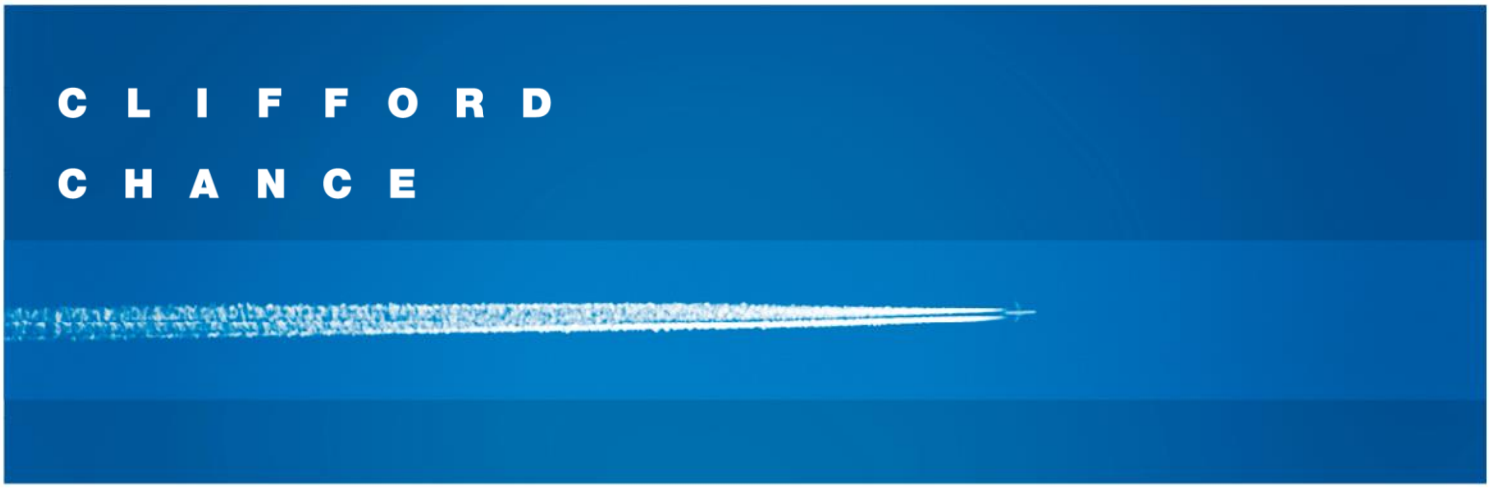

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framework under Banking (Capital) Rules

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Cross-border payments: EU Commission proposes amendments on charges for intra-EU payments in euro and dynamic currency conversion

The EU Commission has published a proposal for a regulation amending Regulation (EC) No 924/2009 as regards certain charges on cross-border payments in the EU and currency conversion charges.

In particular, the proposed amendments cover:

- cross-border transactions in euro sent or received within the EU - when payment service users enter into cross-border transactions in euro, these transactions should be charged at the exact same price as an equivalent domestic one in the official currency used in the Member State from where the transaction is sent or received (i.e. the euro for euro area Member States and respective national currencies for non-euro area Member States). This system is already in place in the euro area and the Commission proposes to extend it to non-euro area Member States as well. Cross-border transactions made in EU currencies other than the euro are not covered by this amendment, but Regulation (EC) No 924/2009 already includes an option for Member States to extend the Regulation to other currencies and this option remains; and
- dynamic currency conversion - the proposal is intended to increase the transparency in this process so that consumers are aware of the costs of currency conversion services applied to cross-border payments in the EU beforehand. The amendment will apply irrespective of whether those payments are denominated in euro or in a currency of a Member State other than the euro.

The proposed amendments will now be submitted to the EU Parliament and Council for adoption.

ELTIF Regulation: RTS on financial derivative instruments published in Official Journal

Commission Delegated Regulation (EU) 2018/480 with regard to regulatory technical standards (RTS) on financial derivative instruments solely serving

hedging purposes, sufficient length for the life of the European long-term investment funds (ELTIFs), assessment criteria for the market for potential buyers and valuation of the assets to be divested, and the types and characteristics of the facilities available to retail investors has been published in the Official Journal.

The RTS will enter into force on 12 April 2018.

ECB publishes guides on assessments of licence applications for banks and fintech credit institutions

The European Central Bank (ECB) has published its guide to assessments of licence applications and its guide to assessments of fintech credit institution licence applications.

The publication of the guides follows a consultation held in September 2017 and the ECB has published a feedback statement summarising the comments received.

The guide to assessments of licence applications explains the general application process and assessment requirements regarding governance, risk management, capital, and more.

The guide to assessments of fintech credit institution licence applications complements the first guide and is aimed at fintech entities. The fintech guide explains aspects of the supervisory assessment of licence applications that are particularly relevant to the specific nature of banks with fintech business models.

The guides offer a practical tool for applicants to increase their understanding of the criteria and to try and ensure a smooth and effective licensing procedure. By publishing these guides the ECB intends to support common supervisory practices and to increase transparency. The ECB intends to launch a second consultation on an addendum to the guide to assessments of licence applications at a later stage.

MiFID2: ESMA publishes final report on amendments to RTS 1 regarding quoting obligations for systematic internalisers

The European Securities and Markets Authority (ESMA) has published its final report on proposed amendments to Commission Delegated Regulation (EU) 2017/587 (RTS 1 under MiFID2/MiFIR). RTS 1 specify requirements on transparency for equity instruments, including quoting obligations for systematic internalisers (SIs) under MiFIR.

The proposed amendments are intended to clarify the concept of 'prices reflecting prevailing market conditions' set out in RTS 1 and to prevent SIs benefitting from a competitive advantage over trading venues. The final report sets out a proposed amendment to Article 10 of RTS 1 to clarify that, for equity instruments subject to the minimum tick size regime under MiFID2 RTS 11, SI quotes would only be considered to reflect the prevailing market conditions where those quotes reflect price increments applicable to EU trading venues trading the same instruments.

The final report has been submitted to the EU Commission for endorsement.

EMIR: ESMA publishes guidelines on position calculations for trade repositories

ESMA has published its guidelines for position calculations in derivatives by trade repositories (TRs) under the European Market Infrastructure Regulation (EMIR), with regard to the time of calculations, the scope of the data used in calculations and the calculation methodologies.

ESMA became aware of divergent and inconsistent approaches to the calculation of positions in accordance with Article 80(4) of EMIR and in November 2017 published draft guidelines for public comment.

These guidelines set out specific instructions on the aggregation of certain data fields and how those should be calculated by TRs prior to the provision of the data to relevant authorities, and are designed to ensure a consistent methodology is used to calculate collateral relating to positions.

The guidelines will become applicable on 3 December 2018 and will require an annual assessment of the TR's compliance.

ESMA agrees product intervention measures on contracts for difference and binary options

ESMA has announced intervention measures relating to the provision of contracts for difference (CFDs) and binary options to retail investors in the EU. In light of responses to its call for evidence, ESMA, along with national competent authorities (NCAs), has concluded that CFDs and binary options represent a significant protection concern for retail investors. Amongst other things, ESMA highlights the products' complexity, lack of transparency, excessive leverage (in the case of CFDs) and structural expected negative return and conflict of interest between providers and their clients (in the case of binary options) as causes for concern.

In order to address this, ESMA has agreed on temporary measures under Article 40 of MiFIR. The measures include a prohibition on the marketing, distribution or sale of binary options to retail investors and various restrictions on the provision of CFDs, including:

- applying leverage limits on the opening of a position by a retail client;
- standardising the percentage of margin at which providers are required to close out a retail client's open CfD;
- introducing negative balance protection to limit retail client losses;
- restricting incentives for trading provided by providers; and
- standardising risk warnings on products.

ESMA intends to adopt these measures in the EU's official languages in the coming weeks, at which point an official notice will be published on its website. The measures will then be published in the Official Journal and will apply after one month for binary options and after two months for CFDs.

CSDR: ESMA publishes official translations of guidelines

ESMA has published the official translations of the following three sets of guidelines under the Central Securities Depositaries Regulation (CSDR):

- guidelines on the process to determine the most relevant currencies in which settlement takes place;

- guidelines on the process to determine the substantial importance of a CSD for a host Member State; and
- guidelines on cooperation between authorities.

National competent authorities (NCAs) to which the guidelines on relevant currencies and the substantial importance of a CSD apply must notify ESMA whether they comply or intend to comply by 12 April 2018. NCAs to which the guidelines on cooperation between authorities apply must notify ESMA by 29 May 2018 if they comply or intend to comply with the guidelines.

All of the guidelines will apply from 29 May 2018.

Securitisation Regulation: ESMA consults on securitisation repositories

ESMA has published two consultation papers on securitisation repositories under the Securitisation Regulation. The first sets out draft technical standards on application requirements for registration with ESMA as a securitisation repository. This consultation also includes draft guidelines on the transfer of data between securitisation repositories.

The second consultation covers ESMA's proposed technical advice to the EU Commission on the fees payable to ESMA for securitisation repositories. This discusses the types of supervisory fees, the matters for which fees are due, the amount of the fees and the way in which they are to be paid.

Comments are due by 23 May 2018.

Credit rating agencies: ESMA consults on guidance on endorsement

ESMA has published a consultation paper proposing supplementary guidance on the application of the endorsement regime under the Credit Rating Agencies (CRA) Regulation. The last update was in November 2017.

The supplementary guidance aims to provide:

- clarity regarding the general principle ESMA relies on when assessing whether an alternative requirement can be considered as stringent; and
- ESMA's concrete assessment of alternative internal requirements currently in place in third-country CRAs.

The guidelines on endorsement of November 2017 clarified that compliance with the third-country legal framework was not sufficient proof that a third-country CRA fulfils requirements which are at least as stringent as those set out in the CRA Regulation. The consultation offers the endorsing CRA two options to demonstrate that the 'as stringent as' condition is met:

- stating that the third-country CRA complies with the relevant provisions of the CRA Regulation; or
- stating that the third-country CRA has established and fulfils alternative internal requirements, which are at least as stringent as the relevant endorsement provisions of CRA Regulation.

Comments are due 25 May 2018.

CRR: ECB consults on general topics chapter of draft internal models guide

The ECB has launched a consultation on the first chapter of its draft guide to internal models.

The guide, which is a revised version of the guide on targeted review of internal models (TRIM) published in February 2017, seeks to ensure transparency and uniform understanding of how the ECB intends to apply the rules laid down in the Capital Requirements Regulation (CRR) governing the internal models used by banks to compute own funds requirements for credit, market and counterparty credit risk.

The first chapter concerns general topics, including:

- overarching principles;
- implementation of the internal ratings-based (IRB) approach;
- internal model governance;
- internal validation;
- internal audit;
- model use;
- model change management; and
- third-party involvement.

The complete guide will also include model-specific chapters, which the ECB will consult on at a later date.

The ECB has followed the understanding of the CRR provisions reflected in the European Banking Authority's (EBA's) draft regulatory technical standards (RTS) on the assessment methodology for the IRB approach (EBA/RTS/2016/03). Parts of the guide may therefore require revision once the EU Commission adopts the RTS.

A public hearing on the general topics chapter is being held on 18 April 2018 via telephone conference. The consultation closes on 28 May 2018.

EBA consults on extending application of complaints handling guidelines to new institutions under PSD2 and MCD

The EBA has launched a consultation on proposals to extend the scope of application of the existing joint committee guidelines on complaints handling to new institutions established under the revised Payment Services Directive (PSD2) and the Mortgage Credit Directive (MCD). The content of the guidelines, which will not be changed under the new proposals, sets out requirements in relation to firms' management, registration, reporting, assessment of and response to complaints.

Under the EBA's proposals, these guidelines would become applicable to payment initiation service providers (PISPs) and account information service providers (AISPs) under PSD2 and credit intermediaries and non-credit institution creditors under MCD. The proposals are intended to ensure that consumers are provided with the same level of protection regardless of which

regulated product or service they are purchasing and which regulated institution they are purchasing it from.

Comments are due by 27 May 2018.

Basel Committee reports on frameworks for early supervisory intervention

The Basel Committee on Banking Supervision (BCBS) has published a report on early supervisory intervention practices, which sets out how supervisors around the world have adopted frameworks, processes and tools to support early supervisory intervention.

Overall, the report notes that there has been significant development in the area of early supervisory intervention. National supervisory authorities are using more forward-looking approaches to risk-based supervisory assessments and are introducing benchmarking exercises and thematic reviews, in addition to institution-specific supervision, in order to better detect emerging risks and potential outlier banks. Many national authorities have also undergone organisational changes to support these approaches, including creating dedicated teams and oversight functions.

From the practices observed, BCBS concluded that early supervisory intervention requires both expert judgment from the supervisor and an organisational infrastructure which sets in place:

- supervisory reinforcement through vertical and horizontal risk assessments in order to maximise the early detection of risks;
- a clear framework for when action should be taken; and
- internal governance processes and programmes to support supervisory development and capacity building.

Brexit: Bank of England provides update on regulatory approach to preparations for EU withdrawal

The Bank of England (BoE) has welcomed the agreement between the UK and EU27 that there should be an implementation period until the end of 2020 as part of the UK's Withdrawal Agreement with the EU and provided an update on its regulatory approach to the preparations for Brexit.

In light of the agreement at the EU Council, the BoE considers it reasonable for firms currently carrying on regulated activities in the UK by means of passporting rights, or the EU framework for central counterparties (CCPs), to plan that they will be able to continue undertaking these activities during the implementation period in much the same way as now.

The BoE has published a letter from Sir John Cunliffe, Deputy Governor Financial Stability, to CCPs, and a letter from Sam Woods, Deputy Governor and CEO of the Prudential Regulation Authority (PRA) to firms, clarifying that relevant firms and CCPs may plan on the assumption that UK authorisation or recognition will only be needed by the end of the implementation period.

The BoE further notes that the UK Government has committed to bring forward legislation, if necessary, to create temporary permission regimes to allow relevant firms to continue their activities in the UK for a limited period after withdrawal, and that this provides confidence that a back-stop will be available in the event that the Withdrawal Agreement is not ratified.

The BoE has also published two new policy statements on the PRA's approach to branch authorisation and supervision for international banks (PS3/18 – responding to consultation CP29/17) and international insurers (PS4/18 – responding to consultation CP30/17), along with accompanying supervisory statements (SS1/18 and SS2/18 for international banks and insurers respectively). In the context of their future preparations for the UK's withdrawal from the EU, EEA banks and insurers may (if they are not conducting material retail business) apply for authorisation to operate as a branch in the UK. Non-UK CCPs should continue engaging with the BoE on the UK recognition process. In light of the responses to the December 2017 public consultation, the PRA has increased the level of the threshold of FSCS-protected liabilities indicating an insurer should potentially operate as a subsidiary from GBP 200 million to GBP 500 million.

Brexit: FCA issues statement on EU withdrawal following March European Council

The Financial Conduct Authority (FCA) has issued a statement welcoming the agreement reached on the terms of an implementation period that will apply following the UK's withdrawal from the European Union. The statement confirms that, in light of the agreement and HM Government's commitment to providing for a temporary permission regime as a backstop, firms and funds currently benefiting from an EU passport need not apply for authorisation at this stage.

The statement notes that the implementation period would permit firms and funds to continue to benefit from passporting between the UK and EEA until the end of December 2020, adding that UK firms and funds passporting into the EEA should discuss with their relevant EU regulator the implications of a transitional period for their contingency planning. The FCA intends to continue to cooperate closely with the home state regulators of EEA firms and the European Supervisory Authorities, in particular to address any risks to consumer protection and financial stability.

Andrew Bailey, Chief Executive of the FCA, also gave a speech at the All Party Parliamentary Group on Wholesale Financial Services Annual Dinner, in which he discussed the UK's EU withdrawal, transition and financial regulation. Mr. Bailey emphasised the need to work with EU regulators to put into effect a smooth transition and expressed his support for the initiative to include provisions in the withdrawal agreement to address the issues on continuity of contracts.

FCA consults on proposed guidance on insider dealing and market manipulation

The FCA has launched a consultation on proposed guidance on insider dealing and market manipulation. In particular, the FCA is seeking feedback on its proposal to add a new chapter to the Financial Crime Guide, which is intended to provide guidance to firms on countering the risk of insider dealing or market manipulation. Amongst other things, the new chapter will set out the FCA's observations of good and bad market practice relating to the requirement to detect, report and counter the risk of financial crime, as it relates to insider dealing and market manipulation.

The FCA is also consulting on various minor amendments to the guide to reflect recent regulatory changes, including the introduction of the Money Laundering Regulations 2017 and changes to sanctions language.

Comments are due by 28 June 2018.

CNMV issues press release on implementation of EU Benchmarks Regulation

The Spanish National Securities Market Commission (CNMV) has been designated as the competent authority responsible for implementing the EU Benchmarks Regulation (EU) 2016/1011 and has issued a press release on its new powers relating to the authorisation and registration of the administrators of indices used as benchmarks located in Spain and the supervision of administrators, contributors, entities monitored with regard to the utilisation of indices and anyone intervening in their elaboration.

The Regulation is intended to address weaknesses identified in this area. Among other things, the Regulation incorporates the following developments:

- benchmark administrators and contributors must have the organisational structure and resources in order to properly manage conflicts of interest;
- establishing an equivalence, recognition and validation regime for indices administrated in third countries when used in the EU;
- monitored entities must elaborate an action plan that can be put in place in cases of sharp changes in the indices or where the indices stop working; and
- prospectuses using indices must indicate whether the index is provided by an administrator registered in the public registry maintained by ESMA.

The Regulation defines a regulatory and supervisory framework adapted to different indices by distinguishing between critical benchmarks, subject to stricter control due to their possible influence on financial stability, significant benchmarks and non-significant benchmarks. The CNMV's monitoring process will vary depending on the inherent nature and risks of each case.

These provisions will be complemented by second and third level rules, which are still in the process of being approved. In addition, the CNMV intends to facilitate the adaptation process by providing access to all the relevant legislation and information and elaborating Q&A documents and seminars.

The Regulation entered into force on 1 January 2018.

CNMV issues circular on warnings related to financial instruments

The CNMV has issued Circular 1/2018, of 12 March, on warnings related to financial instruments.

Circular 1/2018 reinforces the obligation to issue warnings in relation to very specific financial instruments, such as CFDs, contingent convertible or subordinated bank bonds or certain structured bonds referenced to illiquid securities or to credit events. The purpose of Circular 1/2018 is to increase the protection of retail investors by reinforcing their informed consent and improving information transparency in the distribution of financial instruments.

In addition, Circular 1/2018 obliges credit institutions and investment firms to warn their clients about the following:

- the risk of losses in securities market instruments within the scope of the bail-in tool; and
- the existence of significant differences between the effective amount at which the purchase or sale will be made with the client and the estimated current value of the product.

Circular 1/2018 was published in the Spanish Official Gazette on 27 March 2018 and will enter into force on 27 June 2018.

HKMA issues implementation guidance on revised securitisation framework under Banking (Capital) Rules

The Hong Kong Monetary Authority (HKMA) has issued a circular to all locally incorporated authorised institutions setting out implementation guidance on the revised securitisation framework under the Banking (Capital) Rules (BCR). The guidance is intended to assist authorised institutions in interpreting Part 7 of the BCR (as amended to implement the revised framework) at a more detailed level in a number of specific areas.

The new guidance is a set of questions and answers (Q&As) on the revised securitisation framework under the BCR, which supersedes the previous guidance on securitisation set out in pages 52 to 66 of the revised Q&As on the BCR issued on 31 December 2014. The new Q&As are built on the existing Q&As with modifications to align with the amendments made to Part 7 of the BCR and to clarify the HKMA's policy intent in respect of specific issues. In particular, new guidance is provided on the notification requirement under section 230(3), (4) and (5) in Part 7 and the assessment of significant credit risk transfer for the purposes of obtaining capital relief for the underlying exposures of a securitisation transaction under the BCR.

SFC and HKMA consult on further enhancements to OTC derivatives regulatory regime

The HKMA and the Securities and Futures Commission (SFC) have issued a joint consultation paper on further enhancements to the over-the-counter (OTC) derivatives regulatory regime in Hong Kong, including a proposal to mandate the use of the Legal Entity Identifier (LEI) for the reporting obligation. The LEI is a unique 20-digit, alpha-numeric code which identifies entities in a financial transaction.

To align with global standards, all entities contained in a transaction report to be submitted to the Hong Kong Trade Repository would be required to be identified by their LEI. The timeline for implementation will be staggered for different types of entities.

In addition, as the second phase of the OTC derivatives clearing regime, the HKMA and the SFC propose to expand the clearing obligation to specified standardised interest rate swaps denominated in Australian Dollars.

The consultation paper also sets out the proposed factors for determining which products would be appropriate for a platform trading obligation in Hong Kong.

Comments on the consultation are due by 27 April 2018.

SFC concludes consultation on online platforms and consults further on offline requirements for complex products

The SFC has published the conclusions of its May 2017 consultation on proposed guidelines on online distribution and advisory platforms.

The guidelines provide tailored guidance to the industry on the design and operation of online platforms, including specific guidance on the provision of automated or robo-advice. The guidelines also clarify that the posting of factual, fair and balanced materials on online platforms should not in itself trigger the suitability requirement.

The SFC intends to implement the requirement for platform operators to ensure the suitability of complex products sold, recognising that retail investors should be in a position to take responsibility for their decisions to invest in simple products which they can reasonably be expected to understand. The final form of the guidelines will be gazetted on 6 April 2018 and they will become effective 12 months after their gazettal. The SFC will publish frequently asked questions (FAQs) to provide further guidance to the industry.

In addition, the SFC has launched a further consultation on its proposal to apply the same requirement to ensure suitability to the offline sale of complex products. Comments on the further consultation are due by 28 May 2018.

HKMA reminds authorised institutions of HKAB's practical guideline on barrier-free banking services

The HKMA has issued a circular to authorised institutions reminding them of the practical guideline on barrier-free banking services published by the Hong Kong Association of Banks (HKAB).

The guideline, developed by the HKAB in association with the HKMA, sets out good practices recommended for the industry to enhance the accessibility of banking services by customers with physical disabilities, visual impairment or hearing impairment. The HKMA expects all banks to implement the measures in the guideline. Other authorised institutions are also encouraged to observe the recommendations to enhance their services to customers as appropriate.

The HKMA has advised banks to provide proper training and guidance to frontline staff to ensure that they appreciate and make appropriate arrangements to address the needs of customers with disabilities, and to communicate with these customers properly. Banks are also encouraged to continue exploring and implementing further barrier-free measures.

The HKMA intends to monitor the implementation of the measures in the guideline and the development of barrier-free banking services in Hong Kong.

Monetary Authority of Singapore (Safeguards for Compulsory Transfer of Business, and Exemption from Moratorium Provisions) Regulations 2018 gazetted

The Monetary Authority of Singapore (MAS) has gazetted the Monetary Authority of Singapore (Safeguards for Compulsory Transfer of Business, and Exemption from Moratorium Provisions) Regulations 2018.

The MAS's resolution powers under the MAS Act include its power under Section 30AAS to, subject to certain conditions, make a determination that the whole or any part of the business of a transferor shall be transferred to a transferee. However, the MAS has indicated that it does not intend to interfere with set-off and netting arrangements, or to prevent a financial market infrastructure from enforcing the use of collateral posted with it.

The Regulations provide safeguards in the event of an exercise of such resolution powers of the MAS. Amongst other things, the Regulations provide that:

- a transfer of part (but not the whole) of a transferor's business must not involve the transfer of only some (but not all) of the following protected rights and liabilities:
  - between a person and the transferor that arise from one or more financial contracts between them, and which either party is entitled to set-off or net; and
  - that arise from a clearing and settlement arrangement of a market infrastructure, where the failure to transfer any such right or liability will result in a disruption of the arrangement (e.g. disruption of (a) the discharge of payment and delivery obligations for transactions cleared and settled through the market infrastructure, (b) the operation of settlement finality rules, or (c) participant default processes);
- where a right or liability arising from a transfer order effected through a designated system has yet to be settled by the transferor, and a failure to transfer the right or liability when transferring a part of the transferor's business is likely to result in a disruption of the operation of the designated system (e.g. disruption of (a) the netting or settlement of a transfer order in accordance with the designated system rules, or (b) of any process to be observed under the designated system rules upon participant default), a transfer must not take effect until after the right or liability is settled, or must include the transfer of the right or liability and any security posted by the transferor in accordance with the designated system rules; and
- where under a contract, one party owes to the other a secured liability, a transfer must not provide for the transfer of (a) the liability without the benefit of the security, (b) the benefit of the security without the liability, or (c) the property or rights without the liability and benefit of the security.

The Regulations are effective from 30 March 2018.

RECENT CLIFFORD CHANCE BRIEFINGS

Brexit — what does the transition agreement mean?

On Friday 23 March 2018, the EU announced that agreement in principle had been reached on a transition (or 'implementation') period running from the UK's withdrawal from the EU on 29 March 2019 to the end of 2020, during which the UK would retain access to the EU Internal Market and Customs Union on its current terms.

The European Council also adopted guidelines for the EU's negotiators with a view to opening the negotiations with the UK to agree a framework for the future relationship between the EU and UK post Brexit.

This briefing discusses the agreement.

https://www.cliffordchance.com/briefings/2018/03/brexit_-_what_doesthetransitionagreementmean.html

Facebook, data misuse and why it matters

As every news cycle brings further revelations about the alleged misuse of personal data by social media companies and political consultants, regulators, politicians and the public are more concerned than ever with what happens to information placed online, who has it and how it is being used.

This briefing discusses the allegations made of Cambridge Analytica, along with recent issues relating to data security, and considers the following questions:

- Who owns individuals' online data?
- Do social media companies need to inform individuals that they are sharing their data?
- What are individuals' rights in respect of their online data?
- What are the legal limits on how third parties may use individuals' data?
- Where and how might claims be pursued in respect of the misuse of data?
- Which investigating authorities should businesses be concerned about; and
- How should businesses react to allegations of suspected data misuse?

https://www.cliffordchance.com/briefings/2018/03/facebook_data_misuseandwhyitmatters.html

A major step towards a single African market

On 21 March 2018, at an African Union (AU) summit in Kigali, Rwanda, the leaders of 44 African countries signed an agreement to establish the African Continental Free Trade Area (CFTA). This event marks a significant milestone towards the establishment of a single African market, a vision first conceived by the AU member states in 2012. The CFTA's primary objective is to remove trade barriers such as tariffs and import quotas, allowing for the free flow of goods and services between its member states with the goal of boosting commerce, growth and employment throughout Africa.

This briefing discusses the agreement, its legal framework and likely implementation, and the firm's Africa practice.

https://www.cliffordchance.com/briefings/2018/03/a_major_step_towardsasingleafricanmarket.html

Small change – little movement in latest APAC transparency international ratings

Transparency International published its 2017 Corruption Perceptions Index (CPI), showing just modest improvements for most countries in Asia Pacific, but with some higher risk countries continuing to slide in the overall rankings. The rankings are significant and should be considered by clients when conducting pre-transactional and customer due diligence.

This briefing discusses the rankings.

https://www.cliffordchance.com/briefings/2018/03/small_change_littlemovementinlatestapa.html

Emergence of a regional financial centre — Astana International Financial Centre (AIFC) Courts and International Arbitration Centre (AIAC)

The launch of the independent AIFC Courts and the AIAC represents an attractive new option for dispute resolution for businesses that are active in the Republic of Kazakhstan and/or the surrounding Eurasian region, which is a region that continues to increase in economic significance.

This briefing provides an overview of the AIFC and AIFC Courts, explores who can use the AIFC Courts, and looks at how enforcement of the AIFC Courts' judgments will work and the role of arbitration in the AIFC.

https://www.cliffordchance.com/briefings/2018/03/emergence_of_a_regionalfinancialcentreastan.html

Insurance Brexit update – transition, temporary permissions and contract continuity

At a joint press conference held on 19 March 2019, David Davis and Michel Barnier representing the United Kingdom and the European Union announced the agreement in principle to a draft Withdrawal Agreement containing a transitional period of 21 months, i.e. from the entry into force of the withdrawal agreement (no later than 30 March 2019) until 31 December 2020.

In effect, the agreement will allow the UK and EU to work out the finer details of their future relationship that will evolve over many years.

This briefing examines the impact of the agreement on key issues for the insurance sector, including Brexit planning and continuity of insurance contracts. The possibility of a 'temporary permissions' regime is also considered.

https://www.cliffordchance.com/briefings/2018/03/insurance_brexitupdatetransitiontemporar.html

Market abuse systems and controls must go beyond MAR

On 28 March, the UK Financial Conduct Authority (FCA) published draft amendments to its Financial Crime Guide making clear that systems and controls relating to market abuse need to go beyond the requirements of the Market Abuse Regulation (MAR). Authorised firms must ensure that their systems and controls are sufficient to counter market abuse, not just to detect and report it. The FCA emphasises the need for senior management understanding of the law relating to market abuse and the ways in which it may occur.

This briefing discusses the draft amendments.

https://www.cliffordchance.com/briefings/2018/03/market_abuse_systemsandcontrolsmustgobeyon.html

Famed case – what is the importance of the Dutch Hoge Raad judgment?

For several decades the question whether or not – and to what extent – future claims can be used as collateral in financing transactions has been a topic of

discussion in the Netherlands. Although this discussion shall continue to be held in the coming years, the Famed case is to be welcomed because it further reduces the uncertain status of claims arising from medical services contracts as future receivables.

This briefing discusses the importance of the judgment for the Dutch finance, factoring, securitisation and restructuring practices.

https://www.cliffordchance.com/briefings/2018/03/famed_case_what_istheimportanceofthedutc.html