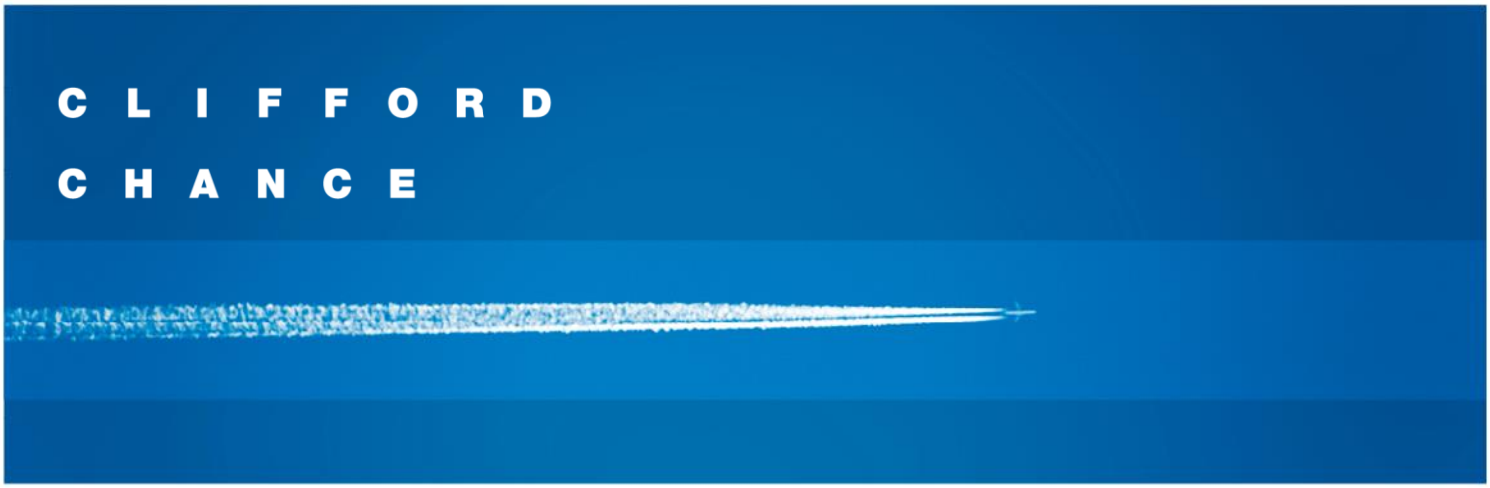

INTERNATIONAL REGULATORY UPDATE 15 – 19 OCTOBER 2018

- **Benchmarks: Commission Implementing Regulation adding STIBOR to list of critical benchmarks published**
- **EMMI launches second consultation on EURIBOR hybrid methodology**
- **World Alliance of International Financial Centers launched**
- **Basel Committee issues final stress testing principles**
- **Basel Committee consults on leverage ratio treatment of client cleared derivatives**
- **Brexit: SIs under the EU (Withdrawal) Act for 15 – 19 October 2018**
- **FCA publishes approach to competition**
- **FCA reports on digital regulatory reporting**
- **PRA and FCA consult on managing financial risks from climate change and green finance**
- **FCA launches green fintech challenge**
- **FSC enacts Enforcement Decree of Special Act on Establishment and Operation of Online-only Banks**
- **MAS issues regulations, notices and guidelines to effect consequential changes stemming from amendments to Securities and Futures Act**
- **MAS publishes notice on listing, delisting or trading of relevant products on an organised market of an approved exchange or a recognised market operator and responses to consultation paper**
- **MAS issues risk fact sheet for contracts for differences, related guidelines, and responses to consultation paper**
- **MAS publishes guidelines on interpretation of 'persons who commonly invest' in Securities and Futures Act**
- **MAS publishes guidelines on provision of digital advisory services and responses to feedback received during consultation**
- **Australian Government consults on third tranche of Corporate Collective Investment Vehicle Bill 2018**
- **APRA sets out Banking Executive Accountability Regime expectations**

Clifford Chance's International Regulatory Update is a weekly digest of significant regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.

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- **ASIC reviews compliance with fees disclosure and renewal notices requirements**
- **ASIC updates guidance as crowd-sourced funding regime extends to proprietary companies**
- **United Arab Emirates enacts federal law on netting**
- **Recent Clifford Chance briefings: transitioning from LIBORs and IBORs; taxation of eurobond issuances in Poland; Hong Kong Court of Final Appeal on insider trading; and more. Follow this link to the briefings section**

Benchmarks: Commission Implementing Regulation adding STIBOR to list of critical benchmarks published

Commission Implementing Regulation (EU) 2018/1557 of 17 October 2018 has been published in the Official Journal.

The Regulation amends Implementing Regulation (EU) 2016/1368 establishing a list of critical benchmarks used in financial markets pursuant to the Benchmarks Regulation (EU) 2016/1011 by adding the Stockholm Interbank Offered Rate (STIBOR), administered by the Swedish Bankers' Association, to the list of critical benchmarks used in financial markets.

Commission Implementing Regulation (EU) 2018/1557 entered into force on 19 October 2018.

EMMI launches second consultation on EURIBOR hybrid methodology

The European Money Markets Institute (EMMI) has launched a second consultation on the hybrid methodology for the Euro Interbank Offered Rate (EURIBOR).

This follows positive feedback received to EMMI's first consultation in March 2018, with support from consultation respondents for EMMI to continue and finalise the design of the hybrid methodology. The methodology leverages market transactions whenever available and is composed of a three-level waterfall model.

EMMI, with the participation of the majority of EURIBOR panel banks, tested the proposed hybrid methodology from May until the end of July 2018. The second consultation presents a summary of EMMI's findings during the testing phase and provides details on EMMI's proposals for the different methodological parameters.

Comments are due by 30 November 2018. EMMI intends to publish a summary of the feedback received and a final methodology, including timeline and next steps, by early 2019. EMMI expects to file for authorisation to the Belgian Financial Services and Markets Authority (FSMA) by Q2 2019. EMMI intends to transition panel banks from the current EURIBOR methodology to the hybrid methodology before the end of 2019.

World Alliance of International Financial Centers launched

The World Alliance of International Financial Centers (WAIFC), a non-profit association established to facilitate cooperation and the exchange of best practices across financial centres, has formally launched.

First proposed in 2016, WAIFC seeks to create a transparent network aimed at furthering the understanding of the importance of international financial centres for national and international economies as well as social development. It intends to undertake project-driven work, initially focusing on data on financial centres, fintech developments, green investment and infrastructure, and the role of financial centres in financing of the economy.

WAIFC's founding members are:

- Abu Dhabi Global Market (ADGM);
- Astana International Financial Centre Authority (AIFC);
- Belgian Finance Club;
- Busan International Financial City Promotion Center (BIFC);
- Casablanca Finance City Authority (CFA);
- Frankfurt Main Finance;
- Luxembourg for Finance (LFF);
- Moscow: Analytical Centre Forum;
- Oman: The Capital Market Authority (CMA);
- Paris EUROPLACE; and
- Toronto Finance International (TFI).

Arnaud de Bresson, Paris EUROPLACE, has been elected Chairman. Frederic de Laminne, Belgian Finance Club, will take on the role of Treasurer and Jochen Biedermann, Frankfurt Main Finance, will act as the Managing Director.

WAIFC will be headquartered in Frankfurt. Founding members and additional financial centres are expected to attend the first General Assembly due to be held around December 2018.

Basel Committee issues final stress testing principles

The Basel Committee on Banking Supervision (BCBS) has issued the final version of its stress testing principles, replacing its principles for sound stress testing practices and supervision published in 2009.

Since the 2009 principles were published, stress testing has become a critical element of risk management for banks and a core tool for banking supervisors and macroprudential authorities. Following a review of current supervisory and bank practices, the BCBS found that a significant range of approaches had been adopted by supervisory authorities and banks and decided to update the 2009 principles.

The updated principles cover sound stress testing practices and have been designed with a view towards application to large, internationally active banks and to supervisory authorities in BCBS member jurisdictions.

The principles set out the objectives, governance, policies, processes, methodology, resources and documentation that guide stress testing activities and facilitate the use, implementation and oversight of stress testing frameworks. The BCBS expects that, for internationally active banks, stress testing is embedded as a critical component of sound risk management and supervisory oversight.

Basel Committee consults on leverage ratio treatment of client cleared derivatives

The BCBS has issued a consultation on proposed revisions to the leverage ratio treatment of client cleared derivatives. The leverage ratio, part of the Basel Committee's post-crisis reforms, complements risk-based capital requirements by providing a safeguard against unsustainable levels of leverage and by mitigating gaming and model risk across both internal models and standardised risk measurement approaches. By design, the leverage ratio does not differentiate risk across different asset classes.

As part of the finalised December 2017 Basel III reforms the Committee undertook to conduct a review of the impact of the leverage ratio on banks' provision of clearing services and any consequent impact on the resilience of central counterparty clearing.

As part of its review, the Committee is consulting with stakeholders on whether a targeted and limited revision of the leverage ratio exposure measure is warranted with regard to the treatment of client cleared derivatives. The Committee welcomes views on two potential revisions and, in particular, on the materiality of the impact of these revisions on leverage ratio capital requirements and on the anticipated impact the revisions might have on client clearing service provision in general.

The Committee is proposing three options:

- option one would see the Committee retain its existing treatment;
- option two would amend the currently specified treatment of client cleared derivatives to allow amounts of cash and non-cash initial margin that are received from the client to offset the potential future exposure of derivatives centrally cleared on the client's behalf; or
- option 3 would amend the currently specified treatment of client cleared derivatives to align it with the measurement as determined per the standardised approach to measuring counterparty credit risk exposures (SA-CCR) as used for risk-based capital requirements. This option would permit both cash and non-cash forms of initial margin and variation margin received from the client to offset replacement cost and potential future exposure for client cleared derivatives only.

Comments to the consultation are due by 16 January 2019.

Brexit: SIs under the EU (Withdrawal) Act for 15 – 19 October 2018

HM Government published new draft statutory instruments (SIs) under the EU (Withdrawal) Act 2018 last week, including the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, which have been laid before Parliament.

The draft proposes amendments to:

- the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017;
- the Data Reporting Services Regulations 2017; and
- retained EU law:
  - MiFIR (Regulation (EU) No 600/2014 on markets in financial instruments);
  - MiFID2 Delegated Regulation (Commission Delegated Regulation 2017/565/EU); and
  - MiFIR Delegated Regulation (Commission Delegated Regulation 2017/567/EU).

For information on all draft SIs under the EU (Withdrawal) Act published last week, visit www.gov.uk and www.legislation.gov.uk.

FCA publishes approach to competition

In December 2017, the Financial Conduct Authority (FCA) launched a consultation on its approach to competition. The FCA has published its final competition approach document under the FCA Mission, which sets out details of the FCA's competition objective and competition duty.

The document sets out how the FCA seeks to promote competition in the interests of consumers, covering work across the organisation. Feedback on its consultation is included in an annex.

FCA reports on digital regulatory reporting

The FCA has published a feedback statement following its call for input on digital regulatory reporting (DRR), which was published in February 2018. The call for input outlined a proof of concept developed at the FCA's TechSprint in November 2017, intended to make it easier for firms to meet their regulatory reporting requirements and improve the quality of the data that they provide. The FCA sought comments on technical aspects of the proof of concept and asked for views on how it could be improved.

Overall, the FCA takes the view, based on input received, that implementing DRR is a concept that the financial services industry considers worth regulators investigating further. The FCA will carry out pilot work in November 2018 and participants will publish a technical paper in early 2019. The paper is expected to provide an assessment of the technologies used to develop a DRR prototype during the pilot tests.

PRA and FCA consult on managing financial risks from climate change and green finance

The Prudential Regulation Authority (PRA) has launched a consultation (CP23/18) on a draft supervisory statement (SS) which sets out its expectations of firms managing financial risks from climate change.

The consultation covers the PRA's proposed expectations in relation to the following points:

- firms should have clear board-level responsibilities for managing the financial risks from climate change, including identifying the relevant Senior Management Function (SMF) holder;
- firms should incorporate the financial risks from climate change into their existing risk management frameworks;
- firms should use scenario analysis to assess the impact of the financial risks from climate change on their current business strategy; and
- firms should develop an approach to disclosure on the financial risks from climate change as well as engaging with wider associated initiatives such as the Task Force on Climate-related Financial Disclosures (TFCD).

Comments on CP23/18 are due by 15 January 2019.

The Financial Conduct Authority (FCA) has also published a discussion paper (DP18/8) on the impact of climate change and green finance on financial services.

In particular, DP18/8 seeks feedback on four main areas in which the FCA intends to:

- ensure consumers making pension investment decisions consider all financially material risks, including climate change;
- enable competition and market growth for green finance;
- ensure that disclosures in capital markets provide adequate information to investors in relation to financial impacts of climate change; and
- introduce a new requirement for financial services firms to report how firms manage climate risk.

Comments on DP18/8 are due by 31 January 2019.

FCA launches green fintech challenge

The FCA has launched a green fintech challenge, which is aimed at firms developing green solutions that need specific regulatory support to bring the proposal to market. Firms that gain a place on the challenge will be eligible to benefit from a range of services under the FCA's Innovate programme, including:

- use of a dedicated Innovate adviser;
- authorisation support;
- live market testing in the regulatory sandbox; and
- guidance and/or informal steers.

The deadline for applications is 11 January 2019 and the FCA will assess applications based on the following eligibility criteria:

- assisting in the transition to a greener economy;
- benefit to UK markets and consumers; and
- need for Innovate services.

The FCA encourages start-ups, incumbents and technology providers that meet the above criteria to apply. Firms developing broader ethical, social, environmental and governance products may also apply, as long as there is a link with the green finance agenda. Successful applicants will be notified by the end of the first quarter of 2019, after which a list of successful firms will be published on the FCA website.

FSC enacts Enforcement Decree of Special Act on Establishment and Operation of Online-only Banks

The Financial Services Commission (FSC) has enacted the Enforcement Decree of the Special Act on the Establishment and Operation of Online-only Banks. The Special Act, scheduled to take effect on 17 January 2019, raised the ceiling of shareholdings by non-financial companies in an online-only bank from 10% to 34%. As delegated by the Special Act, the Enforcement Decree is to specify non-financial companies qualified for an exception to the ownership cap of 10% in an online-only bank.

In particular, the key proposals include the following:

- non-financial companies qualified for an exception to the ceiling of 10% on shareholdings in an online-only bank – generally, conglomerates subject to cross-shareholding restrictions under the Monopoly Regulation and Fair-Trade Act are not allowed to own a stake in an online-only bank in excess of 10%. However, the Enforcement Decree allows an exception to the 10% cap for a conglomerate whose assets in the information and communication technology business account for 50% or more of the assets of the group's non-financial business;
- exception to restriction on granting credit to the same borrower – the Special Act limits the granting of credit by an online-only bank to the 'same borrowers' to 20% of its equity capital, stricter than the restriction of 25% under the Banking Act. However, exceptions will be allowed where they are deemed to be important for the national economy or would not affect the bank's soundness;
- exception to restriction on transaction with large shareholders – the Special Act basically prohibits online-only banks from extending credit to large shareholders and acquiring stocks issued by large shareholders. However, the Enforcement Decree allows exceptions when the granting of credit or acquisition of stocks, originally irrelevant with large shareholders, later becomes a transaction with large shareholders through mergers and acquisitions, exercise of rights to collateral, or transfer of business; and
- exception to non-face-to-face business operation – in principle, online-only banks should operate non-face-to-face. Face-to-face operation will be allowed only for exceptional cases where it is deemed to be necessary for the convenience of customers with disabilities or aged over 65, or where it is deemed to be impossible to complete financial transaction through electronic methods due to legal or technical problems.

Comments on the Enforcement Decree are due by 26 November 2018.

MAS issues regulations, notices and guidelines to effect consequential changes stemming from amendments to Securities and Futures Act

The Monetary Authority of Singapore (MAS) has issued various regulations under the Securities and Futures Act (SFA) and the Financial Advisers Act, and revised notices and guidelines, to effect consequential changes stemming from the amendments to the SFA pursuant to the Securities and Futures (Amendment) Act 2017.

A list of the regulations is set out in Annex A of MAS Circular No. MPI 01/2018 dated 5 October 2018, which is addressed to all financial institutions.

Following the issuance of the circular, the following two regulations were published in connection with the amendments to the SFA:

- Securities and Futures (Classes of Investors) Regulations 2018 – Corrigendum; and
- Securities and Futures (Offers of Investments) (Shares and Debentures) (Exemption from Prospectus and Pricing Statement Requirements) (Amendment) Regulations 2018.

The revised notices, which came into operation on 8 October, are listed on the MAS's notices webpage. The revised versions of guidelines are available on the MAS's guidelines webpage.

MAS publishes notice on listing, delisting or trading of relevant products on an organised market of an approved exchange or a recognised market operator and responses to consultation paper

The MAS has published MAS Notice SFA 02-N01 on listing, delisting or trading of relevant products on an organised market of an approved exchange or a recognised market operator incorporated in Singapore and its responses to the feedback it received on its May 2018 public consultation on the draft Notice.

The Notice sets out the criteria and process for the listing, de-listing or trading of derivatives products on approved exchanges and locally-incorporated recognised market operators.

The Notice applies to an exchange which operates an organised market on which any relevant product will be listed, or is listed or permitted for trading, but does not apply to an exchange in respect of any excluded warrants listed or permitted for trading.

The Notice took effect on 8 October 2018.

MAS issues risk fact sheet for contracts for differences, related guidelines, and responses to consultation paper

The MAS has issued MAS Notice SFA 04-N15 on Risk Fact Sheet for Contracts of Differences, Guidelines SFA 04-G09 to MAS Notice on Risk Fact Sheet for Contracts of Differences, and its responses to the feedback it received on its October 2017 consultation on the draft Notice and Guidelines.

The Notice sets out the circumstances under which capital markets services licence holders (CMS Licensees) and exempt financial institutions (EFIs)

dealing in contracts for differences (CFDs) with retail investors must provide a risk fact sheet. The Notice also prescribes the format of the risk fact sheet and minimum information that must be included in the risk fact sheet. The Guidelines provide further guidance to CMS Licensees and Exempt Financial Institutions when preparing the risk fact sheet.

The Notice took effect on 8 October 2018.

MAS publishes guidelines on interpretation of 'persons who commonly invest' in Securities and Futures Act

The MAS has issued guidelines on the interpretation of the term 'persons who commonly invest' (common investors) in Division 3 of Part XII of the Securities and Futures Act, and its responses to the feedback it received on its October 2017 consultation on the draft guidelines.

The guidelines elaborate on the MAS' policy stance behind the statutory definition of common investors in Section 214 of the Securities and Futures Act (SFA), which is used in Sections 215 and 216 of the SFA, and provide guidance on its interpretation.

The guidelines were issued on 8 October 2018.

MAS publishes guidelines on provision of digital advisory services and responses to feedback received during consultation

The Monetary Authority of Singapore (MAS) has published guidelines on the provision of digital advisory services and its responses to the feedback received during the public consultation on the guidelines in June 2017.

The guidelines apply to all financial institutions offering or seeking to offer digital advisory services in Singapore and provide guidance on the regulatory requirements and expectations in relation to the provision of digital advisory services. Where certain regulatory requirements or expectations also apply to conventional financial advisers, they are specified in the guidelines.

Amongst other things, the guidelines provide that:

- there is no separate authorisation regime for digital advisers, and the licensing framework under the Securities and Futures Act (SFA) and Financial Advisers Act (FAA) is technology agnostic and applies to digital advisers;
- digital advisers that seek to offer fund management services to retail investors may be eligible for licensing even if they do not meet the SFA corporate track record requirements, provided they meet other specified safeguards;
- digital advisers will be exempted from the FAA requirement to collect the full information on the financial circumstances of a client under paragraph 11 of MAS Notice FAA-N16, such as income and financial commitments, subject to conditions in order to mitigate the risks of providing unsuitable investment recommendations due to limited client information;
- digital advisers that operate as financial advisers may carry on limited SFA-regulated activities, such as passing on their clients' trade orders to brokerage firms for execution, and re-balancing their clients' portfolios comprising collective investment schemes back to the most recent advice

provided based on the agreed asset allocation, without the need for an additional capital markets services licence under the SFA, provided that such dealing is incidental to their financial advisory services;

- the Board and Senior Management should ensure that there are sufficient resources to monitor and supervise the performance of algorithms, and the digital adviser should be adequately staffed with persons who have the competency and expertise to develop and review the methodology of the algorithms;
- digital advisers should have policies, procedures and controls in place to monitor and test their algorithms on a regular basis to ensure that they are performing as intended, and to address technology risks;
- digital advisers are required to have in place adequate policies, procedures and controls to mitigate money laundering and terrorism financing risks; and
- digital advisers should provide sufficient information to their clients to allow them to make informed investment decisions.

Australian Government consults on third tranche of Corporate Collective Investment Vehicle Bill 2018

The Australian Government has launched a public consultation on the third tranche of the Treasury Laws Amendment (Corporate Collective Investment Vehicle (CCIV)) Bill 2018 and related explanatory materials.

The CCIV is an investment vehicle with a corporate structure, with the additional consumer protection of a depositary for retail funds which is responsible for the oversight of crucial administrative functions undertaken by the fund. A single CCIV can offer multiple products and investment strategies within the same vehicle.

The Australian Government previously released two tranches of the draft Bill for public consultation. The first tranche consultation on the CCIV that was launched on 13 June 2018 closed on 18 July 2018. The second tranche consultation on the CCIV that was launched on 19 July 2018 closed on 10 August 2018.

The third tranche exposure draft includes:

- the independence requirement for the depositary, whose responsibility it is to safeguard the fund's assets and oversee some of the activities of the fund;
- arrangements and reconstructions, receivership and winding up;
- deregistration of sub-funds and CCIVs;
- takeovers, compulsory acquisitions and buy-outs, and disclosure requirements; and
- other consequential amendments to the Asia Region Funds Passport, Chapter 9 (Miscellaneous provisions), the Australian Securities and Investments Commission Act and the Personal Property and Securities Act 2009 to accommodate the new CCIV regime.

Comments on the third tranche consultation are due by 26 October 2018.

APRA sets out Banking Executive Accountability Regime expectations

The Australian Prudential Regulation Authority (APRA) has published an information paper to assist authorised deposit-taking institutions (ADIs) to meet their obligations under the Banking Executive Accountability Regime (BEAR). The information paper, based on APRA's experience in implementing the regime for the largest banks, is intended to assist all other ADIs prepare to implement the BEAR, and help the largest ADIs refine and embed the regime.

The information paper clarifies APRA's expectation of how an ADI can effectively implement the accountability regime on matters including:

- identifying and registering accountable persons;
- creating and submitting an accountability statement for each accountable person, and an accountability map for the ADI;
- establishing a remuneration policy requiring that a portion of accountable persons' variable remuneration be deferred for a minimum of four years, and reduced commensurate with any failure to meet their obligations; and
- notifying APRA of any accountability-related changes or breaches of accountability obligations.

The information paper also includes questions and answers based on some of the issues commonly raised by ADIs during implementation. APRA has indicated that it will address enforcement-related issues, including the disqualification of accountable persons and civil penalties under the BEAR, in a subsequent paper.

ASIC reviews compliance with fees disclosure and renewal notices requirements

The Australian Securities and Investments Commission (ASIC) has announced a review of compliance with requirements for fee disclosure statements (FDS) and renewal notices in the financial advice sector.

ASIC has received a number of breach reports from licensees which indicate they may have failed to comply with the FDS and renewal notice requirements that were implemented as part of the Future of Financial Advice (FOFA) reforms in 2013. ASIC is investigating these reports and will take enforcement action where breaches are substantiated.

In addition to investigating the particular instances, ASIC believes that the volume and range of breach reports indicates a significant risk of systemic non-compliance. Therefore, it will undertake a project that will test compliance with FDS and renewal notice requirements across the industry.

ASIC will examine to what extent advice licensees:

- issue FDSs and renewal notices to customers;
- issue FDSs and renewal notices within the time frames set out by the law;
- include the required content in the FDSs;
- ensure the content of FDSs is accurate, for example, in describing what customers are charged for and what services customers have received; and

- have appropriate procedures in place to ensure fees for ongoing services are discontinued when the arrangements are terminated as a result of licensees failing to comply with the FDS or renewal notice requirements.

ASIC's ongoing work on fee for no service failings in the advice industry has highlighted the importance of FDSs and renewal notices. ASIC will test compliance with these obligations across a range of small and large licensees and will provide its findings in 2019.

ASIC updates guidance as crowd-sourced funding regime extends to proprietary companies

ASIC has released updated regulatory guides entitled 'Regulatory Guide 261 Crowd-sourced funding: Guide for companies (RG 261)' and 'Regulatory Guide 262 Crowd-sourced funding: Guide for intermediaries (RG 262)' to coincide with the extension of the crowd-sourced funding (CSF) framework to eligible proprietary companies, effective from 19 October 2018.

ASIC has amended its guidance to include proprietary companies and updated requirements for public companies, following its June 2017 public consultations titled 'Consultation Paper 288 Crowd-sourced funding: Guide for public companies' and 'Consultation Paper 289 Crowd-sourced funding: Guide for intermediaries' on proposed guidance on crowd-sourced funding. RG 261 helps public and eligible proprietary companies to understand and comply with the additional reporting requirements and accountability standards that apply to companies raising funds through the CSF regime. ASIC recognises that this is a new regime for proprietary companies and these companies will not have experience in making public offers of their shares.

RG 262 helps intermediaries seeking to provide a crowd-funding service to public and eligible proprietary companies and explains intermediaries' unique gatekeeper obligations as operators of platforms for CSF offers and investments.

United Arab Emirates enacts federal law on netting

The United Arab Emirates has enacted a federal level law making close-out netting of financial contracts and related collateral arrangements legally enforceable against UAE counterparties. The new law (Federal Law No. 10 of 2018 on Netting) does not extend to the UAE's two financial free zones: the Abu Dhabi Global Market or the Dubai International Financial Centre, which have their own netting laws. The effective date of the law is not yet known but is likely to be a date in late October/November 2018.

RECENT CLIFFORD CHANCE BRIEFINGS

Transitioning from LIBORs and IBORs – an international overview

Before financial markets can be encouraged to move from using LIBOR (the London Interbank Offered Rate) or other interbank offered rates (IBORs) as reference rates in new financial contracts, there must be suitable alternatives in place.

This briefing provides a snapshot of 'risk-free reference rates' (RFRs) selected by different markets to replace LIBORs and IBORs for different currencies. It

also highlights those RFRs for which 'term' rates are being pursued and those for which Overnight Indexed Swaps (OIS) and futures have been developed.

https://www.cliffordchance.com/briefings/2018/10/transitioning_fromliborsandibors-a.html

New method of taxation of eurobond issues

The Ministry of Finance has proposed amendments to the taxation of Eurobonds which might change the way they are issued by Polish issuers from an indirect issuance via a special purpose vehicle to a direct issuance. The new regulations are set out in a draft amendment to the Act of Personal Income Tax, Corporate Income Tax and the Tax Code, which is currently under consideration in the Parliament. It is therefore still subject to change. It is expected that the Draft Act will come into force from 1 January 2019.

This briefing summarises the proposed amendments.

https://www.cliffordchance.com/briefings/2018/10/new_method_of_taxationofeurobondissues.html

Not (only) for profit? Hong Kong Court of Final Appeal clarifies innocent purpose defence in insider trading

In a four-to-one majority decision, the Court of Final Appeal (CFA) has allowed an appeal by the Securities and Futures Commission (SFC) against findings by the Market Misconduct Tribunal (MMT) that two former listed company executives had established a defence under the Securities and Futures Ordinance (SFO) which provides that a person should be acquitted of insider dealing if they did not have the purpose of securing a profit by using inside information.

This briefing discusses the decision.

https://www.cliffordchance.com/briefings/2018/10/not_only_for_profithongkongcourtoffina.html

Major Changes to the Singapore Employment Act – Extended Coverage to include Professionals, Managers and Executives

On 2 October 2018, the Employment (Amendment) Bill was read for the first time in the Singapore Parliament. The bill, which is expected to come into force in April 2019, seeks to introduce major amendments to the Employment Act 2009 (Cap 91). The changes are clearly geared towards creating a more pro-employee regime in Singapore and will have a very significant impact in the way companies operating in Singapore hire and manage their employees.

This briefing provides a summary of the key proposed changes to the Employment Act, and the impact of these changes on employers.

https://www.cliffordchance.com/briefings/2018/10/major_changes_tothesingaporeemploymentact.html

CFIUS Broadens Jurisdiction and Institutes Mandatory Filing Under Interim Rule

On 10 October 2018, the US Department of the Treasury, as chair of the Committee on Foreign Investment in the United States (CFIUS), issued interim regulations establishing the Critical Technology Pilot Program, which

implements parts of the Foreign Investment Risk Review Modernization Act including expanding the scope of 'Covered Transactions' and making transactions that involve sensitive technologies in certain industries subject to mandatory declarations. Failure to notify CFIUS when required could expose the parties to civil penalties equal to the value of the transaction as a whole. As a practical matter, these changes may push potential non-US investors into detailed due diligence on the US target's exposure to critical technologies and covered industries well in advance of signing the Share Purchase Agreement, as failure to identify and address the mandatory filing requirement when it applies could put the entire transaction at risk.

This briefing discusses the interim regulations.

https://www.cliffordchance.com/briefings/2018/10/cfius_broadens_jurisdictionandinstitute.html

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