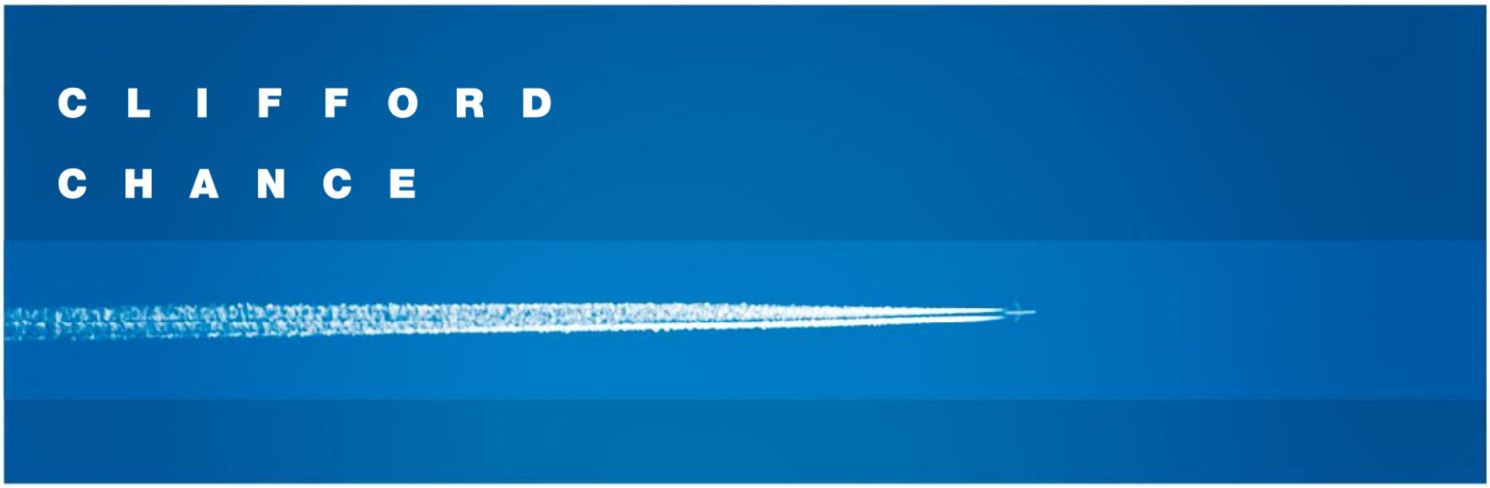

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Coreper confirms agreement on Directive to criminalise money laundering

The EU Council's Permanent Representatives Committee (Coreper) has confirmed the agreement reached between the Council and the EU Parliament on the proposed Directive on countering money laundering by criminal law, which would establish minimum rules concerning the definition of criminal offences and sanctions related to money laundering, remove obstacles to cross-border judicial and police cooperation and bring EU rules into line with international obligations.

The Directive was proposed by the Commission in December 2016 together with a proposal for a regulation on the mutual recognition of freezing and confiscation orders. Both texts are part of the EU plan to strengthen the fight against terrorist financing and financial crimes. The Directive is also intended to complement the fifth Anti-Money Laundering Directive (MLD 5).

The Directive will enter into force twenty days after publication in the Official Journal and will have a twenty-four month transposition period.

NPLs: EBA and ECB analyse data waiver impacts on LGD estimates and capital requirements

The European Banking Authority (EBA) and European Central Bank (ECB) have jointly written to Olivier Guersent, EU Commission Director General for Financial Stability, Services and Capital Markets Union, on considerations for the loss given default (LGD) waivers under the internal ratings based (IRB) approach.

The letter highlights that both institutions have been involved in and supportive of efforts to reduce the levels of non-performing loans (NPLs) and, given their

strong focus on internal models and NPLs, the EBA and ECB have noted with interest views from some stakeholders that disposal of NPLs and the corresponding capital release is being hampered by the design of the regulatory framework for internal models, in particular LGD estimation. The letter expresses the institutions' concerns relating to proposals for the introduction of data waivers to eliminate losses due to the sale of NPLs from the dataset used for LGD estimations for the selling institution. The EBA and ECB have set out an annex which includes detailed analysis of the potential consequences of the data waiver on the LGD estimates, which the institutions believe would lead to inadequate capital requirements. Among other things, the letter also highlights potential level playing field concerns and potential damage to market confidence in relation to internal model approaches.

The institutions call for their views to be considered in upcoming political discussions on the proposals.

Extension to transitional periods related to own funds requirements for exposures to CCPs published in Official Journal

A Commission Implementing Regulation (2018/815) on the extension of the transitional periods related to own funds requirements for exposures to central counterparties (CCPs) has been published in the Official Journal.

The Regulation specifies that the 15-month periods referred to in Article 497(2) of the Capital Requirements Regulation (CRR) and in the second subparagraph of Article 89(5a) of the European Market Infrastructure Regulation (EMIR), as most recently extended in Implementing Regulation (EU) 2017/2241, are extended by an additional six months until 15 December 2018.

The Regulation entered into force on 7 June 2018.

SRB publishes critical functions policy

The Single Resolution Board (SRB) has published its critical functions policy, which is intended to serve as a reference to describe the approach taken by the SRB to the identification of critical functions, which is a key element of resolution planning.

Institutions are required to self-assess critical functions when drawing-up their recovery plans, which are then reported and reviewed by resolution authorities with a view to achieving an appropriate and consistent identification of critical functions. The SRB assesses the criticality of each function and, among other things, the policy sets out the assumptions the SRB makes when assessing these impacts.

FSB calls for feedback on technical implementation of TLAC

The Financial Stability Board (FSB) has launched a call for public feedback on the technical implementation of the total loss-absorbing and recapitalisation capacity for global systemically important banks (G-SIBs) in resolution (TLAC standard). Views from stakeholders are expected to assist the FSB with its monitoring on implementation and the preparation of its report to G20 Leaders by June 2019. The TLAC standard will be phased in from January 2019.

Comments are due by 20 August 2018.

FSB launches thematic peer review on bank resolution planning

The FSB has launched a thematic peer review on resolution regimes. The peer review will investigate how effectively FSB member jurisdictions have implemented the resolution planning standard set out in the FSB's 'Key attributes of effective resolution regimes for financial institutions' and associated guidance. The review will cover resolution planning for all G-SIBs, domestic systemically important banks (D-SIBs) and any other banks that could be systemic in failure and that are included in resolution planning at a jurisdictional level. Following a recent focus on resolution planning for G-SIBs, the FSB is keen to focus particularly on banks other than G-SIBs in this review.

Amongst other things, the FSB is seeking comments on:

- the adequacy, proportionality and nature of requirements and practices for resolution planning;
- the nature and scope of resolution planning guidance given by authorities;
- experiences and challenges to developing resolution strategies;
- the adequacy of public disclosures on bank resolution planning; and
- experiences and challenges to addressing barriers to resolvability and the impact they have on resolution planning.

Comments are due by 4 July 2018 and the FSB intends to publish a report discussing the responses in the first half of 2019.

BoE publishes independent report on resolution arrangements and Deputy Governor discusses CCP resolution and banks' resolvability self-assessments

The Bank of England (BoE) has published a report by the Independent Evaluation Office (IEO) on the effectiveness of the BoE's resolution arrangements. The Court of Directors commissioned the report in February 2017. The findings and recommendations relate to three broad themes:

- establishing a roadmap to the BoE's stated objective of major UK banks being fully resolvable by 2022;
- an assessment of the BoE's structural separation (operational independence) between its supervisory and resolution functions, including the view that there may be benefits in the BoE considering the scope for synergies between going and gone-concern supervision; and
- preparing for resolution, which focuses on formalising current practices for heightened contingency planning, including preparing for a 'fast death' arising from operational events.

The BoE has welcomed the evaluation and simultaneously published its response, which sets out a commitment to implement the IEO's recommendations.

Alongside the report, the Deputy Governor for Financial Stability, Sir Jon Cuncliffe, has delivered a speech to the FIA International Derivatives Expo addressing the progress that has been made to reform derivatives markets and how the concentration of counterparty risk in central counterparties

(CCPs) is managed, including what the objectives should be for a resolution regime for CCPs. The speech also reflected on the development of the UK's bank resolution regime, including methods of assessing progress on resolvability. In the speech, Sir Jon announced that the BoE intends to consult on a reporting and assurance framework under which UK banks would carry out a self-assessment of their resolvability. The BoE would then publish an assessment of resolvability in order to provide greater transparency over its key judgments as resolution authority. It is anticipated that firms would submit their first self-assessments in 2020.

FCA publishes final rules on listing of sovereign controlled companies

The Financial Conduct Authority (FCA) has published final rules which create a new category within its premium listing regime for companies controlled by a shareholder that is a sovereign country. By providing a distinct listing category for these companies, the FCA is seeking to encourage them to choose the higher standards of premium listing, rather than standard listing.

The FCA has modified its original proposed rules to reflect consultation feedback. Amendments include:

- a new requirement that the election of independent directors is subject to separate approval by independent shareholders;
- a new requirement that disclosures on transactions between the sovereign and issuer are reported promptly;
- the removal of the requirement for a sponsor 'fair and reasonable' opinion and shareholder approval for related party transactions with the sovereign before the transactions are completed; and
- the exemption for the sovereign from the requirement to enter into a controlling shareholder agreement with the issuer.

Other features of the premium listing regime apply as usual. These include requirements to:

- demonstrate that a company is carrying on an independent business;
- disclose information regarding the issuer's compliance with the Financial Reporting Council's corporate governance code;
- maintain proportionate voting rights; and
- adhere to the principles of pre-emption rights.

The new category will be effective from 1 July 2018.

AMF consults on amendments to its General Regulation and proposes an instruction with a view to application of new Prospectus Regulation

Anticipating that the national threshold below which an offer of securities does not require the production of a European prospectus will be raised to EUR 8 million, the Autorité des Marchés Financiers (AMF) has proposed amendments to Book II of its General Regulation, on issuances and financial information, and a new instruction on the information document to be produced under this threshold for offers to the public made in France.

The provisions of the Prospectus Regulation of 14 June 2017 on the national threshold requiring an offer prospectus will come into effect on 21 July 2018. Bearing in mind the approaches adopted at the end of an initial consultation held between 24 January and 21 February 2018 on the determination of the national threshold below which an offering of financial securities to the public does not require the publication of a European prospectus, the AMF has launched a new consultation on harmonising its General Regulation.

Ownership control procedure: BaFin publishes new templates for notifications of acquisitions or increases of qualifying holdings in investment firms

Any person intending to acquire or increase a qualifying holding in an investment firm located in Germany is obliged to notify the German Federal Financial Supervisory Authority (BaFin) and Deutsche Bundesbank promptly of that intention.

The information required to be included in the notification by proposed acquirers is set out in Delegated Regulation (EU) 2017/1946, but this does not include any guidelines as to the form in which notifications need to be filed.

In order to facilitate the process for proposed acquirers, BaFin has now published (non-mandatory) notification templates on its website.

Own funds requirements: BaFin publishes guidance note on permission requests to classify capital instruments as Common Equity Tier 1 instruments

BaFin has published a guidance note concerning permission requests pursuant to Article 26 paragraph 3 of the Capital Requirements Regulation (CRR).

In order to classify capital instruments as Common Equity Tier 1 instruments, institutions located in Germany are obliged to apply for permission from BaFin. In its guidance note, BaFin provides information on the necessary documents and declarations which need to be handed in together with such a request.

AMLD 4: Consob adopts implementing regulation

The Commissione Nazionale per le Società e la Borsa (CONSOB) has adopted Resolution no. 20465/2018 on a new regulation implementing Legislative Decree no. 231/2007 and the fourth Anti-Money Laundering Directive (AMLD 4). The regulation relates to the organisation, procedures and internal controls of statutory auditors and auditing firms, with the aim of preventing of the use of the economic and financial system for the purposes of money laundering and terrorism financing.

The regulation replaces the previously adopted by resolution (no. 17836/2011) and, among other things, provides for:

- amendments to define duties and responsibilities of the bodies involved in the processes of prevention and countering of money laundering and terrorist financing;
- obligations of assessment and analysis of the risks of money laundering and terrorism financing; and
- the introduction of specific provisions concerning statutory auditors-natural persons.

The regulation will enter into force on 1 July 2018.

MiFID2: Luxembourg Implementing Law and Grand Ducal Regulation published

A new law of 30 May 2018 on markets in financial instruments implementing MiFID2, MiFIR and Article 6 of Commission Delegated Directive (EU) 2017/593 has been published in the Luxembourg official journal (Mémorial A). Amongst other things, the law modifies the financial sector law of 5 April 1993 and repeals the markets in financial instruments law of 13 July 2007 (with the exception of its Article 37).

The law is supplemented by a Grand Ducal Regulation of 30 May 2018 on the protection of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or receipt of fees, commissions or any monetary or non-monetary benefits (GDR). The GDR transposes the other provisions of the Delegated Directive, repeals the Grand Ducal Regulation of 13 July 2007 relating to organisational requirements and rules of conduct in the financial sector and modifies the Grand Ducal Regulation of 13 July 2007 relating to the keeping of the official listing for financial instruments.

The law and the GDR are intended to close regulatory gaps revealed by the 2008 financial crisis, adapt the legislation to financial and technological changes in financial markets that have occurred since the introduction of MiFID1 and make financial markets more resilient and transparent, while strengthening investor protection and providing authorities with more effective supervisory powers. The stricter organisational requirements relate, amongst other things, to product governance and set more extensive requirements for members of the management bodies of investment firms, credit institutions and market operators in an effort to strengthen investor protection.

In this context, the CSSF announced in its May 2018 Newsletter that it will update the sections of its website dedicated to MiFID2/MiFIR and transaction reporting. The CSSF has indicated that CSSF Circulars 07/302, 07/306 and 08/365, providing specifications and technical arrangements in relation to transaction reporting pursuant to Article 28 of the former law of 13 July on markets in financial instruments, have become obsolete under the new regulatory framework.

The law and the GDR entered into force on 4 June 2018.

Amendment to Act on Payment Services published in Journal of Laws

The Act Amending the Act on Payment Services, which implements Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) 1093/2010, and repealing Directive 2007/64/EC (PSD2) into Polish law, has been published in the Journal of Laws.

The Act comes into force on 20 June 2018.

Polish Financial Supervision Authority issues communication on operation of cryptocurrency exchanges and bureaux de change

The Polish Financial Supervision Authority (PFSA) has issued a communication on the operation of cryptocurrency exchanges and bureaux de change in which it notes that the Polish legal system has no regulations prohibiting the carrying on of a business as a cryptocurrency exchange or bureau de change, which means that the carrying on of a business in the Republic of Poland in the form of a cryptocurrency exchange or bureau de change and trading in cryptocurrencies are not prohibited and therefore legal. In the communication, the PFSA highlights issues related to licensing as well as requirements arising under anti-money laundering legislation.

Resolution to implement Government Green Bond Programme to be introduced in Legislative Council

The Hong Kong Government has announced that a resolution will be introduced into the Legislative Council to authorise the government to borrow sums not exceeding HKD 100 billion or equivalent to implement the Government Green Bond Programme. The programme is intended to promote the development of green finance in Hong Kong by encouraging issuers to arrange financing for their green projects through Hong Kong's capital markets.

Sums raised under the programme will be credited to the Capital Works Reserve Fund of the government for funding public works projects with environmental benefits to combat climate change and promote the development of green finance. The programme will be aligned with the guidelines/standards widely accepted by global investors for green bond issuance. To follow best market practice and set a good example for other potential green issuers, the government is inclined to engage independent reviewers to verify and/or certify the alignment of the frameworks of individual issuances under the programme with the green bond issuance standards.

The Hong Kong Monetary Authority (HKMA) will assist in implementing green bond issuance under the programme.

Subject to deliberation within the Legislative Council over the legislative process, the government intends to move the resolution in the Legislative Council on 27 June 2018.

HKEX joins UN partnership programme for sustainable capital markets

The Hong Kong Exchanges and Clearing Limited (HKEX) has announced that it has become a partner of the United Nations (UN) sustainable stock exchanges (SSE) initiative, committing to further promote sustainable and transparent capital markets. The HKEX is the 74th stock exchange to join the UN SSE initiative.

The HKEX requires its listed companies to report environmental, social and governance information, and will provide both written guidance and training on this and other sustainability-related topics.

SFC reminds intermediaries of need to comply with notification requirements

The Securities and Futures Commission (SFC) has issued a circular to remind intermediaries of the notification requirements under the Securities and Futures (Licensing and Registration) (Information) Rules (Information Rules) under which intermediaries are required to notify the SFC of any significant changes in the nature of their business and the types of service they provide.

The SFC expects intermediaries to fully comply with the Information Rules regardless of the nature of the significant change in their business. Moreover, they are encouraged to discuss their plans with the SFC at an early stage to avoid adverse regulatory consequences.

Along with the development of new financial technologies, the SFC has noticed a growing trend of intermediaries introducing changes to their business activities to provide trading and asset management services involving crypto-assets as well as robo-advisory financial services. The SFC views these activities as significant changes which trigger the notification requirement. Intermediaries are advised to discuss these activities with the SFC before engaging in them.

In addition, where crypto-assets business is conducted in Hong Kong by other entities in the same group as an intermediary, the SFC encourages the intermediary to inform it as soon as reasonably practicable so that it may assess the potential impact of the group's crypto-assets business on the intermediary.

TSE publishes revised Corporate Governance Code

The Tokyo Stock Exchange (TSE) has published a revised Corporate Governance Code. The revisions are mainly intended to enhance the engagement between investors and companies.

In response to amendments made to the Code, the TSE has revised the Securities Listing Regulations for necessary changes and the Financial Services Agency (FSA) has published the final guidelines for investor and company engagement following a public consultation held in March and April 2018. An English translation of the summary of comments received in the public consultation and the FSA's view on them will be published soon.

The revised Code and the new guidelines are effective from 1 June 2018.

FSC announces measures to improve stock trading system

The Financial Services Commission (FSC) has announced measures to improve the safety of the stock trading system. The measures are intended to introduce multi-layered verification systems covering the entire process of stock trading in order to prevent the probability of systemic flaws in internal and external controls of the stock trading system.

Some of the key measures include the following:

- controls in the stock trading system:
  - securities firms will tighten internal controls over stocks coming in and out of trading accounts and cross-check with the Korea Securities

Depository (KSD) – stricter internal controls measures in the stock trading system will be implemented by the third quarter of 2018;

- before the market opens for trade, securities firms will be required to verify daily whether its total balance of stocks equals the sum of stock holdings by investors – the verification system for stock holdings by investors will be implemented by the first quarter of 2019;
- securities firms, the Korea Exchange (KRX) and the KSD will jointly establish a monitoring system by the first half of 2019 to enable real-time tracking of changes in the balance of stocks and trading volume;
- securities firms will be required to introduce an 'emergency button' system by the third quarter of 2018 to halt immediately erroneous trades by their employees, once an incident occurs; and
- to prevent market shocks from massive trading orders, the KRX will lower the threshold for activating the rejection of orders by the third quarter of 2018, currently triggered with an order exceeding 5% of listed stocks;

- a dividend payment process under the stock ownership plan will be implemented by the third quarter of 2018 – securities firms will be required to divide their dividend payment process into two separate systems: one for cash dividends and the other for stock dividends, and use banks' electronic system to pay cash dividends in order to avoid any possible confusion between 'cash' and 'stock' in the first place; and
- short selling rules – the FSC will toughen supervision and penalties on violations of short selling rules, instead of a blanket ban on short sales. It will expand the type and amount of stocks that retail investors can borrow for short selling to provide more opportunities for retail investors and toughen penalties on violations of short selling rules by the second half of 2018. Further, it plans to propose a draft bill to revise the Financial Investment Services and Capital Markets Act by the end of 2018.

FSC proposes amendments to regulations on supervision of banking business

The FSC has proposed amendments to the regulations on supervision of banking business following its 19 January 2018 policy proposals aimed at further improving the bank capital regulations regime. The proposed amendments are intended to reassign risk weights given to household and corporate loans for the calculation of the loan-to-deposit ratio and fine-tune asset classification rules for new credit extended to companies under restructuring.

The key proposals include the following:

- for the calculation of the loan-to-deposit ratio, household loans will be given 115% risk weight, corporate loans 85%, and sole proprietor loans 100%;
- KRW-denominated certificate of deposits issued by banks will be treated as deposits up to 1% of the banks' aggregate deposits in the loan-to-deposit ratio calculation; and

- new credit extended to a company under a workout or other restructuring arrangements may be eligible to be classified separately from previous credit extensions.

Comments on the proposed amendments are due by 6 July 2018.

MAS issues statement of commitment to FX Global Code

The Monetary Authority of Singapore (MAS) has issued a statement affirming its commitment to the Foreign Exchange Global Code (FX Global Code) developed by the Bank for International Settlements. The MAS has indicated that it will adhere to the principles of the FX Global Code when acting as a market participant and ensure that its internal practices and processes are aligned with these principles.

The FX Global Code, which applies to the wholesale foreign exchange (FX) market globally, sets out global principles of good practice that promote a robust, fair, liquid, open, and appropriately transparent FX market, underpinned by high ethical standards.

Amongst other things, the FX Global Code covers principles of good practice that market participants should adhere to, in relation to the following:

- ethical and professional standards;
- sound and effective governance structures;
- execution of transactions;
- information sharing;
- risk management, compliance and review structures; and
- confirmation and settlement of FX trades.

While the FX Global Code is voluntary, wholesale FX market participants in Singapore are strongly encouraged by the MAS to demonstrate adherence to the FX Global Code.

MAS responds to feedback on regulations for short selling

The MAS has published its responses to the feedback it received on its December 2016 consultation paper on regulations for short selling, containing draft Securities and Futures (Short Selling) Regulations 2018 and Guidelines on the Regulation of Short Selling.

Amongst other things, the MAS has confirmed that:

- investors will be required to report their short positions and short sell orders in securities listed on the Singapore Exchange – this is intended to improve the transparency of short selling activities in the securities market and enable investors to make more informed trading decisions;
- investors with short positions that reach or exceed the lower of (a) 0.2% of total issued shares or units or (b) SGD 2,000,000 will be required to report these positions to the MAS through a new online portal, the Short Position Reporting System (SPRS);
- products subject to the short selling requirements include all primary and secondary shares listings (including ordinary and preference shares),

business trusts and real estate investment trusts. Bonds, exchange-traded funds, and contracts for difference are excluded;

- designated market makers and registered market makers will be exempted from the requirement to disclose short sell orders;
- the definition of 'trading desk' in the Regulations has been revised to address concerns with having to report at the highest level of trading decision-making – a 'trading desk' with multiple trading books can either report its net short position across trading books, or net short positions of individual trading books;
- all short positions are to be reported if an investor chooses to report at the discretionary fund manager level, to ensure that the market has transparency to an investor's positions that exceed the reporting threshold at the investor level, but is below the reporting threshold when broken down at the fund manager level; and
- flexibility will be provided for trustees to report short positions at the legal entity level or at the individual trust level, and trustees are allowed to authorise a third party / reporting agent to report on their behalves.

The new short selling requirements will be effected through the Securities and Futures (Short Selling) Regulations 2018, which will come into operation on 1 October 2018.

MAS consults on guidelines on provision of financial advisory service and design of advisory and sales forms

The MAS has launched a public consultation to seek feedback on its proposed guidelines on the provision of financial advisory service and the design of advisory and sales forms.

The proposed guidelines on the provision of financial advisory service clarify how the MAS assesses whether a person is deemed to be carrying on a business of providing a financial advisory service. A person who is carrying on a business of providing a financial advisory service is required to hold a financial adviser's licence and comply with the relevant provisions under the Financial Advisers Act, unless he is exempted. Amongst other things, the proposed financial advisory service guidelines:

- provide a two-stage test for assessing whether a person is carrying on a business of providing a financial advisory service. First, the MAS assesses whether the activity amounts to providing financial advice. Providing factual information in an unbiased manner is not considered providing financial advice. Second, the MAS determines if the person is carrying on a business of providing financial advice. Any activity conducted systematically and with continuity is likely to be considered as carrying on of a business; and
- indicate the MAS' position on specific activities, such as distribution or reproduction of research reports, and providing portfolio allocation advice.

The proposed guidelines on the design of advisory and sales forms are intended to highlight good practices in form design, improve form readability and facilitate clients' understanding of the advisory and sales process as well as key information to be disclosed in forms. Amongst other things, the proposed guidelines on the design of advisory and sales forms provide that financial advisers should:

- use clear and concise language in their forms;
- organise and present information in a reader-friendly manner; and
- ensure that their forms facilitate an efficient and effective advisory and sales process, which includes ensuring that forms do not contain duplicate questions or disjointed sections.

Comments on the consultation are due by 5 July 2018.

Monetary Authority of Singapore (Amendment) Act 2017 (Commencement) Notification 2018 gazetted

The Monetary Authority of Singapore (Amendment) Act 2017 (Commencement) Notification 2018 has been gazetted to announce the commencement dates of the following sections of the Monetary Authority of Singapore (Amendment) Act 2017 (Amendment Act):

- sections 9, 34, 36(5), 37 and 41(a), which relate to the renumbering of provisions of the Monetary Authority of Singapore Act (MAS Act), and consequential amendments to the Banking Act, Companies Act and the Financial Advisers Act, will be effective from 4 June 2018; and
- sections 10, 11, 12, 15, 16, 33, 35, 36(2), 36(3), 41(b), 43(a), 43(b), 44, 45, 46(c), 46(d), 47 and 48(b) will be effective from 5 June 2018 (5 June Amendments).

Amongst other things, the 5 June Amendments:

- introduce a new Division 2 to Part VIA of the MAS Act, empowering the MAS to impose requirements relating to recovery and resolution planning on pertinent financial institutions. 'Pertinent financial institution' is defined to bear the same meaning as used in Part VIB of the MAS Act;
- criminalise the breach of an order of the MAS prohibiting a specified financial institution from carrying on its significant business, any act or function connected with the business or any aspect of the business; and
- criminalise certain acts or omissions by a liquidator of a company which is carrying or has carried on significant business in Singapore of a specified financial institution, such as knowingly furnishing false or materially misleading information to the MAS about the affairs of the company or the winding up of the company.

RECENT CLIFFORD CHANCE BRIEFINGS

Look out – why new EU tax reporting requirements are ahead!

New EU rules – commonly known as 'DAC 6' – under the Directive on Administrative Cooperation require taxpayers and intermediaries to report a wide range of transactions to their home tax authorities. In some cases these are transactions that are tax-motivated. In other cases they may be ordinary course financing or corporate transactions with no particular tax objective.

In the next few weeks EU taxpayers and intermediaries will have to put in place systems to enable identification and reporting of affected transactions. This briefing paper outlines the new rules and suggests how such systems could work.

https://www.cliffordchance.com/briefings/2018/06/look_out_why_neweutaxreportingrequirement.html

EU Court of Justice clarifies the EU Merger Regulation prohibition on gun jumping?

In its judgment in Ernst & Young, the Court of Justice of the EU (CJEU) provided guidance on the scope of the prohibition on implementing a transaction that is notifiable under the EU Merger Regulation (EUMR) prior to its clearance by the European Commission (so-called 'gun jumping'). The judgment is a first piece in the puzzle of what amounts to gun jumping under the EUMR, but leaves open important issues that are expected to be addressed by other, ongoing cases. In the meantime, broad reliance on the judgment may be limited by the unusual facts of the case.

This briefing paper discusses the judgment.

https://www.cliffordchance.com/briefings/2018/06/clifford_chance_clientbriefingeucourto.html

Russian court issues the first ever decree recognising cryptocurrency as property

On 15 May 2018, the full text of a decree issued by the 9th Arbitrazh Appellate Court in relation to case No. A40-124668/2017 was published. According to the decree, cryptocurrency is recognised as property within the meaning of the Russian civil law. Thus, while special regulations concerning tokens and cryptocurrency are still being considered by the Russian State Duma, there is already court practice in place that recognises, based on the general principles and scope of the Russian civil legislation, cryptocurrency as an independent class of assets.

This briefing paper discusses the court's decree.

https://www.cliffordchance.com/briefings/2018/06/-russian-court-issued-the-first-ever-decree-recognising-cryptocu.html

Hong Kong new open-ended fund company structure goes live in July 2018

Currently a Hong Kong domiciled open-ended investment fund may be established in the form of a unit trust but not in the form of a corporate vehicle due to the capital protection provisions of Hong Kong incorporated companies under the Hong Kong Companies Ordinance. To further develop Hong Kong as a full-service asset management centre, the government is introducing the open-ended fund (OFC) structure with an objective to attract more funds to domicile in Hong Kong.

This briefing paper provides an overview of the key features and implications of the OFC regime.

https://www.cliffordchance.com/briefings/2018/05/hong_kong_new_open-endedfundcompanystructur.html

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Recent moves in Japan towards tougher corporate compliance

'Japan Inc' is now back on the front pages with many Japanese corporations increasingly pursuing significant M&A opportunities internationally given the mature market at home and high levels of cash reserves.

The corporate landscape in Japan has also been changing in other ways in recent years. As a consequence of a number of high-profile corporate scandals, Japanese legislators have been busy revising legislation to further improve corporate governance in the world's third biggest economy.

This briefing paper focuses on three such reforms:

- the bolstering of the role of independent outside directors;
- the introduction of Japan's first ever plea-bargaining regime; and
- the release of Japan's 'Principles for Listed Companies Dealing with Corporate Malfeasance'.

For the reasons explained in this briefing, global companies with operations in Japan should keep in mind this shift towards more regulation.

https://www.cliffordchance.com/briefings/2018/06/recent_moves_in_japantowardstoughercorporat.html

Saudi Arabia's new Commercial Pledge Law

In the last week of April 2018, Saudi Arabia's new Commercial Pledge Law and its Implementing Regulations (the new CPL) were issued and published, and they came into force immediately upon their publication. In replacing the old Commercial Pledge Law and its Implementing Regulations (the old CPL), the new CPL provides an entirely new framework for the grant, perfection and enforcement of pledges over movable assets to secure debts that are considered, pursuant to the provisions of the new CPL, to be 'economic debts' as opposed to personal debts.

This briefing paper discusses the new law.

https://www.cliffordchance.com/briefings/2018/05/saudi_arabia_s_newcommercialpledgelaw.html