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Banking Union: EU Council endorses key issues agreed on banking package

The EU Council has [endorsed](#) the agreement reached between the EU Council Presidency and the EU Parliament on elements of the package of risk reduction measures for the banking industry, which comprises:

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

The Council Presidency and Parliament agreed to settle 'ad referendum' several key issues at trilogue negotiations on 21 and 22 November 2018, which are set out in [a note](#) from the EU Council's Permanent Representatives Committee (Coreper) to the EU Council, dated 30 November 2018. Among 20 key issues listed in the note as being agreed at the November trilogues are measures relating to:

- MREL calibration;
- the moratorium tool;
- credit risk;

- proportionality;
- the Net Stable Funding Ratio (NSFR);
- own funds;
- Pillar 2/macprudential framework;
- the fundamental review of the trading book; and
- the Leverage Ratio.

The note also sets out other issues where agreement has been reached, but highlights outstanding issues relating to:

- remuneration;
- off-balance sheet guarantees to collective investment undertakings (CIUs); and
- treatment of shadow banking or market-based finance.

EU Council has issued a statement noting that work on the outstanding issues will continue at technical and political level, with a view to finalising negotiations on the banking package by the end of the year. EU Leaders are expected to review the progress achieved so far in reducing risk in the EU banking industry in December 2018 and may decide on specific steps to be taken, specifically as regards the early implementation of a backstop for the European Stability Mechanism (ESM).

Separately, Ministers of the euro area Member States (the Eurogroup) has issued [a report](#) to EU Leaders on deepening the economic and monetary union (EMU), which welcomed the progress made to reach political agreement on the banking package by the co-legislators. The report sets out that the Eurogroup, in inclusive format, has agreed on a [term sheet](#) for the further development of the European Stability Mechanism (ESM) and [terms of reference](#) on the main details for the operationalisation of the common backstop to the Single Resolution Fund (SRF). The Eurogroup also welcomed the agreement reached between the ESM and the EU Commission on cooperation within and outside of financial assistance programmes. The ESM has published [a note outlining the joint proposals](#) for the future cooperation.

EMIR 2.2: EU Council agrees negotiating stance

The EU Council's Permanent Representatives Committee (Coreper) has endorsed the EU Council's [negotiating stance](#) on the proposed Regulation amending the European Market Infrastructure Regulation (EMIR), as regards the procedures and authorities involved for the authorisation of central counterparties (CCPs) and requirements for the recognition of third-country CCPs (EMIR 2.2).

The Council's stance includes:

- establishing a CCP supervisory committee within the European Securities and Markets Authority (ESMA) to ensure closer cooperation between supervisory authorities and central banks responsible for EU currency;
- introducing a system for recognising and supervising third country clearing houses, and in particular, differentiating between non-systemically important CCPs and systemically important CCPs (also called Tier 2 CCPs);

- setting stricter rules that Tier 2 CCPs must adhere to in order to be recognised and authorised to operate in the EU; and
- as a measure of last resort, allowing ESMA to be able to conclude that a CCP or some of its clearing services are of such substantial systemic importance that the CCP should not be recognised, requiring the third country CCP to establish itself in the EU in order to be able to operate.

Coreper also endorsed [the Council's position](#) on a decision revising the statute of the European system of central banks and the European Central Bank (ECB).

Having endorsed the Council's negotiating mandates, Coreper has called on the EU Council Presidency to begin trilogue negotiations with the EU Parliament.

Capital Markets Union: ECON Committee publishes reports on proposals on cross-border distribution of collective investment funds

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has published its [final report on a proposed Regulation](#) and [final report on a proposed Directive](#) on the cross-border distribution of collective investment funds, following its [adoption of amendments](#).

The proposed Regulation and Directive would amend the Alternative Investment Fund Managers Directive (AIFMD), Undertakings for Collective Investment in Transferable Securities (UCITS) Directive, the European Venture Capital Funds (EuVECA) Regulation and the European Social Entrepreneurship Funds (EuSEF) Regulation.

EU Commission further extends transitional period for own funds requirements for exposures to CCPs

A [Commission Implementing Regulation \(2018/1889\)](#) on the extension of the transitional periods related to own funds requirements for exposures to CCPs has been published in the Official Journal.

The Regulation specifies that the 15-month periods referred to in Article 497(2), CRR and in the second subparagraph of Article 89(5a), EMIR, as most recently extended in Implementing Regulation (EU) 2018/815, are extended by an additional six months until 15 June 2019.

The regulation entered into force on 8 December 2018.

EU Commission announces review of Distance Marketing Directive

The EU Commission has published a [roadmap](#) on an evaluation of the Distance Marketing of Financial Services Directive (2002/65/EC). The evaluation follows an announcement in the Commission's 2019 Work Programme and will be carried out in line with the Better Regulation principles.

The Directive is intended to ensure the free movement of financial services in the single market by harmonising the consumer protection rules governing them. However, the Commission notes that since 2002, the distance marketing of financial services has changed due to digitalisation and the commercial practices used by online providers. In parallel, the legal framework for retail financial services has evolved. The Commission is

seeking evidence from stakeholders on the functioning of the Directive, including whether the rules are fit for purpose, and will consider the totality of the Directive as well as specific aspects, in particular:

- scope of services covered;
- information disclosure;
- right of withdrawal;
- unsolicited services and communications;
- regulatory choices by Member States; and
- interplay with product-specific legislation in the field of retail financial services, the e-commerce framework and horizontal consumer protection rules.

The Commission is consulting on the roadmap until 4 January 2019 and will launch an evaluation consultation for a minimum of twelve weeks in early 2019.

PSD2: EBA publishes final report on SCA and CSC RTS guidelines

The EBA has published its [final report](#) on guidelines on the exemption from the contingency mechanism under Article 33(6) of the regulatory technical standards (RTS) on strong customer authentication and common and secure communication (SCA and CSC) under the recast Payment Services Directive (PSD2). The EBA developed the guidelines after reviewing amendments introduced to the RTS that were not included in the EBA's final draft RTS submitted to the EU Commission. In particular, the EBA's review identified a need to provide additional clarity regarding the conditions that need to be met to benefit from an exemption, to ensure a consistent application of the RTS across Member States.

The EBA's final guidelines are intended to specify the conditions that must be met by an account servicing payment service provider (ASPSP) in order to be exempt from the requirement to implement the contingency or fallback mechanism. The guidelines are also intended to clarify how competent authorities should consult the EBA, particularly in the period leading up to the RTS applying from 14 September 2019.

The EBA has made certain changes to the final guidelines, based on comments received to its consultation launched in June 2018. Among other things, the changes relate to:

- the involvement of third-party payment service providers (TPPs) in the exemption process;
- whether an ASPSP fulfils the 'wider usage' condition; and
- the obligation for ASPSPs to publish data on the availability and performance of their interfaces.

The EBA has called on ASPSPs to begin testing, launch their production interfaces and engage with their competent authority as soon as possible, in order to meet the conditions of the exemption before the September 2019 application date of the RTS.

EMIR: ESMA publishes updated Q&As

ESMA has updated its questions and answers (Q&A) document on the implementation of EMIR. The document has been updated to include [new Q&As](#) on margin requirements.

CRD4: EBA publishes overview of implementation and transposition

The EBA has published information disclosed by competent authorities under the implementing technical standards (ITS) on supervisory disclosure under the Capital Requirements Directive (CRD4).

[The information](#) provides an overview of the implementation and transposition of CRD4 and CRR, the use of options and national discretions (ONDs) by each competent authority and information on the general criteria and methodologies used for the supervisory review and evaluation process (SREP). The information covers all EU jurisdictions, including information provided by the ECB relating to the single supervisory mechanism (SSM).

ECB publishes cyber resilience oversight expectations

The ECB has published its [cyber resilience oversight expectations](#) for financial market infrastructures (FMIs). The expectations are based on global guidance on cyber resilience for FMIs published by the Committee on Payments and Market Infrastructures and the Board of the International Organisation of Securities Commissions (CPMI-IOSCO) in June 2016, and are intended to set out practices to help FMIs comply with the CPMI-IOSCO guidance.

In particular, the ECB's document includes:

- detailed steps on how FMIs can adopt the guidance, ensuring they are able to foster improvements and enhance their cyber resilience over a sustained period;
- clear expectations for overseers to assess FMIs under their responsibility; and
- the basis for a meaningful discussion between the FMIs and their respective overseers.

The ECB has also published its [response](#) to comments received on its consultation, which highlights the main amendments made to the cyber resilience oversight expectations as a result of the feedback received.

EU Council agrees non-legislative actions for AML action plan

The EU Council has adopted [conclusions](#) on an anti-money laundering (AML) and counter terrorist financing (CTF) action plan. The conclusions set out a number of short-term, non-legislative actions that are intended to assist in achieving the key objectives of the action plan.

The objectives include:

- identifying the factors that contributed to the recent money laundering cases in EU banks, in order to better inform possible additional actions in the medium and long term;
- mapping money laundering and terrorist financing risks and the best prudential supervisory practices to address them;

- enhancing supervisory convergence, cooperation and information exchange;
- clarifying aspects related to the withdrawal of a bank's authorisation in instances of serious breach;
- sharing best practices and improving convergence among national authorities; and
- improving supervisory authorities' capacity to make better use of existing tools.

Credit rating agencies: ESMA publishes annual market share calculations

The European Securities and Markets Authority (ESMA) has published its [annual market share calculation](#) for EU registered credit rating agencies (CRAs).

The market share calculation, which is required under Article 8d of the Credit Rating Agencies Regulation (CRA Regulation), aims to promote competition in the credit rating industry by encouraging issuers and related third parties to appoint smaller CRAs. The market share calculation also aims to increase awareness of the different types of credit ratings offered by each registered CRA.

G20 Leaders publish communiqué following Buenos Aires summit

The G20 Leaders have published a [communiqué](#) following their summit in Buenos Aires, Argentina on 30 November – 1 December 2018.

The communiqué sets out details of the G20's discussions to build consensus for fair and sustainable development through an agenda that is people-centred, inclusive and forward looking. Among other things, the leaders note that mobilising sustainable finance and strengthening financial inclusion are important for global growth, and leaders have welcomed the publication of:

- the Sustainable Finance Synthesis Report 2018, which presents voluntary options to support deployment of sustainable private capital; and
- the G20 Financial Inclusion Policy Guide, which provides voluntary policy recommendations to facilitate digital financial services.

The communiqué also reaffirms the G20's commitment to further strengthening the global financial safety net with a strong, quota-based, and adequately resourced International Monetary Fund (IMF) at its centre.

The G20 Leaders have also highlighted their ongoing commitment to the agreed financial reform agenda and the evaluation of its effects, as well as work to:

- achieve resilient non-bank financial intermediation;
- ensure that the potential benefits of technology in the financial sector can be realised while the risks are mitigated; and
- regulate crypto-assets for anti-money laundering and countering the financing of terrorism (AML/CFT) in line with Financial Action Taskforce (FATF) standards.

On tax measures, the communiqué includes a commitment to the worldwide implementation of the OECD/G20 Base Erosion and Profit Shifting package, calls for all jurisdictions to sign and ratify the multilateral Convention on Mutual Administrative Assistance in Tax Matters, and highlights work to seek a consensus-based solution to address the impacts of digitisation of the economy on the international tax system, with a final report due in 2020.

The G20 Leaders will meet in Japan in 2019.

Brexit: UK Government and HoC Library publish summaries of Withdrawal Agreement and Political Declaration

HM Government has published a document summarising the overall legal effect of the draft Withdrawal Agreement between the UK and EU. The document is intended to set out [the Government's legal position](#) on each part of the Agreement and the three Protocols, which relate to the border between Ireland and Northern Ireland, the UK's Sovereign Base Areas in Cyprus, and Gibraltar.

Separately, the House of Commons (HoC) Library has published two briefings for MPs on the UK's withdrawal from, and future relationship with, the EU. One [briefing](#) summarises each part of the Withdrawal Agreement and Protocols and provides commentary on where the endorsed Withdrawal Agreement differs from previous draft versions. The [second paper](#) relates to the Political Declaration on the framework for the future relationship between the EU and UK.

Brexit: SIs under the EU (Withdrawal) Act for 3 – 7 December 2018

HM Government published new draft statutory instruments (SIs) under the EU (Withdrawal) Act 2018 last week.

HM Treasury (HMT) published a [guidance draft of the Collective Investment Schemes \(Amendment etc.\) \(EU Exit\) Regulations 2018](#), which proposes, among other things, amendments to Part 17 of the Financial Services and Markets Act 2000 (FSMA), the Undertakings for Collective Investment in Transferable Securities Regulations 2011 (SI 2011/1613) and other secondary legislation and retained EU law relating to collective investment schemes.

The [draft Market Abuse \(Amendment\) \(EU Exit\) Regulations 2018](#), [draft Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2018](#) and [draft Consumer Protection \(Enforcement\) \(Amendment etc.\) \(EU Exit\) Regulations 2018](#) have been laid before Parliament, as have the [draft Occupational and Personal Pension Schemes \(Amendment etc.\) \(EU Exit\) Regulations 2018](#) and [draft Occupational and Personal Pension Schemes \(Amendment etc.\) \(Northern Ireland\) \(EU Exit\) Regulations 2018](#).

The following SIs have been made:

- [the Bank of England \(Amendment\) \(EU Exit\) Regulations 2018 \(SI 2018/1297\)](#);
- [the Central Securities Depositories \(Amendment\) \(EU Exit\) Regulations 2018 \(SI 2018/1320\)](#);

- [the Deposit Guarantee Scheme and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(SI 2018/1285\)](#);
- [the Electricity and Gas \(Powers to Make Subordinate Legislation\) \(Amendment\) \(EU Exit\) Regulations 2018 \(SI 2018/1286\)](#), which relates to the onshoring of the Regulation on wholesale energy market integrity and transparency (REMIT);
- [the Service of Documents and Taking of Evidence in Civil and Commercial Matters \(Revocation and Saving Provisions\) \(EU Exit\) Regulations 2018 \(SI 2018/1257\)](#);
- [the Short Selling \(Amendment\) \(EU Exit\) Regulations 2018 \(SI 2018/1321\)](#); and
- [the Trade Repositories \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2018 \(SI 2018/1318\)](#).

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

Securitisation Regulations 2018 laid before Parliament

HM Treasury has laid [the Securitisation Regulations 2018 \(SI 2018/1288\)](#) before Parliament.

The Regulations amend the Financial Services and Markets Act 2000 (FSMA) to reflect the application of the EU Securitisation Regulation in the UK and are intended to:

- harmonise and reform existing rules on due diligence, risk retention, disclosure and credit-granting that will apply in a uniform way to all securitisations, securitising entities and all types of EU regulated institutional investors;
- create a new framework for simple, transparent and standardised (STS) securitisations and asset-backed commercial paper programmes; and
- implement the revised securitisation framework from Basel international standards, including hierarchy of approaches and risk weights and recalibrating the prudential treatment for credit institutions investing in STS securitisations.

The Regulations designate the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) as competent authorities under the Securitisation Regulation.

The Regulations will come into force on 1 January 2019.

FCA consults on permanent restrictions on retail binary options and CFDs

The FCA has published two consultation papers on proposed rules aimed at addressing concerns about investor protection in relation to binary options and contracts for difference (CFDs).

Both consultation papers seek to apply, and go beyond, product intervention measures introduced by ESMA under MiFIR on a permanent, domestic basis.

The [binary options consultation paper \(CP18/37\)](#) proposes a general prohibition on the sale, marketing and distribution of binary options to consumers treated as retail clients by firms carrying out activities in, or from,

the UK. The intention is to extend the prohibition to securitised binary options, which are currently exempted by ESMA.

The [CFDs consultation paper \(CP18/38\)](#) proposes permanent restrictions on the sale, marketing and distribution of CFDs, by requiring firms to:

- limit leverage by collecting minimum margin as a percentage of the overall exposure;
- close out a customer's position when their funds fall to 50% of the margin needed to maintain their open positions;
- provide protections guaranteeing that a client cannot lose more than the total funds in their CFD account;
- not offer inducements to encourage trading; and
- provide a standardised risk warning, including telling potential customers the percentage of losses their retail client accounts make.

The intention is for the measures to extend beyond ESMA's temporary intervention by including CFD-like options such as turbo certificates. A further divergence from ESMA is a proposal to set leverage limits for CFDs referencing certain government bonds to 30:1.

The CFDs consultation also sets out a discussion on considerations and possible policy approaches to exchange-traded futures and other leveraged derivative products which may pose similar risks of harm.

Comments on the binary options consultation, and the proposed measures in the CFDs consultation, are due by 7 February 2019. Comments on the discussion of other complex derivative products in the CFDs consultation are due by 7 March 2019.

PSR signs MoU on monitoring separation of international payment card schemes and processing entities

The Payment Systems Regulator (PSR) has signed a [Memorandum of Understanding \(MoU\)](#) on cooperation between national competent authorities of the EU to monitor compliance by payment card schemes providing cross-border services and processing entities with Article 7(1)(a) of the Interchange Fee Regulation (IFR) and the IFR regulatory technical standards (RTS).

Article 7(1)(a) of the IFR lays down the principle that accounting, organisation and decision-making processes of payment card schemes and processing entities will be independent, while the RTS (Delegated Regulation (EU) 2018/72) set out the independence requirements.

The framework provided for in the MoU covers, among other things, cooperation arrangements for monitoring compliance, the role of the lead and participating competent authorities, confidentiality and the exchange of information.

The following jurisdictions are currently signatories to the MoU: the UK, Netherlands, Denmark, Finland, Czech Republic, Belgium, Lithuania and Italy.

BaFin publishes draft general administrative act on prohibition of binary options for retail clients

The German Federal Financial Supervisory Authority (BaFin) has published a draft version of a general administrative act on the prohibition of marketing, distribution and sale of binary options to retail clients at a national level.

Binary options can be traded on easily accessible online platforms and promise high returns, but BaFin takes the view that these products can generate extremely high losses for retail clients and pose very high risks. BaFin sees considerable investor protection concerns arising from the complexity and lack of transparency associated with binary options.

The marketing, distribution and sale of binary options to retail clients is currently prohibited in the EU due to a temporary measure imposed by ESMA. The draft general administrative act would maintain this prohibition once ESMA's measure expires.

BaFin has published the [draft general administrative act for consultation](#) and comments are due 20 December 2018.

MiFID2: Consob complies with ESMA guidelines on suitability requirements

The Commissione Nazionale per le Società e la Borsa (Consob), the Italian securities regulator, has [notified](#) ESMA of its intention to comply with the guidelines on certain aspects of the MiFID2 suitability requirements, which were adopted by ESMA on 28 May 2018.

The guidelines relate to the MiFID2 obligation for institutions to provide personalised recommendations as part of an advisory service or to make investment or divestment decisions in the context of a mandate to manage portfolios that must prove genuinely suitable, having regard to the characteristics of the customers served and the specific nature of the products.

With effect from 8 March 2019, institutions subject to Consob supervision will be required to comply with the MiFID2 guidelines and the previous MiFID1 guidelines issued in July 2012 will cease to apply.

CSSF publishes regulation on systemically important institutions authorised in Luxembourg

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued [Regulation 18-06](#) concerning systemically important institutions authorised in Luxembourg.

The Regulation identifies eight systemically important institutions (SIIIs) authorised in Luxembourg, which qualify as other systemically important institutions (O-SIIIs). Five of the institutions qualify as O-SIIIs by exceeding the threshold laid down in the EBA guidelines (EBA/GL/2014/10). The remaining institutions are categorised as O-SIIIs due to their contribution to the Luxembourg economy, their exposure to the real estate market, the importance of their deposits, and/or their importance for the investment fund sector or the asset management industry. There are no global systemically important institutions (G-SIIIs) authorised in Luxembourg.

The Regulation also foresees new capital buffer rates for the O-SIIIs.

The Regulation will enter into force on 1 January 2019.

Bank of Spain publishes draft circular on fee information document, statement of fees, and payment accounts comparison websites

Draft Circular XX/2019, of XX XXXX, of the Bank of Spain, on requirements for the fee information document and the statement of fees, and payment accounts comparison websites, which partially amends Circular 5/2012, of 27 June, of the Bank of Spain to credit institutions and payment services suppliers, on banking services transparency and responsible lending, has been published. The [draft circular](#) is intended to complete the transposition of the Payment Accounts Directive 2014/92/EU, initiated through:

- the Royal Decree-Law 19/2017, of 24 November, on basic payment accounts, payment account switching and comparability of payment account fees; and
- the Draft ECE Order XXX regarding services, basic payment accounts fees, payment account switching procedures and comparators.

Furthermore, the draft circular aims to achieve an enhancement of the transparency and comparability of the fees charged by payment services suppliers for the services linked to a payment account and to meet the mandates given to the Bank of Spain both in the Royal Decree-Law and in the Draft Order regarding comparison websites and certain fees associated with basic payment account agreements.

The draft circular will be subject to public consultation until 11 January 2019.

Swiss Federal Council introduces recognition obligation for foreign trading venues that trade Swiss shares

The Federal Council has introduced a [recognition obligation](#) for foreign trading venues that trade Swiss shares. On the same day, the Swiss Financial Market Supervisory Authority (FINMA) published [guidance on the recognition obligation](#).

From 1 January 2019, foreign trading venues that admit shares of Swiss companies to trading or permit trading in such shares must be recognised by FINMA. The measure is being introduced in light of the potential expiry of the EU's 2018 equivalence recognition of the Swiss stock market, which was limited to one year.

The Federal Council takes the view that Switzerland meets all the conditions for unrestricted recognition by the EU of the equivalence of Swiss stock market regulation, and has highlighted that its aim is a swift and unlimited extension of stock market equivalence.

The Federal Council has stressed that the measure is only intended to protect the operation of the Swiss stock exchange infrastructure. It is designed in such a way that it would have no practical effect if the EU Commission extends its Swiss stock market equivalence decision before the end of 2018.

FINMA publishes guidelines on fintech licence

FINMA has published [guidelines](#) on obtaining a fintech licence, which will be open for applications from 2019. The guidelines are intended to simplify the application process.

The fintech licence will allow institutions to accept public deposits of up to CHF 100 million, provided that these are not invested, and no interest is paid on them. An institution with a fintech licence will be required to have its registered office and conduct its business activities in Switzerland.

FINMA is responsible for granting the fintech licence and will supervise licensed institutions.

SFC and CSRC sign MoU to enhance supervision of Cross-Boundary Regulated Entities

The Hong Kong Securities and Futures Commission (SFC) and the China Securities Regulatory Commission (CSRC) have [signed](#) a memorandum of understanding (MoU) regarding the cooperation and exchange of information in connection with the supervision and oversight of Cross-Boundary Regulated Entities, which operate on a cross-boundary basis in Hong Kong and Mainland China.

The MoU facilitates cooperation between the SFC and the CSRC in the interest of fulfilling their mandates, particularly in the areas of investor protection, promoting the integrity and financial prudence of Cross-Boundary Regulated Entities, fostering fairness of markets, reducing systemic risk and maintaining financial stability.

Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Bill 2018 gazetted

The Hong Kong Government has gazetted the [Inland Revenue \(Profits Tax Exemption for Funds\) \(Amendment\) Bill 2018](#) to provide a profits tax exemption for eligible funds operating in Hong Kong.

The Bill is intended to address the concerns of the Council of the European Union over the ring-fencing features of Hong Kong's tax regimes for privately offered offshore funds and enhance the competitiveness of Hong Kong's tax regimes by creating a level playing field for all funds operating in Hong Kong.

The Bill introduces new and self-contained provisions in the Inland Revenue Ordinance (IRO) so that all funds operating in Hong Kong, regardless of their structure, their location of central management and control, their size or the purpose that they serve, can enjoy a profits tax exemption for their transactions in specified assets subject to meeting certain conditions. A fund can also enjoy a profits tax exemption from its investment in both overseas and local private companies.

To minimise the risk of tax evasion, the Bill will put in place certain anti-abuse measures, including certain requirements on a fund's investment in private companies in relation to holding of immovable property and assets, as well as holding period. Also, the current anti-round tripping provisions for resident persons will be retained.

The Bill will be introduced into the Legislative Council on 12 December 2018.

SFC concludes consultation on amendments to Code on Unit Trusts and Mutual Funds

The Securities and Futures Commission (SFC) has [concluded](#) its December 2017 public consultation on proposed amendments to the Code on Unit Trusts and Mutual Funds (UT Code).

The SFC intends to implement the proposals set out in the consultation paper with some modifications and clarifications. These include modifications to the calculation method for funds' derivatives investments and clarification of the enhanced obligations of trustees and custodians. Consequential amendments to the SFC Code on MPF Products (MPF Code), Code on Pooled Retirement Funds (PRF Code) and Code on Investment-Linked Assurance Schemes (ILAS Code) will also be implemented, with appropriate modifications.

The revised UT Code, and the revised MPF Code, PRF Code and ILAS Code incorporating the corresponding consequential amendments, will become effective tentatively on 1 January 2019 following their gazettal on 14 December 2018.

The SFC intends to provide a 12-month transition period from the effective date of the revised UT Code for existing SFC-authorized funds. The SFC will publish frequently asked questions to provide further guidance to the industry regarding the implementation and transition arrangements for the revised UT Code.

Japan enacts legislation promoting open water offshore wind projects

The Promotion of Use of Sea Areas to Develop Marine Renewable Energy Facilities Act (the Offshore Wind Promotion Act) has been passed by the National Diet, Japan's legislature. [The Offshore Wind Promotion Act](#) is expected to increase the development of large scale offshore wind projects in Japan.

Under the new regime, the Government will designate certain 'promotion areas' in Japanese territorial open waters and commence a bidding process for the development of offshore wind projects. The Government will grant winning bidders certain rights of occupation in respect of the relevant promotion area for up to 30 years. The Offshore Wind Promotion Act does not specify the number of promotion areas to be designated nor their location. The Government has indicated that it intends to designate five promotion areas by 2030.

Prior to the enactment, there was no state level regime governing rights of occupation in open water areas. While local regulations in some parts of Japan provide for rights of occupation to be granted for three to five years, this is insufficient (without extensions) to cover the required construction period and the 20-year feed-in-tariff period. By providing for the long-term grant of occupation rights, the Offshore Wind Promotion Act addresses one of the major hurdles for the development and long-term project financing of offshore wind projects in Japanese territorial open waters. The Act also envisages a consultation process with stakeholders, in order that developers can avoid the need to negotiate bilaterally with each interested party. It is expected that the consultation process will become the primary forum for resolution of issues with local residents and fishing rights holders.

Some enabling regulations will be issued to clarify details such as the terms and conditions of the bidding process and the selection criteria.

Amendments to CFTC swap margin requirements published in Federal Register

On 19 November 2018, the US Commodities Futures Trading Commission (CFTC) approved a final rule to amend its uncleared swap margin requirements (CFTC Margin Rule) to address recent rule changes applicable to certain qualified financial contracts of systemically important banking organizations (QFC Rules).

[The amendments](#) ensure that master netting agreements are not excluded from the definition of "eligible master netting agreement" under the CFTC Margin Rule based solely on such agreements' compliance with the QFC Rules. They also ensure that any legacy uncleared swap that is not subject to the CFTC Margin Rule would not become so subject if it is amended solely to comply with the QFC Rules.

Following publication in the Federal Register, these amendments will be effective from 26 December 2018.

US regulators encourage banks to explore innovative approaches to strengthen the financial system against illicit financial activity

The Federal Reserve Board (FSB) and four other US regulatory agencies have issued a [joint statement](#) encouraging banks to explore innovative approaches to both meet their Bank Secrecy Act/anti-money laundering (BSA/AML) compliance obligations and to further strengthen the financial system against illicit financial activity.

The statement recognises that private sector innovation can help banks identify and report illicit financial activity. While the agencies do not recommend a specific innovative approach or technology, the statement provides the following two examples of innovation:

- building or enhancing internal financial intelligence units devoted to identifying complex and strategic illicit finance; and
- experimenting with artificial intelligence and digital identity technologies applicable to BSA/AML compliance programs.

Pilot programmes are an important means of testing and validating the effectiveness of innovative approaches, and the statement provides assurances that testing and implementation of innovative approaches will not result in additional regulatory expectations. In addition, the agencies indicate that they will not criticise or penalise any institutions that maintain effective AML programmes that pilot an innovative approach that ultimately proves to be unsuccessful or choose not to pursue innovative approaches.

To assist institutions, the regulators have committed to continued engagement with the private sector and other interested parties.

RECENT CLIFFORD CHANCE BRIEFINGS

Tax bill for real estate companies may increase considerably as Italian Government curbs deduction of interest expenses on mortgage loans

The Italian Government has finally approved the Legislative Decree implementing the EU 'anti-tax avoidance' Directive (ATAD) 2016/1164. The decree, which has not yet been published in the official gazette, contains significant tax measures, including a new limitation on the deduction of interest expenses on loans secured by mortgage on properties held to be rented out.

This briefing discusses the changes.

https://www.cliffordchance.com/briefings/2018/12/tax_bill_for_realestatecompaniesmayincreas.html

The new DIFC Companies Law – key changes and what it means for your business

The new DIFC Companies Law (Law No 5 of 2018) came into effect on 12 November and brings with it a number of important changes. In addition to updating the law, the DIFC has also enhanced the wider corporate regulatory framework, with new Companies Regulations, a new DIFC Operating Law and Operating Regulations, UBO Regulations, Protected Cell Company Regulations and Investment Company Regulations.

One of the most significant changes under the new law is the re-classification of entity types. Now, Limited Liability Companies have been abolished and Companies Limited by Shares will be classified as either Public Companies or Private Companies. The Recognised Company regime has been retained.

This briefing looks at what companies will need to do to comply with the new regime and explores in more detail some of the key changes brought about by the new law and the wider regulatory framework.

https://www.cliffordchance.com/briefings/2018/11/the_new_difc_companieslawkeychangesandwha.html

Hong Kong court rules directors who signed incorrect company tax return not liable to penalty tax

In the first decision of its kind, the Hong Kong Court of First Instance has ruled that two company directors who submitted an incorrect tax return on behalf of the company should not be liable for an additional penalty assessment of tax. The Court also found that an agent of a corporate taxpayer is not precluded from reopening questions regarding the taxpayer's liabilities to profits tax.

This briefing discusses the judgment.

https://www.cliffordchance.com/briefings/2018/12/hong_kong_court_rulesdirectorswhosigne.html

DOJ revises corporate cooperation policy but leaves individual employees in the crosshairs

On 29 November 2018, Deputy Attorney General (DAG) Rod J. Rosenstein announced updates to the Department of Justice's (DOJ's) policy for criminal

and civil enforcement, making important adjustments to the policy announced in September 2015 by then-DAG Sally Yates, as well as prior DOJ guidance.

This briefing examines the revised guidance, which continues to place pressure on corporations to cooperate fully with investigations while at the same time creating incentives to identify culpable executives and other employees.

https://www.cliffordchance.com/briefings/2018/12/doj_revises_corporatecooperationpolicybu.html

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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