisation transactions to choose the higher standards of premium listing, rather than standard listing.

By providing a distinct listing category for these companies, the FCA hopes to improve access to the UK market. The new premium listing category would include the full suite of investor protection applicable to companies in the existing premium listing category with two modifications:

- the related party rules would operate on a modified basis – the sovereign controlling shareholder would not be considered a related party for the purposes of the UK listing rules; and
- the controlling shareholder rules would not apply to companies in the new category in respect of the sovereign controlling shareholder.

The new listing category would also be open to companies who want to list in the form of Depositary Receipts (DRs).

FCA publishes statement on ESMA transitional provisions for the Benchmarks Regulation

The FCA has published a statement on ESMA transitional provisions for the EU Benchmark Regulation.

The statement highlights that the set of questions and answers (Q&As) published by ESMA in relation to the transitional provisions for the Benchmarks Regulation provide an important clarification for the industry, and will inform decisions on when to apply for authorisation or registration from January 2018 to December 2019. The FCA can approve applications from index providers and send information to the ESMA Registry from January 2018.

PSD2: FCA consults on authorisation, registration and reporting forms

The FCA has launched a consultation on authorisation, registration and reporting procedures under PSD2. In particular, the FCA is proposing to amend the FCA

Handbook to introduce new reporting and record keeping requirements for payment service providers, and new registration and authorisation forms, which are to be used by payment and e-money institutions to reflect the new authorisation and registration requirements of PSD2. This includes draft forms for existing payment and e-money institutions that will need to be re-authorised or re-registered under PSD2.

Comments are due by 18 August 2017.

BoE publishes third round results of Fintech Accelerator

The Bank of England (BoE) has published summaries of the third round of proofs of concept completed by its Fintech Accelerator.

The Fintech Accelerator works in partnership with innovative firms working on new technology to harness fintech innovations for central banking. The third round of proofs of concept covered four areas of the BoE's work:

- analysing large-scale supervisory data sets;
- executing high-value payments across currencies and borders;
- identifying and applying cross-cutting legal themes from regulatory enforcement actions; and
- measuring performance on the BoE's internal projects portfolio.

The Fintech Accelerator invited applications for its fourth round of proofs of concept in April 2017 and aims to announce the successful firms shortly.

PRA consults on Pillar 2 liquidity and Pillar 2A capital requirements and disclosure

The Prudential Regulation Authority (PRA) has published a consultation paper (CP13/17) on assessing firms' liquidity risk under the Pillar 2 liquidity framework. The proposals include:

- the creation of a cashflow mismatch risk (CFMR) framework to ensure effective monitoring of a firm's liquidity risk profile in stress; and
- providing firms with transparency by setting out the PRA's methodologies for assessing liquidity risks that are not captured, or not fully captured, in Pillar 1.

CP13/17 also seeks early views on aspects of the calibration of overall liquidity requirements (which will be consulted on in a third consultation paper), and outlines how feedback on CP21/16 on the Pillar 2 framework was taken into account. The consultation closes on 13 October 2017.

The PRA has also published a consultation paper (CP12/17) on proposed adjustments to its Pillar 2A capital framework, covering three areas:

- setting Pillar 2A capital as a requirement rather than as guidance (a 'Pillar 2A capital requirement'), and the introduction of the term 'Total Capital Requirement' (TCR);
- revising the PRA's capital disclosure policy; and
- clarifying when and how Pillar 2A capital requirements may be set at individual level.

The proposals are set out as amendments to SS31/15 and the PRA's Statement of Policy (SoP), which the PRA proposes to apply from 1 January 2018.

The consultation closes on 12 October 2017.

German Federal Council comments on the EU Commission's legislative proposal on targeted reforms to EMIR

The German Federal Council (Bundesrat) has commented on the EU Commission's legislative proposal on targeted reforms to EMIR. Generally, the Bundesrat welcomes the EU Commission's targeted reforms, which are intended to improve the functioning of the derivatives market in the EU and provide simpler and more proportionate rules for OTC derivatives.

The Bundesrat invites the German Federal Government to discuss with the EU Commission whether EMIR could also be amended in a way which would encourage direct clearing models for more institutions. The Bundesrat has expressed concern that a concentration of few major direct clearing members may create a risk to financial stability.

CONSOB consults on amendments to Crowdfunding Regulation

The Commisione Nazionale per la societa e la borsa (CONSOB) has launched a consultation on a set of proposed amendments to Regulation no. 18592 of 26 June 2013 on the collection of risk capital through online portals (crowdfunding) (the Crowdfunding Regulation). These proposed amendments are intended to adapt Consob second-level regulations on crowdfunding to the new first-level provisions introduced by Law no. 232 of 11 December 2016 (Budget Law 2017), which made certain amendments to the Italian Financial Act (Legislative Decree no. 58/1998), and by the draft legislative decree implementing MiFID2,

which envisages further amendments to the provisions of the Italian Financial Act on the collection of risk capital through online portals.

Amongst other things, the amendments include:

- a new article 7-bis of the Crowdfunding Regulation, which states that for the purposes of registering and remaining in the ordinary section of the register of online portal managers, adherence to an indemnity system for investor protection or an insurance policy covering against civil liability for damages resulting from professional negligence is necessary;
- changes to Article 13 of the Crowdfunding Regulation governing conflicts of interest, which has been strengthened in line with the MIFID2; and
- confirmation of the minimum subscription, for the purpose of completing the offer, of a portion equal to at least 5% of the financial instruments offered by qualified investors.

Comments are due by 21 August 2017.

CONSOB consults on amendments to Intermediaries' Regulation to implement MiFID2 in Italy

CONSOB has launched a public consultation on proposed amendments to the Intermediaries' Regulation (Consob Regulation no. 16190/2007), which are intended to give full implementation to MiFID2.

In particular, the amendments will transpose into local regulations the provisions on:

- product governance and inducements; and
- investor protection and the knowledge and competence of investment firms' staff.

Comments are due by 21 August 2017.

Polish Ministry of Development and Finance presents bill on amendment of Act on Financial Market Supervision and Certain Other Acts

The Ministry of Development and Finance has presented a bill on the amendment of the Act on Financial Market Supervision and Certain Other Acts, which provides for:

- the maintaining by the Polish Financial Supervision Authority of a register of internet domains used by entrepreneurs included in the list of public warnings (there will be an obligation for telecommunications companies providing internet services to block such domains);
- the aggravation of criminal liability for conducting unauthorised business activity consisting in trading in financial instruments in cases where the consequence of the prohibited act is the disadvantageous disposal of property by the harmed person; and
- the increase from 1% to 4% of the current margin deposit required for orders to buy or sell derivatives submitted by retail customers on the forex market.

The bill has been submitted for interdepartmental and public consultations.

PFSA issues communiqué on impact of regulations on countering tax avoidance on issuers' financial statements

The Polish Financial Supervision Authority (PFSA) has issued a communiqué which draws attention to the impact of regulations implementing the clause on countering tax avoidance on the reporting obligations with respect to the preparation of consolidated financial statements and financial statements of issuers of securities.

Among other things, the PFSA underlines:

- the obligation to include information on events related to the finding by the tax authorities of the use of aggressive tax optimisation techniques in periodic reports, and the obligation to prepare financial statements in a true and fair manner; and
- the importance of the requirements set out in the International Accounting Standards (IAS) 12 "Income Taxes" regarding the recognition and valuation of assets in terms of deferred tax liabilities.

MiFIR: CNMV publishes operational guide for transaction reporting

The Spanish National Securities Market Commission (Comisión Nacional del Mercado de Valores) (CNMV) has published an operational guide for transaction reporting under MiFIR, which complements the reporting instructions issued by the European Securities and Markets Authority (ESMA) in October 2016 and implements operational rules for the interaction between reporting entities and the CNMV under Article 26 of MiFIR.

Article 26 of MiFIR establishes, as of 3 January 2018, an obligation for investment firms and credit institutions to communicate to the CNMV complete and accurate data of transactions carried out in financial instruments as soon as possible or, at the latest, on the following business day.

The main purpose of the operational guide is to facilitate an understanding of this transaction reporting system and how it works and resolve possible uncertainties.

The operational guide does not deal with the detailed description of the items of information to be included in each transaction, as these have already been defined in CDR 590/2017, in the ESMA reporting instructions and in the validation rules. What the operational guide describes are the different communication channels that an entity has to report its transactions, the flow of data files with the CNMV, as well as their different types, the naming convention and basic reporting rules.

In order to facilitate the task of reporting for entities, CNMV has made available an e-mail address (comunicacionOperaciones@cnmv.es) to answer users' questions in this regard.

Bank of Spain publishes draft circular on transparent banking services and responsible lending

The Bank of Spain (Banco de España) has published a draft circular to amend Circular 5/2012 of 27 June 2017 on transparency of banking services and responsible lending. The proposal is intended to adapt the wording in relation to the Annual Euro Interbank Offered Rate (Euribor), included in paragraph 4 of annex 8 of Circular 5/2012, as it has become outdated.

The proposed wording in the draft Circular updates the reference to the European Banking Federation (EBF) to the European Money Markets Institute (EMMI). Moreover, following the European Commission' list of "critical" indexes, the circular identifies the current reference rate of Euribor as one of the most important interest rate indexes in the European Union, specifically, as a "critically important" benchmark.

The proposed circular is subject to public consultation until 24 July 2017.

CSSF issues circular regarding survey of amount of covered deposits held as of 30 June 2017

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), acting in its function as Depositor and Investor Protection Council (Conseil de Protection des Déposants et des Investisseurs) (CPDI), has issued a circular dated 6 July 2017 (CSSF-CPDI 17/08) regarding a survey of the amount of covered deposits held as of 30 June 2017.

The circular is addressed to all members of the Luxembourg deposit protection scheme, the Fonds de garantie des dépôts Luxembourg (FGDL) (in particular to all credit institutions incorporated under Luxembourg law, to the POST Luxembourg, and to Luxembourg branches of non-EU/EEA credit institutions), and reminds them that the CPDI collects the amount of covered deposits on a quarterly basis in order to identify trends and changes in the relevant indicators of deposit guarantee throughout the year. The circular further draws members' attention to the provisions of CSSF-CPDI circular 16/02, notably as regards the exclusion of structures assimilated to financial institutions and the treatment of omnibus and fiduciary accounts. The volume of eligible and covered deposits in omnibus and fiduciary accounts and the number of beneficiaries (ayants droit) are to be reported where credit institutions wish to ensure deposit protection for relevant beneficiaries and in order to allow the CPDI to prepare the FGDL for the reimbursements of such deposits.

In addition, FGDL members are requested to provide the data at the level of their legal entity, comprising branches located within other Member States, by 31 July 2017 at the latest. In order to transmit this data, institutions are requested to complete the table attached to the circular, which is also available on the CSSF website. The file containing the data shall be duly completed in all cases, shall respect the special surveys naming convention, as defined by CSSF circular 08/344, and shall be submitted over secured channels (E-File/SOFiE). Furthermore, a member of the authorised management, i.e. the member in charge of the FGDL membership, must review and approve the file prior to its transmission to the CSSF.

SFC and AMF sign MOU on France-Hong Kong mutual recognition of funds

The Securities and Futures Commission (SFC) and the Autorité des Marchés Financiers (AMF) have signed a Memorandum of Understanding (MoU) on France-Hong Kong Mutual Recognition of Funds (MRF), which will allow eligible Hong Kong public funds and French UCITS funds to be distributed to retail investors in each other's market through a streamlined authorisation process.

The MoU is the first agreement between Hong Kong and a member of the European Union for establishing the regulatory framework for distribution of eligible Hong Kong and French funds, which currently include general equity funds, bond funds and mixed funds. It also stipulates a mechanism for regular dialogue and regulatory cooperation

thus enabling the SFC and the AMF to fulfil their respective supervisory and regulatory mandates.

In addition, the SFC has issued a circular on the MRF between France and Hong Kong, covering:

- general principles applicable to the MRF;
- eligibility requirements and types of French covered funds;
- requirements applicable to all French covered funds; and
- application process for authorisation of French covered funds.

Cyberspace Administration of China consults on regulations on critical information infrastructures security protection

The Cyberspace Administration of China (CAC) has published a consultation draft of the Regulations on Security Protection of Critical Information Infrastructure. The consultation draft follows the PRC Cyber-security Law and clarifies the relevant issues and requirements of security protection of critical information infrastructures (CII). The points below are worth noting:

- a CII is defined as infrastructures, the damage of which may materially endanger national security, public welfare or public interests such as government agencies and energy, finance, communications, healthcare, education, social security, telecommunications, TV & radio, internet and other institutions engaging in cloud calculation, big data, etc. A guideline regarding the scoping and identification of CIIs will be formulated;
- in line with the Cyber-security Law, personal information and important data collected and generated by critical information infrastructure operators (CIIO) must be stored within China. Cross-border transfer is subject to the relevant security assessment;
- operation and maintenance of CIIs must be carried out in China. Prior reporting to the relevant regulators is required for operation and maintenance activities on a remote basis from offshore for business reasons; and
- Chinese authorities (particularly national security authorities) may impose sanctions or other applicable legal liabilities on offshore institutions, organisations or individuals for activities attacking, intervening with and damaging CIIs that cause severe consequences.

Comments on the consultation draft are due by 10 August 2017.

Monetary Authority of Singapore (Amendment) Act 2017 passed by Parliament

The Monetary Authority of Singapore (Amendment) Act 2017 has been moved for its second reading in Parliament and passed. The Amendment Act sets out legislative amendments to enhance the resolution regime for financial institutions in Singapore. The Amendment Act will come into operation on a date appointed by the Minister by notification in the Gazette.

The key provisions in the Amendment Act include:

- amendments that will consolidate the MAS's powers to impose requirements relating to recovery and resolution planning on pertinent financial institutions;
- amendments that will dis-apply counterparties' rights to terminate contracts with pertinent financial institutions where these rights arise solely by reason of the financial institution's entry into resolution, and empower the MAS to temporarily stay the early termination or acceleration rights of counterparties to contracts entered into with a pertinent financial institution over which the MAS has exercised its resolution powers;
- amendments that will empower the MAS to write down or convert into equity instruments issued or contracted after the effective date of the bail-in regime, so as to absorb losses or recapitalise a distressed financial institution;
- the introduction of a framework for the MAS to recognise all or part of any resolution action taken by foreign resolution authorities on financial institutions in Singapore;
- the introduction of a creditor compensation framework to provide creditors and shareholders, who receive under the resolution of a financial institution less than what they would have received had the financial institution been liquidated, with a right to compensate for the difference. This is in line with the 'no creditor worse off than in liquidation' principle; and
- the introduction of a framework that will be used to meet the costs of implementing resolution measures, including the provision of loans to a financial institution under resolution, initial capital for a bridge entity, administrative costs, and creditor compensation claims.

The Bill also provides for the merger of the Currency Fund with the other funds of the MAS, introduces amendments

relating to the MAS' financial arrangements with the government, and introduces specific financial and annual report provisions for the Financial Sector Development Fund.

MAS responds to feedback on proposed net stable funding ratio and related disclosure requirements for banks

The MAS has published its responses to the feedback it received on its November 2016 public consultation on the draft MAS Notices on the net stable funding ratio (NSFR) and related disclosure requirements for banks in Singapore. The proposed requirements complement the existing liquidity coverage ratio requirements by incorporating the Basel III NSFR standards.

The MAS has also finalised and published MAS Notice 652 on the NSFR. MAS Notice 653 on the NSFR disclosure requirements is undergoing further consultation as part of the public consultation on proposed amendments to the disclosure requirements under the MAS Notice 637, 651 and 653, which closes on 7 August 2017. The finalised MAS Notice 653 will be published after the public consultation is completed.

Amongst other things, the MAS has provided responses relating to:

- the proposal for assets encumbered under exceptional central bank liquidity operations to be treated as though they were unencumbered when applying the Required Stable Funding (RSF) factors;
- the proposal to exclude from their NSFR computation derivative transactions with central banks arising from the latter's short term monetary policy and liquidity operations;
- the proposal to allow for 0% RSF and 0% Available Stable Funding factors to be applied on interdependent assets and liabilities;
- the calibration of RSF factors for off-balance sheet exposures and
- the treatment of derivative liabilities.

MAS to streamline framework for banks carrying on permissible non-financial businesses

The MAS has announced that it will streamline the regulatory requirements for banks seeking to conduct or invest in permissible non-financial businesses.

The regulatory framework separating banks' financial and non-financial businesses ('anti-commingling framework') was introduced in 2001 to ensure that banks remained focused on their core businesses and competencies. The MAS has recognised that the banking landscape has evolved considerably since then, and the proposed measures will give banks more flexibility to serve their customers' needs while ensuring they remain focused on their core financial businesses.

The MAS proposes to refine the anti-commingling framework for banks in the two key aspects:

- making it easier for banks to conduct or invest in non-financial businesses that are related or complementary to their core financial businesses, by:
  - not requiring banks to seek prior regulatory approval before conducting or acquiring major equity stakes in permissible non-financial businesses. Banks will instead be required to notify the MAS prior to doing so; and
  - capping such permissible non-financial businesses to 10% of the bank's capital funds. This is intended to limit exposure and ensure that banks continue to focus on their core businesses; and
- allowing banks to engage in the operation of digital platforms that match buyers and sellers of consumer goods or services as well as the online sale of such goods or services, if such activities are related or complementary to their core financial businesses. Beyond digital platforms, banks will need to seek case-by-case approval.

However, banks will continue to be prohibited from entering certain businesses, such as property development and the provision of hotel and resort facilities.

The MAS will consult on the operational details of the proposed policy changes by the end of September 2017.

MAS and BOT sign fintech cooperation agreement and banking supervision memorandum of understanding

The MAS and the Bank of Thailand (BOT) have signed a fintech cooperation agreement. The fintech cooperation agreement aims to help develop a richer financial ecosystem in Thailand and Singapore as well as in ASEAN. The agreement enables BOT and the MAS to share information on emerging market trends and their impact on regulations, as well as to refer fintech companies to their counterparts. It also signals a shared intent to explore jointly undertaking innovation projects, especially those with potential for cross-border applicability.

BOT and the MAS have also updated their memorandum of understanding (MOU) on banking supervision, which had been in place since 2006. The MOU serves to strengthen bilateral collaboration in safeguarding the resilience of the two countries' banking systems. The updated MOU sets out in greater detail the two central banks' commitment to fostering greater information exchange and cooperation in the areas of licensing, on-site examinations, supervisory colleges, and crisis management.

Australian Treasury consults on new banking executive accountability regime

In the 2017-18 Budget, the Australian Government brought forward a comprehensive package of reforms to strengthen accountability and competition in the banking system. As part of this package, the Government announced that it will legislate to introduce a new Banking Executive Accountability Regime (BEAR). The Government has now released a consultation paper which outlines the key features of the BEAR and the proposed approach to implementation.

In general, the intention of the BEAR is to enhance the responsibility and accountability of authorised deposit-taking institutions (ADIs) and their directors and senior executives. The BEAR will provide greater clarity regarding their responsibilities and impose on them heightened expectations of behaviour in line with community expectations.

Where these expectations are not met, the Australian Prudential Regulation Authority (APRA) will be empowered more easily to remove or disqualify individuals, ensure ADIs' remuneration policies result in financial consequences for individuals, and impose substantial fines on ADIs. ADIs will be required to register individuals with APRA before appointing them as senior executives and directors.

Comments on the consultation paper are due by 3 August 2017.

RECENT CLIFFORD CHANCE BRIEFINGS

Brexit – European Union (Withdrawal) Bill published

The Bill colloquially known as the Great Repeal Bill has now been published. It aims to bring existing EU law into UK law on the UK's exit day. It also seeks to confer wide powers on the Government to cure deficiencies in that retained EU law, but it gives no indication as to how those powers will in practice be exercised. The political battle awaits.

This briefing paper discusses the Bill.

https://www.cliffordchance.com/briefings/2017/07/brexit_european_unionwithdrawalbillpublished.html

Failure to prevent the facilitation of tax evasion – the new extra-territorial UK criminal offence and its impact on private equity

The UK has enacted a new corporate criminal offence of failing to prevent the facilitation of tax evasion by employees and other associated persons. It is highly extra-territorial, applies to businesses worldwide, and can apply to the evasion of non-UK taxes as well as UK taxes.

There is only one defence to the offence: that the business has put reasonable procedures in place to prevent the facilitation of tax evasion.

This creates new risks for private equity. It's possible, but very unlikely, that an employee of a private equity fund could deliberately set out to facilitate tax evasion for a third party. What's much more likely is that a private equity company finds itself prosecuted for tax evasion by foreign tax authorities over what in reality is a civil dispute. Either scenario may now result in UK criminal liability for the fund and/or manager, with the prospect of unlimited fines and considerable regulatory and reputational damage.

This briefing paper summarises the new offence, and the prevention measures private equity funds and fund managers should have in place now so that, if worst comes to the worst, they can avail themselves of the defence.

https://www.cliffordchance.com/briefings/2017/07/failure_to_preventthefacilitationofta.html

The Bond connect – another effort of market liberalisation through Hong Kong

The launch of the northbound trading link of the Bond Connect was announced on 2 July 2017 and trading officially commenced on 3 July 2017, with participation by 70 international investors and 19 onshore quoting institutions and a turnover of over RMB 7 billion by the close of the day.

Since 16 May 2017 when the People's Bank of China (PBoC) and the Hong Kong Monetary Authority (HKMA) jointly announced their collaboration in setting up the Bond Connect, a series of regulations and guidelines have been

issued to formulate the basic framework and key rules for implementing the Northbound Trading Link.

This briefing paper discusses the northbound trading link.

https://www.cliffordchance.com/briefings/2017/07/clifford_chance_newsflash-thebondconnect.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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