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Brexit: Leaders comment on progress of negotiations following European Council meeting

The European Council (Art.50) has adopted conclusions on the Brexit negotiations at its meeting on 29 June 2018. The conclusions welcome further progress made on parts of the Withdrawal Agreement but note that other important aspects still need to be agreed.

Among other things, the conclusions express the European Council's views on:

- agreeing a backstop solution for Northern Ireland; and
- preparing a political declaration on the framework for the future relationship.

Brexit: EBA publishes opinion on financial institutions' no-deal contingency planning

The European Banking Authority (EBA) has published an opinion on contingency planning and other preparations by financial institutions in the event of the UK's withdrawal from the EU without a ratified agreement in March 2019 (EBA/Op/2018/05). The opinion is addressed to competent authorities, but also contains matters of importance for financial institutions.

The EBA has been monitoring the level of contingency planning and other preparations undertaken by financial institutions and takes the view that

progress in financial institutions' preparations for a no-deal scenario is inadequate and mitigating actions should be pursued without further delay. As such, the opinion sets out a sequence that financial institutions should follow in assessing and responding to the implications of no ratified agreement and no transition period being in place.

Issues addressed within the sequence include:

- identifying risk channels beyond the general risk of market turmoil, including direct financial exposures to, contracts with or reliance on UK or EU27 counterparties and other financial market infrastructures (FMIs), as well as the storage and transfer of data;
- taking identified risks into account in capital planning, including whether continued market access to the UK or EU27 is necessary or desirable;
- ensuring the necessary regulatory permissions are in place in both the UK and EU27 to conduct new and support existing business;
- ensuring the booking model takes into account recovery and resolution arrangements, and the resilience of any new or expanded entity;
- amending or replacing existing or future contracts that could be affected as soon as possible;
- identification of, and engagement with, alternative FMIs in the event that access to existing FMIs is lost or curtailed; and,
- for financial institutions subject to the BRRD, ensuring MREL-eligible instruments issued under UK or EU law remain eligible after the UK's withdrawal, and that non-MREL liabilities can be credibly written down or converted via bail-in recognition clauses.

The opinion also emphasises the duty on financial institutions to provide clear information to their customers on how contracts or services may be affected by a no-deal scenario, and the expectation that firms will inform their competent authorities of the actions being taken and the timeline for those actions.

Banking reform package: ECON Committee publishes final reports

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has published its stance on the legislative proposals forming the banking reform package, which have been tabled for plenary.

The ECON Committee's stance is set out in:

- the final report on the proposed Directive to amend the Bank Recovery and Resolution Directive (BRRD 2);
- the final report on the proposed Regulation to amend the Capital Requirements Regulation (CRR 2);
- the final report on the proposed Directive to amend the Capital Requirements Directive (CRD 5); and
- the final report on the proposed Regulation to amend the Single Resolution Mechanism Regulation (SRMR 2).

The ECON Committee adopted the reports on 19 June 2018. The EU Parliament is expected to confirm its stance in July, ahead of trilogue negotiations with the EU Council and EU Commission.

Cross-border payments: EU Council agrees negotiating stance on proposed amendments on charges for intra-EU payments in euro and dynamic currency conversion

The EU Council Presidency has published the final compromise text for a negotiating position on the 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.

The Council invites the Permanent Representatives Committee (COREPER) to agree the compromise text and begin negotiations with the EU Parliament with a view to reaching an agreement at first reading.

Benchmarks: ECB publishes methodology for calculating ESTER

The Governing Council of the European Central Bank (ECB) has published its methodology for the calculation of the Euro Short Term Rate (ESTER), an overnight unsecured rate based entirely on money market statistical reporting (MMSR) which will start to be published by October 2020.

The Governing Council has also released the time-lagged publication of daily rate, volume and dispersion data based on the main methodological features of the forthcoming ESTER, called pre-ESTER. Regular releases for each reserve maintenance period will be issued from summer 2018.

MiFID2: ESMA Chair discusses current priorities

The Chair of the European Securities and Markets Authority (ESMA), Steven Maijoor, has delivered the keynote address at the FESE convention in Vienna. The speech discussed the implementation of MiFID2, in particular ESMA's assessment of the first months and issues identified in the area of secondary markets which ESMA intends to focus on in the coming months.

Maijoor commented on areas of MiFID2 implementation where ESMA views clear positive achievements, but also acknowledged some areas where improvements are needed to ensure the regime's smooth functioning and to ensure it meets its objectives. Specifically, the comments related to:

- data quality issues in the double volume cap mechanism as well as concerns relating to some periodic auction systems that may be designed with the intention to circumvent the double volume cap, which ESMA is currently investigating;
- concerns about a lack of level playing field between SIs and trading venues that may result in changes in market structure away from trading venues to systematic internalisers (SIs) and ESMA's proposed amendment to RTS 1 to ensure that quotes of SIs meet the tick size requirements;
- data quality issues in the bond liquidity assessment;
- three work streams on market data issues relating to the concept of making data available free of charge 15 minutes after publication, increases in the costs of market data, and the lack of a consolidated tape; and

- ESMA's intention to consult on an amendment to the tick size methodology to suggest different options for setting an appropriate tick size for instruments with their most liquid market outside of the EU. ESMA expects to launch the consultation in mid-July.

The speech also discussed the need for a comprehensive regime for third country trading venues in MiFID2, in the context of Brexit. Maijoor commented that a harmonised third country regime would have the benefit of ensuring a level playing field between EU and non-EU trading venues and mitigate potential risks related to orderly markets, investor protection and stability. Maijoor set out the view that a third country regime for trading venues could cover both regulated markets and trading venues operated by investment firms or their equivalent. ESMA stands ready to provide further technical advice to the EU institutions on the issue, if required.

EMIR: ESMA publishes opinion on CCP liquidity risk assessment

ESMA has published an opinion on central counterparties' (CCPs') internal risk model assessments on the liquidity risk posed by all entities towards which the CCP has a liquidity exposure.

The opinion, published under the European Market Infrastructure Regulation (EMIR), in intended to clarify the assessment of the liquidity risk when:

- a clearing member also acts as a liquidity provider; and
- a liquidity provider is not a clearing member.

ESMA takes the view that CCPs should include, in the measurement of their liquidity needs, the default of their top two clearing members in all their capacities vis-á-vis the CCP, in addition to assessing in their stress testing scenarios all entities towards which the CCP has a liquidity exposure.

ESMA publishes consultation responses on EMIR clearing obligation under the Securitisation Regulation

ESMA has published responses to its May 2018 consultation on amendments to regulatory technical standards (RTS) on the EMIR clearing obligation under the Securitisation Regulation. The draft RTS are intended to specify criteria for establishing which arrangements under covered bonds or securitisations adequately mitigate counterparty risks and may benefit from an exemption from the clearing obligation.

ESMA has published six responses to the consultation on its website.

EBA publishes updated guides on supervisory data

The European Banking Authority (EBA) has published updated versions of its methodological guide on risk indicators and detailed risk analysis tools (DRATs), and its guidance note on compiling IMF Financial Soundness Indicators (FSIs) using data from EBA implementing technical standards (ITS) on supervisory reporting.

Both guides have been revised to include updated formulas and guidance reflecting changes made by the new International Financial Reporting Standard on financial instruments (IFRS 9). The guidance note also includes additional information on how to compute IMF FSIs.

A revised list of EBA risk indicators and DRATs has been published alongside the updated guides.

EBA consults on draft guidelines on outsourcing

The EBA has launched a consultation on draft guidelines on the outsourcing arrangements of financial institutions. The draft guidelines update the existing outsourcing guidelines published in 2006 by the EBA's predecessor, the Committee of European Banking Supervisors (CEBS), and incorporate the EBA's recommendations on outsourcing to cloud service providers. The draft guidelines will apply to credit institutions and investment firms subject to the Capital Requirements Directive (CRD 4), payment institutions subject to the recast Payment Services Directive (PSD2) and e-money institutions subject to the second E-Money Directive (EMD2).

Among other things, the proposed guidelines set out:

- criteria for assessing whether an outsourced activity, service, process or function would be deemed 'critical' or 'important';
- the responsibilities of the management body, including the establishment of an outsourcing framework, its implementation and application in a group, due diligence and risk assessment;
- clarifications related to the monitoring, documentation and supervision of outsourcing arrangements;
- a framework for the due diligence process; and
- supervisory expectations regarding services providers located in third countries, aimed at ensuring that the responsibility of an institution's management body is not outsourced and that outsourcing does not lead to 'empty shell' institutions that lack the substance to remain authorised.

Comments on the consultation are due by 26 September 2018.

EBA adds PSD2 to Q&As on single rulebook

The EBA has updated its questions and answers (Q&As) on the Single Rulebook to include the recast Payment Services Directive (PSD2). The Q&A tool is intended to support the consistent and effective application of the Single Rulebook for the banking sector. Stakeholders are now able to submit questions on the application of PSD2 and the EBA's associated work.

European Union (Withdrawal) Bill receives Royal Assent

The European Union (Withdrawal) Bill has received Royal Assent and has become an Act of Parliament. An explanatory note has been published alongside the Act.

Among other things, the European Union (Withdrawal) Act 2018:

- repeals the European Communities Act 1972 on the day the UK leaves the EU;
- converts EU law as it stands at the moment before the UK leaves the EU into domestic law and preserves laws made in the UK to implement EU obligations; and
- creates powers to make secondary legislation, including temporary powers to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left the EU and to implement

a withdrawal agreement, following the enactment of a statute by Parliament approving the final terms of withdrawal.

The Department for Exiting the European Union (DExEU) has announced that the Government expects to use the powers given by the Withdrawal Act to make about 800 pieces of secondary legislation.

Brexit: HMT publishes approach to secondary legislation under EU (Withdrawal) Act

HM Treasury (HMT) has published a paper on its approach to laying financial services statutory instruments (SIs) under the European Union (Withdrawal) Act 2018. The paper sets out HMT's approach to:

- the implementation period;
- contingency preparations to ensure that the UK continues to have a functioning financial services regulatory regime in all scenarios, including a 'no deal' scenario;
- fixing deficiencies; and
- splitting responsibilities between HMT and the financial services regulators.

Among other things, HMT has set out its intention to begin laying SIs soon, including those relating to a Temporary Permissions Regime (TPR) and a Temporary Recognition Regime for central counterparties, as well as the SI sub-delegating the power to fix deficiencies in EU Binding Technical Standards (BTS) and regulator rulebooks to the financial services regulators.

Further to the HMT announcement, the Bank of England (BoE), Financial Conduct Authority (FCA) and Payment Systems Regulator (PSR) have each issued their approach to financial services legislation under the Withdrawal Act. The BoE, FCA and PSR each intend to consult on changes to onshored BTS and rules this autumn.

HMT plans to publish additional draft SIs and accompanying explanatory information over the summer, ahead of laying, to give stakeholders an opportunity to engage and familiarise themselves with the draft provisions.

HM Treasury publishes draft statutory instrument on ring-fenced bodies and core activities under FSMA

HM Treasury has laid before Parliament a draft statutory instrument (SI) amending the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 (CAO). The draft SI is intended to resolve conflicting requirements between the UK's ring-fencing regime and the financial sanctions regimes.

To comply with the ring-fencing regime, set out in the Financial Services and Markets Act 2000 (FSMA) and amended by the Financial Services (Banking Reform) Act 2013, banking groups may need to move some accounts from one legal entity to another, such as a retail depositor's account into a new ring-fenced bank. However, in some instances the holders of these accounts are subject to financial sanctions, which, among other things, prohibit the movement of any fund that the account holders own or control. This means that some banking groups are unable to comply fully with the ring-fencing legislation.

The draft Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) (Amendment) Order 2018 amends the definition of a 'core deposit' under the CAO, so that accounts whose holders are or have been subject to financial sanctions restrictions in the last six months are excluded in the definition. As such, banking groups will not be required to move retail accounts whose holders are subject to financial sanctions into ring-fenced banks.

The SI is expected to come into force on 31 October 2018.

PRA publishes final rules and form changes on EU Benchmarks Regulation

The PRA has updated its policy statement on responses to Chapters 7 and 8 of occasional consultation paper CP18/17 (PS31/17) to include its final rules and form changes on the EU Benchmarks Regulation.

The legislative framework for the PRA to implement the EU Benchmarks Regulation is now in place. As a result, the policy statement has been updated to include the PRA Rulebook: CRR Firms: Benchmarking Regulation Instrument 2018 (PRA 2018/15).

The Instrument came into force on 29 June 2018.

FCA issues Handbook Notice No.56

The FCA has issued Handbook Notice 56, which sets out the changes to the FCA Handbook made by the FCA Board on 24 May and 28 June 2018.

In particular, the Notice sets out Handbook changes effective from:

- 29 June 2018 for changes made by the:
  - Benchmarks Regulation (Amendment) Instrument 2018;
  - Fees (Payment Systems Regulator) Instrument (No 7) 2018;
  - Capital Requirements Directive IV and Bank Recovery and Resolution Directive Instrument 2018; and
  - Payment Services Instrument 2018;
- 1 July 2018 for changes made by the Listing Rules (Sovereign Controlled Commercial Companies) Instrument 2018; and
- 2 July 2018 for changes made by the:
  - Periodic Fees (2018/19) and Other Fees Instrument 2018;
  - Fees (Miscellaneous Amendments) (No 11) Instrument 2018; and
  - Fees (Single Financial Guidance Body Levy) Instrument 2018.

Additionally, the Handbook Administration (No 49) Instrument 2018 will make minor changes to various modules of the FCA Handbook to correct or clarify existing provisions which have previously been consulted on and which do not represent any alteration in FCA policy.

PRA publishes changes to large exposures framework

The PRA has published a policy statement on changes to its large exposures (LE) framework (PS14/18).

The policy statement sets out the PRA's feedback on responses received to its consultation, alongside updates to the LE part of the PRA rulebook, the supervisory statement on LE (SS16/13) and the guidelines for completing regulatory reports (SS34/15).

The changes to the framework include:

- additional guidance for intragroup permissions and the inclusion of the PRA's expectations on the resolution exemption;
- modifications to the application of non-core large exposures group (NCLEG) permissions at a solo and UK consolidated level; and
- the exemption of resolution exposures from LE limits.

The changes to the PRA's rules and expectations took effect from 29 June 2018.

PRA publishes Dear CEO letter on exposure to crypto-assets

The PRA has published a letter to the CEOs of banks, insurance companies and designated investment firms on exposure to crypto-assets. In particular, the letter sets out the PRA's expectations in relation to firms' crypto-assets exposure.

Among other things, the PRA expects firms to:

- assign an individual, approved by the PRA to perform an appropriate Senior Management Function (SMF) or Senior Insurance Management Function (SIMF), to actively review and approve the risk assessment framework for any planned business direct exposure to crypto-assets and/or entities heavily exposed to crypto-assets;
- ensure that the incentives provided for engaging in crypto-asset related activity do not encourage excessive risk-taking;
- ensure that the firm has access to the relevant expertise to accurately assess the risks of crypto-assets and establish risk management approaches that are commensurate to those risks;
- set out their consideration of risks relating to crypto-exposures in their internal capital adequacy assessment process or own risk and insolvency assessment, where relevant; and
- inform their usual supervisory contact of any planned crypto-asset exposure or activity on an ad hoc basis, along with an assessment of the associated risks.

PRA publishes policy statement on regulated fees and levies for 2018/19

The PRA has published a policy statement on regulated fees and levies for 2018/19 (PS13/18).

Alongside feedback on consultation responses, the policy statement sets out the final fee rates to cover:

- the PRA's annual funding requirement (AFR) for the financial period 1 March 2018 to 28 February 2019; and

- the ring-fencing implementation fee (RFIF) for the financial period 1 March 2018 to 28 February 2019.

Appended to the policy statement are the final rules to implement changes to the Fees part of the PRA Rulebook from 28 June 2018.

The PS13/18 affects all firms currently paying PRA fees or expecting to do so within the fee year for 2018/19.

PSR publishes policy statement on regulatory fees

The PSR has published a policy statement on regulatory fees (PS18/2) which concludes the review of its regulatory fees regime. Since August 2017 the PSR has published three consultation papers on the regime, each building on the decisions outlined in the previous one, with an intention of establishing a fees regime that is proportionate, sustainable, and simple for fee payers and payment system operators.

In particular, the policy statement sets out the PSR's decisions following its March 2018 consultation paper (CP18/8) relating to:

- the PSR's approach to publishing the annual figures for PSR fees;
- the definition of relevant transactions for the Cheque and Credit (C&C) system in the fees rules;
- alignment with the Financial Conduct Authority (FCA) on the collection of PSR fees on account; and
- alignment with the FCA on the PSR's approach to any future underspend, which will also affect its treatment of the 2017/18 underspend.

Alongside the policy statement, the PSR has also published a stand-alone document on the PSR fees figures for 2018/19 which sets out the figures to be used to calculate the 2018/19 regulatory fees applying the new methodology set out in the fees rules.

FCA publishes progress report on review of retail banking business models

The FCA has published a progress report on its strategic review of retail banking business models. The review is intended to examine how personal current accounts are paid for and the possible impact of technological change facilitated by Open Banking and the recast Payment Services Directive (PSD2).

The paper provides an update on the FCA's work, including a summary of initial analysis and areas for further engagement. In the next phase of the review the FCA intends to assess when and how several factors that could lead to significant changes in the market may have an effect, including changing customer behaviour, regulatory initiatives, technological developments, and changes to banks' business models such as branch closure programmes.

The FCA is seeking views on the progress report by 7 September 2018.

Prospectus Regulation: German finance committee approves draft law

The Finance Committee of the German Parliament (Finanzausschuss) has approved the draft law on the exercise of options pursuant to the EU Prospectus Regulation (2017/1129 - PR3).

Under the draft law, issuers will not be required to publish PR3 compliant prospectuses for securities offerings in an overall equivalent between EUR 100,000 and EUR 8 million. For such issuances a securities information document (Wertpapier-Informationsblatt) will be provided to investors instead. The securities information document is intended to be a three-page, simple description of the essential characteristics of the security and the potential risks of investing in it. Each securities information document will be reviewed by the German Federal Financial Supervisory Authority (BaFin) and will be published subject to BaFin's authorisation.

Securities that fall into the new exemption regime, and therefore issued without a prospectus, will be subject to an investment threshold for non-qualified investors. This threshold limits such investments to a maximum of EUR 10,000 and further restricts them based on the financial situation of the (retail) investor.

Prospectuses under the new Prospectus Regulation regime may be published in the English language in order to facilitate securities offerings to non-German investors.

German Government publishes draft law implementing EU securitisation regulations

The German Government has published a draft law to implement the new Securitisation Regulation (EU) 2017/2402 and Regulation (EU) 2017/2401, which apply from 1 January 2019.

Among other things, the Regulations require Member States to implement appropriate administrative sanctions in case of infringements of the requirements of the Securitisation Regulation. The draft law amends the following national laws:

- the German Banking Act (KWG);
- the Insurance Supervisory Act (VAG);
- the German Investment Code (KAGB);
- the German Securities Trading Act (WpHG);
- the Solvency Regulation (SolvV);
- the Audit Report Regulation (PrüfbV); and
- the Regulation on Specification of Rules of Conduct and Organisation under the KAGB (KAVerOV).

The draft law also amends the term 'significant participation' within the KAGB to be in line with the Alternative Investment Fund Managers Directive (2011/61/EU - AIFMD) and UCITS IV (Directive 2009/65/EC). Moreover, simplified formal requirements for approval or amendment of fund investment conditions are introduced.

BaFin consults on revisions to issuers guide

The German Financial Supervisory Authority (BaFin) has revised the topics 'monitoring of financial statements' and 'publication of financial reports' (until recently chapters X-XIV) within its issuers guide (Emittentenleitfaden).

The revisions are the first part of a step-by-step update of BaFin's issuers guide due to new laws and regulations.

Comments are due by 31 July 2018.

PBoC streamlines CIBM access procedures for overseas institutional investors

The Shanghai Head Office of the People's Bank of China (PBoC) has issued Relevant Requirements on Streamlining the Registration Procedures for Overseas Investors Entering the China Inter-bank Bond Market (CIBM).

The notice is intended to further facilitate investment by overseas institutional investors in the CIBM and introduces two changes to the existing CIBM regime:

- a new registration form which replaces the previous forms; and
- removal of the previous requirement to provide an updated filing on the contemplated investment amount for an overseas institutional investor if it remitted less than 50% of the previously registered investment amount into China within nine months from the date of filing.

SFC and HKMA publish conclusions from consultation on OTC derivatives regulatory regime

The Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) have published conclusions from their joint consultation on further enhancements to the OTC derivatives regulatory regime in Hong Kong, which was launched in March 2018.

Based on market feedback, the mandatory use of Legal Entity Identifiers (LEIs) in trade reporting will only apply to the identification of entities that are on a reporting entity's side of a transaction. This requirement will be applicable to the reporting of new transactions and daily valuation information from 1 April 2019.

The SFC and HKMA have advised reporting entities to continue to identify their counterparties in transaction reports in accordance with a waterfall of identifiers specified in the supplementary reporting instructions for OTC derivative transactions. Meanwhile, reporting entities are expected to establish a process to request LEIs from their clients. Regulators will maintain close dialogues with reporting entities and keep in view international developments to assess the need for further requirements in this area.

The SFC and HKMA have also indicated that they will proceed with their proposals for Phase 2 clearing with some fine tuning. The clearing obligation will be expanded to include specified standardised interest rate swaps denominated in Australian dollars and the list of financial services providers will be revised.

The conclusions set out that the SFC and HKMA have adopted the trading determination process proposed in the joint consultation paper and are

currently using the process to determine which products may be appropriate for Hong Kong to introduce a platform trading obligation.

SFC publishes Annual Report 2017-18

The SFC has published its Annual Report 2017-18, which sets out ongoing initiatives to promote healthy and sustainable market development.

Among other things, the report highlights:

- a record high number of licensees and registrants;
- the review of 309 listing applications and the supervision of 401 takeovers-related transactions and applications;
- 301 on-site inspections of intermediaries;
- 8,461 requests for trading and account records from intermediaries as a result of market surveillance; and
- disciplinary action taken against 31 licensed corporations and individuals with total fines amounting to HKD 483 million.

HKMA and FSRA sign fintech cooperation agreement

The HKMA and the Abu Dhabi Global Market Financial Services Regulatory Authority (FSRA) have signed a co-operation agreement to enhance fintech collaboration between the two authorities. The agreement is intended to encourage and enable innovation in financial services in both markets, and support innovative financial businesses in expanding to each other's jurisdictions.

Under the agreement, the HKMA and the FSRA will collaborate on referring innovative businesses, information sharing and joint innovation projects.

SGX launches rules for listing companies with dual class shares

The Singapore Exchange Limited (SGX) has published a response paper to the feedback received on its consultation on introducing a primary listing framework for dual class shares (DCS) structures to the Mainboard of Singapore Exchange Securities Trading Limited (SGX-ST) and proposed safeguards to address associated expropriation and entrenchment risks.

Among other things, the response has clarified that:

- an issuer with a DCS structure will only be allowed to introduce a single class of multiple voting (MV) shares under the framework;
- companies seeking listing will have to demonstrate their suitability to list with a DCS structure through a holistic assessment by SGX at the point of listing which will consider non-exhaustive suitability factors, including the track record of the issuer group as a whole;
- holders of MV shares shall observe a moratorium on the transfer or disposal of their entire shareholdings in the issuer in respect of their interests in both MV and ordinary voting (OV) shares for at least 12 months after listing;
- the voting rights attaching to MV shares will be capped at 10 votes per share and the issuer will be permitted to reduce the voting differential post-

listing, subject to the approval of SGX and shareholders through an enhanced voting process;

- in any general meeting, the number of votes that may be cast by OV shareholders who are not also MV shareholders must be at least 10% of the total voting rights of the issuer;
- OV shareholders holding at least 10% of the total voting rights on a one-share-one-vote basis must be able to convene a general meeting;
- the issuer will be required to ensure that the proportion of the total voting rights of the MV shares as a class against those of the OV shares after a corporate action will not increase beyond that proportion existing prior to the corporate action;
- in the event of any excess MV shares or OV shares not taken up in their entirety in a rights issue, the issuer should have mechanisms in place to ensure that the proportion of the total voting rights of the MV shares does not increase after the rights issue;
- in principle, shareholders' approval for share issuance (whether under a general mandate or otherwise) must be obtained for each class of shares. While different approval thresholds apply for the issuance of MV shares and OV shares, issuers have a choice in deciding whether to obtain separate approvals or a single approval according to the stricter threshold;
- the issuer must have automatic conversion provisions to convert MV shares to OV shares on a one-for-one basis if the MV shareholder ceases to be a director or sells or transfers the MV shares;
- MV shares may be transferred to a non-director (who is not in the permitted holder group) as long as the shareholders approve such transfer through the enhanced voting process;
- the majority of the Audit Committee, Nominating Committee and Remuneration Committee, including the respective chairs, must be independent for effective check and balance; and
- the enhanced voting process will be extended to cover other key matters such as reverse takeovers.

The proposed amendments to the Mainboard Listing Rules have been effective since 26 June 2018.

Singapore and Rwanda sign bilateral investment treaty

Singapore and Rwanda have signed a bilateral investment treaty (BIT) to protect investors' interests and encourage cross-border investment flows between the two countries. The BIT is intended to establish rules on how Rwanda should treat investments from Singapore, and vice versa. Singapore companies operating in Rwanda will enjoy protection on their investments, in addition to what is already accorded under Rwanda's domestic laws. Investors from both countries will have access to international arbitration for investment disputes.

Singapore and Rwanda have also signed an air services agreement (ASA). The ASA is intended to enhance connectivity, enabling wider economic benefits through increased investment, tourism and trade between the two countries. The airlines of Singapore and Rwanda will be able to fly any number of passenger and cargo services between both countries as well as to

any third country, with no restrictions on capacity, frequency, aircraft type and routing.

ASIC calls on retail OTC derivatives sector to improve practices

The Australian Securities and Investments Commission (ASIC) has called on retail OTC derivatives issuers to improve their practices. ASIC has published a report following a review of 57 issuers which identified a number of risks associated with retail products, including binary options, margin foreign exchange and contracts for difference.

ASIC has raised concerns relating to pricing methodologies, risk management practices, monitoring of counterparties, referral arrangements and marketing materials.

To address the risks identified, ASIC has called on issuers to:

- review and update their risk management and client money practices; and
- assess whether their arrangements with counterparties and referrers meet their Australian financial services licence obligations.

Australian Takeovers Panel publishes revised guidance note on rights issues

The Australian Takeovers Panel has published the finalised version of its revised Guidance Note 17 on rights issues, following a consultation in February 2018. The Panel's response to feedback received on the consultation has been published alongside the finalised guidance note.

The changes are intended to provide clearer guidance on the Takeovers Panel's approach to rights issues by:

- revising the section on mitigating potential control effects;
- providing additional guidance in relation to shortfall facilities; and
- explaining that a rights issue will generally not be unacceptable if there is a clear need for funds provided an appropriate dispersion strategy has been put in place.

RECENT CLIFFORD CHANCE BRIEFINGS

The Fifth EU Anti-Money Laundering Directive - the new trust registration requirement and what it means for business

The new EU Anti-Money Laundering Directive (AMLD5) will require trustees of express trusts to register information on the beneficial ownership of the trust in a central national register. In a major change from the current rules, the new rules will apply to all express trusts - new and pre-existing - not just those that have tax consequences.

As Member States must implement the new rules by 10 January 2020, AMLD5 presents a challenging and onerous task for businesses - to identify all such trusts and register their beneficial ownership by that date as well as to build the appropriate systems to comply with the registration obligation for all new trusts.

This briefing explains how the new rules work and what steps corporate trustees and other businesses should be taking now.

https://www.cliffordchance.com/briefings/2018/06/the_fifth_eu_anti-moneylaunderingdirective.html

Sustainability and its impact on business

The profile of corporate sustainability has been growing steadily over the last few years. Boosted by initiatives such as the UN Global Compact and its Sustainable Development Goals and the Paris Climate Change Agreement, the topic is becoming a mainstream and core focus of business operations in many sectors.

This briefing discusses sustainability and its impact on business.

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

OHADA Law - impacts of the dematerialisation of securities

The recent dematerialisation of securities in OHADA law jurisdictions has raised an array of questions.

This briefing explains, in practical terms, the dematerialisation of securities and, in particular, the impact that such reform has on the type of security which can be granted over such assets.

https://www.cliffordchance.com/briefings/2018/06/client_briefing_-ohadalawimpactsofth.html

LIBOR and Operating Leases

The reform of LIBOR and other global benchmark rates used in loans and other financial instruments continues, although a common alternative reference rate acceptable to banks, hedging counterparties, investors and borrowers is yet to emerge.

This briefing specifically considers the impact of the potential discontinuation and replacement of LIBOR on aircraft operating leases and suggests next steps for lessors and lenders.

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

Government publishes new narrative reporting regulations

On 11 June 2018, the Government published new regulations introducing new narrative reporting requirements for companies including:

- a requirement for all large companies (whether listed or unlisted) to include a s172(1) Companies Act 2006 statement in their strategic report;
- a separate requirement for all large companies (whether listed or unlisted) to include information in their directors' report on how the directors have had regard to the need to foster the company's business relationships with suppliers, customers and others;

- a requirement for all companies with more than 250 UK employees to include information in their directors' report on how the directors have engaged with employees;
- a requirement for all quoted companies with more than 250 UK employees to publish, in their remuneration report, the ratio of their CEO's total remuneration to the median remuneration of their UK employees;
- a requirement for all quoted companies to include, in their remuneration report, information on the impact of share price growth on share-based executive pay, along with a summary of any discretion that has been exercised on executive remuneration outcomes in respect of share price increases or decreases during the relevant performance periods; and
- a requirement for large unlisted companies to include a statement of their corporate governance arrangements in their directors' report.

The regulations are intended to come into force on 1 January 2019 for financial years starting on or after that date.

This briefing discusses the regulations.

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

New UK thresholds for national security reviews of mergers

For transactions that close on or after 11 June 2018, new, lower thresholds apply to determine whether the UK Government can call them in for a national security review. The new thresholds apply only to deals involving targets with certain activities involving intellectual property or roots of trust relating to computer processing units, military or dual use products, or quantum technologies.

This briefing discusses the reforms.

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

Consob's sanctions regime - obligation to be interviewed vs the right to silence and the right against self-incrimination - a question under scrutiny by the Constitutional Court

Is it possible to require a person under investigation by CONSOB in relation to the administrative wrongdoing of insider trading and market manipulation to be interviewed by their accuser? Can this person (under investigation in relation to administrative wrongdoing) be forced to choose whether to follow the order to be interviewed (art 187 octies paragraph c) the Consolidated Financial Intermediation Law) or exercise their inviolable right of defence (the right to remain silent and the right against self-incrimination being laid down in the constitution and treaties) and risk being subject to further administrative sanctions provided for in the case of failure to comply with a request from the Regulator or its delayed performance (art 187 quinquiesdecies Consolidated Financial Intermediation Law) or, even worse, to further criminal sanction for obstructing the Regulator (art 170 bis of the Consolidated Financial Intermediation Law)?

These are, in short, the questions put by the Supreme Court to the Constitutional Court when it sought a declaration that the law also imposes an administrative sanction for non-compliance with a request from the CONSOB or a delayed performance of its functions on a person that CONSOB, when exercising its functions, alleges to have committed the administrative wrongs of insider trading and market manipulation.

This briefing discusses the case.

https://www.cliffordchance.com/briefings/2018/06/client_briefing_-consobssanctionsregime.html

China's Belt and Road Initiative

China's Belt and Road Initiative (BRI), is one of the most ambitious development projects in history. China's vision is to boost global trade and create vibrant economies along its route, which covers 74 countries. President Xi describes it as a vehicle for China to take a greater role on the international stage by funding and developing global transport and trade links. Its strategic importance was reinforced in October 2017 at the Communist Party of China's (CPC) 19th Party Congress when BRI was officially written into the CPC's Constitution - a clear statement of China's determination to push it forward. It also means that Chinese enterprises have the political imperative to make BRI a success.

This series of briefing papers discusses the BRI, focusing on the following topics:

- Initial phase - infrastructure;
- Dispute resolution from a Chinese perspective;
- Investing in the Caspian region; and
- Private investment funds.

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

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

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

https://www.cliffordchance.com/briefings/2018/06/belt_and_road_privateinvestmentfunds0.html

A Short Practical Guide to merger control for Chinese outbound deals

China's outbound investment has increased dramatically in recent years. In today's globalised economy, mergers and acquisitions (M&A) often transcend national boundaries. Competition authorities around the world are reviewing an increasing number of notified M&A transactions involving Chinese companies and this trend is likely to continue. It would be prudent for Chinese companies investing in overseas market(s) to understand the relevant merger control laws and act and plan accordingly.

This briefing discusses the relevant laws and the following questions:

- What transactions may need to be notified to competition regulators?

- In which jurisdictions would notifications need to be made?
- What happens if a notifiable transaction is not notified?
- What notification forms and information are required?
- What are the implications of merger control notifications?
- How could merger control notifications be conducted efficiently and effectively?
- Are any foreign investment control notifications required?

https://www.cliffordchance.com/briefings/2018/06/client_briefing_-ashortpracticalguidet.html

The aircraft leasing sector in China - regulatory regime changes and other developments

In March 2018, the thirteenth National People's Congress of the People's Republic of China (PRC) approved the institutional reform proposal submitted by the State Council. Among other things, this proposal contemplates that the China Insurance Regulatory Commission (CIRC) will be merged with the China Banking Regulatory Commission (CBRC) and form a single commission under the direct supervision of the State Council. On 8 April 2018, the China Banking and Insurance Regulatory Commission (CBIRC) came into existence.

Following the establishment of CBIRC, the Ministry of Commerce of the PRC (MOFCOM) published the Circular on the Supervisory Duties on Financial Leasing Companies, Commercial Factoring Companies and Pawn Shops (Circular 165), officially announcing that its administrative authority over financial leasing companies was handed over to CBIRC. Circular 165 took effect on 22 April 2018.

This briefing discusses the reform of China's financial leasing industry regulatory regime.

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

Hong Kong's SFC gives first major update on progress of Manager-in-Charge regime

Hong Kong's Securities and Futures Commission (SFC) has published its first substantive review of progress in the Manager-in-Charge regime since it was fully implemented in October 2017. The SFC also says it will conduct a thematic review of Licensed Corporations' (LCs) management structure and effectiveness. The update comes shortly after Singapore announced plans to introduce a similar regime, with a consultation underway and guidelines expected to be issued later this year.

This briefing discusses the review.

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

Restructuring the administrative state - Supreme Court decides SEC ALJs are 'Officers of the United States' subject to the Constitution's Appointments Clause

On 21 June 2018, the US Supreme Court held in Lucia v SEC that an administrative law judge (ALJ) of the Securities and Exchange Commission is an 'Officer of the United States' under the Constitution, and therefore his appointment must satisfy the Appointments Clause before he can hear or decide cases. Accordingly, the Supreme Court reversed the Court of Appeals for the DC Circuit, which had agreed with the Commission that its ALJs are employees rather than officers, and thus not subject to the Appointments Clause. In doing so, the Supreme Court resolved a recent circuit split on this issue, but also significantly unsettled, at least in the near term, the ability of federal agencies like the Commission to adjudicate cases administratively. Indeed, the SEC has already suspended all administrative proceedings in the wake of the decision, and practitioners before the SEC and other federal agencies would be well advised to examine the Lucia decision to determine whether and how their rights have been affected.

This briefing discusses the decision.

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

SEC renews focus on fund manager reporting announcing Form PF settlements

On 1 June 2018, the US Securities and Exchange Commission announced settlements with thirteen investment managers for failure to properly file Form PF. The settlements included a USD 75,000 civil penalty. These enforcement actions serve as a warning to private fund advisers and other investment managers that the SEC takes reporting obligations seriously and that it has not fully abandoned its 'broken windows' enforcement strategy.

This briefing discusses the enforcement actions and Form PF requirements.

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

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