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EMIR: ESAs publish final draft RTS amending Delegated Regulation on risk mitigation techniques to assist Brexit preparations for OTC derivative contracts

The Joint Committee of the European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and European Securities and Markets Authority (ESMA), has published a final report with draft regulatory technical standards (RTS) that propose amendments to the Commission Delegated Regulation on risk mitigation techniques for OTC derivatives not cleared by a central counterparty (CCP) under the European Market Infrastructure Regulation (EMIR).

The draft RTS relate to the treatment of OTC derivative contracts novated from a counterparty established in the UK to a counterparty established in another Member State, as a consequence of the notification of intention of the UK to withdraw from the EU. The draft RTS propose a limited exemption in order to facilitate the novation of certain OTC derivative contracts to EU counterparties during a specific time window. The amendments would only apply in the event of a no deal scenario.

The scope, time and intent of the draft standards are aligned with draft RTS regarding the clearing obligation published by ESMA in November 2018. These two measures will be the only regulatory measures the ESAs intend to propose to address the legal uncertainty raised by the withdrawal of the UK from the EU and to ensure a level playing field between EU counterparties.

The ESAs have advised counterparties to begin negotiating the novations of their transactions which are in scope as soon as possible.

The draft RTS have been submitted to the EU Commission for endorsement and are subject to the scrutiny of the EU Parliament and the Council.

EMIR 2.2: EU Council Presidency publishes compromise text and reports on state of play

The EU Council Presidency has published the latest compromise text and a state of play report 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.

The latest compromise text is now supported by most of the delegations. Against this background, the EU Council Presidency recommends that the Permanent Representatives Committee (COREPER):

- agrees on the negotiating mandate with regard to the proposed regulation;
- invites the Presidency to start negotiations with the EU Parliament on the basis of that mandate with a view to reaching an agreement at first reading; and
- enters into its minutes a statement relating to the establishment of the Central Counterparty Supervisory Committee (CCP Supervisory Committee).

CRR: ECB Regulation on materiality threshold for credit obligations past due published in Official Journal

A European Central Bank (ECB) Regulation (2018/1845) on the definition of the materiality threshold for credit obligations past due has been published in the Official Journal.

The ECB, as competent authority for carrying out microprudential tasks within the Single Supervisory Mechanism (SSM), has exercised the discretion conferred on competent authorities under Article 178(2)(d) of the Capital Requirements Regulation (CRR) to set a threshold for assessing the materiality of a credit obligation past due.

Credit institutions should apply the threshold specified in the Regulation no later than 31 December 2020 and have until 1 June 2019 to notify the ECB of the exact date on which they will commence applying the threshold.

The Regulation will enter into force on 16 December 2018.

ESAs publish statement on disclosure requirements and consolidated application of securitisation rules for credit institutions

The Joint Committee of the ESAs has published a statement on disclosure requirements for EU securitisations and consolidated application of securitisation rules for EU credit institutions.

The statement relates to the ESAs being made aware of several operational challenges for reporting entities in complying with transitional provisions under the Securitisation Regulation (2017/2402), which require CRA3 templates to be used until ESMA's disclosure templates specified in a Commission

Delegated Regulation are adopted. In light of the difficulties highlighted and market concerns, the ESAs set out that they expect competent authorities to generally apply their supervisory powers in their day-to-day supervision and enforcement of applicable legislation in a proportionate and risk-based manner. When examining reporting entities' compliance with the disclosure requirements of the Securitisation Regulation, which will apply from 1 January 2019, competent authorities can consider the type and extent of information already being disclosed by reporting entities. This approach does not entail general forbearance, but a case-by-case assessment. The ESAs expect these difficulties to be solved with the subsequent adoption of the ESMA disclosure templates.

Separately, the statement also highlights challenges faced by EU banking entities with regard to complying with specific provisions of the Capital Requirements Regulation (CRR) Amending Regulation relating to the scope of the Chapter 2 requirements in the Securitisation Regulation, relating to due-diligence, risk retention, transparency, re-securitisation and criteria for credit-granting. With regard to Article 1(11) of the CRR Amending Regulation, the ESAs also set out that they expect competent authorities to carry out their supervision in a proportionate manner, applying a case-by-case assessment of the degree of compliance with the Securitisation Regulation. The ESAs expect these difficulties to be solved with the adoption of the new CRR Amending Regulation (CRR2).

EU Commission reports on non-performing loans and Capital Markets Union ahead of December European Council meeting

The EU Commission has published two communications ahead of the December European Council and Euro summit: its third progress report on the reduction of non-performing loans (NPLs) and further risk reduction in the Banking Union, and a communication on progress on the Capital Markets Union (CMU).

The third progress report has been published ahead of the meetings as Member States will discuss progress in reinforcing the European Stability Mechanism (ESM) and completing the Banking Union. One of the key areas for reducing risk in the EU banking sector is the further decline of NPLs, and the progress report shows a continued decline in the first half of 2018 to an average of 3.4%. The communication welcomes this decline but notes that high NPL ratios remain an important challenge for some Member States in particular. Among other things, the report confirms that the Commission has delivered all elements of the Council's Action Plan on NPLs, published in July 2017.

The communication is complementary to the progress report on CMU, which calls for renewed political engagement and efforts to complete the key building blocks of the CMU ahead of the European elections in May 2019. The report recalls the key building blocks the Commission has delivered in the past three years, but also highlights that ten of thirteen proposals putting in place the building blocks are still under discussion by the EU co-legislators. The report stresses that the co-legislators should accelerate work on the pending proposals to make sure that all proposals are completed by the end of the mandate.

Capital Markets Union: EU Council agrees negotiating stance on proposed Regulation and Directive on covered bonds

The EU Council has reached political agreement on its stance on a harmonised EU framework for covered bonds. The proposed Regulation and Directive would set minimum harmonisation requirements that all covered bonds across the EU will have to meet and seek to increase security for investors. The proposals form part of the EU Commission's Action Plan on CMU. Alongside the announcement, the Council has published a compromise text on the proposed Regulation and a compromise text on the proposed Directive, both dated 23 November 2018.

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) adopted a report on the proposed Regulation and a report on the proposed Directive on 20 November. The EU Council will be able to begin trilogue negotiations with the EU Parliament once the Parliament's stance has been confirmed by a plenary vote expected in December 2018.

Capital Markets Union: EU Commission consults on draft Delegated Regulation on simplified prospectus

The EU Commission has published for consultation a draft Delegated Regulation supplementing Regulation (EU) 2017/1129 regarding the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market within the EU.

The draft Regulation forms part of the EU Commission's Capital Markets Union initiative and is intended to reduce burdens, deliver shorter prospectuses and provide better and more concise information for investors, as well as a fast track regime for companies that frequently use capital markets.

The draft Regulation will repeal EU Commission Regulation (EC) 809/2004 and will apply from the 21 July 2019.

Comments are due by 26 December 2018.

PSD2: EU Commission adopts RTS on electronic central register

The EU Commission has adopted a Delegated Regulation setting out RTS on the development, operation and maintenance of the electronic central register within the field of payment services under the recast Payment Services Directive (PSD2).

The RTS specify:

- technical requirements that will apply to the EBA when developing the register and providing access to the information contained in it; and
- the procedures that competent authorities should follow when transmitting information to the EBA.

The RTS will enter into force on the twentieth day following its publication in the Official Journal.

BIS issues statement following International Conference of Banking Supervisors and Basel Committee meeting in Abu Dhabi

The Bank for International Settlements (BIS) has issued a statement following the 20th International Conference of Banking Supervisors (ICBS) and a meeting of the Basel Committee on Banking Supervision (BCBS) in Abu Dhabi on 28-29 November 2018.

Among other things, the Basel Committee agreed to:

- set targeted revisions to the market risk framework to be submitted to the Group of Central Bank Governors and Heads of Supervision (GHOS);
- consult on potential enhanced disclosures to reduce bank window-dressing behaviour in relation to the leverage ratio;
- revisions to the Pillar 3 disclosure framework, which will be published in December 2018; and
- consult on a framework to consolidate the Committee's standards into a single integrated framework in 2019.

The ICBS discussed topics including best practices for evaluating the impact of post-crisis reforms, the role of proportionality in the Basel framework, the importance of implementing the post-crisis reforms in a full, timely and consistent manner, and supervisory challenges following the completion of Basel III including financial technology and operational resilience.

FSB Chair writes to G20 Leaders ahead of Buenos Aires summit

The Chair of the Financial Stability Board (FSB), Mark Carney, has written to G20 Leaders ahead of their summit in Buenos Aires. The letter reports on progress made during 2018 and highlights the main issues that require the attention of G20 Leaders.

Among other things, the letter sets out three developments that, in the FSB's view, merit particular attention:

- continued vigilance to contain the risks of non-bank finance and structural vulnerabilities associated with asset management;
- making the core of the financial system as robust to operational risks as to financial ones, including major cyber incidents; and
- harnessing the benefits of new financial technologies, while containing the risks to financial stability, including work on crypto-assets, distributed ledger technology (DLT), the global legal entity identifier (LEI), artificial intelligence, and various payments technologies.

The letter also sets out details of the completion and implementation of the G20's post-crisis reform priorities and the FSB's work with standard-setters to complete work on a few final policy areas. The FSB's work in 2018 has included:

- finalising policy to evaluate whether CCPs have adequate financial resources to support resolution;
- measures to strengthen the governance frameworks of financial institutions to address the underlying causes of misconduct;

- a framework for addressing systemic risks in insurance;
- a correspondent banking action plan; and
- mitigating the financial stability risks from climate change through the taskforce on climate-related financial disclosures (TCFD).

The FSB expects its work to pivot from design of new policy initiatives towards dynamic implementation and evaluation of the effects of the agreed G20 reforms, to ensure that the reforms remain fit for purpose in changing circumstances. To ensure its effective operation as it moves to the next phase of its work, the FSB's membership has undertaken a review of how the FSB works in relation to processes and transparency, and has published procedural guidelines. The FSB intends to evaluate these guidelines again in 2021.

As part of its pivoting, the FSB has reported to leaders on two evaluations under its new policy evaluation framework on:

- financial intermediation, which assesses how financial reforms affect the availability and cost of infrastructure finance and whether reforms have unintended consequences in this area; and
- whether adequate incentives to centrally clear OTC derivatives are in place.

Mark Carney's term as Chair of the FSB will end at the conclusion of the G20 summit on 1 December 2018. The letter also reports that the incoming Chair, Randal K. Quarles, will take on the role immediately after the summit alongside the new Vice Chair, Klaas Knot.

BCBS reports on Basel III monitoring

The Basel Committee on Banking Supervision (BCBS) has published a report to G20 leaders on progress by its 27 member jurisdictions in implementing the Basel III regulatory reforms in preparation for the G20 summit in Buenos Aires.

Overall the report finds that member jurisdictions have continued to make progress in implementing the Basel III standards since the Committee's July 2017 report. In particular, the report identifies that:

- standards for capital, liquidity and global systemically important banks (G-SIBs) have generally been transposed into domestic regulations within the timeframe set by the BCBS;
- key components of the Basel III standards, including the risk-based capital standards and the liquidity coverage ratio (LCR), are now enforced by all member jurisdictions; and
- member jurisdictions are continuing their work on adopting other Basel III standards, including those relating to margin requirements for non-centrally cleared derivatives, the net stable funding ratio (NSFR), revised securitisation framework, the standardised approach for measuring counterparty credit risk exposures (SA-CCR) and revised Pillar 3 requirements.

However, the BCBS notes that challenges remain, particularly regarding the timely adoption of these standards, notably for the NSFR, with only ten member jurisdictions having final rules in force.

The final Basel III reforms were finalised in December 2017 and will take effect from 1 January 2022. The BCBS has urged its members to complete the implementation of standards whose implementation date has already passed and to begin the process of transposing the final Basel III reforms into their domestic banking regulations. The BCBS will continue to monitor the implementation and impact of its standards and report to the G20 on progress.

FSB reports to G20 leaders on implementation of financial regulatory reforms

The Financial Stability Board (FSB) has published its fourth annual report on the implementation and effects of the G20 financial regulatory reforms. The report, prepared for the G20 summit in Buenos Aires, finds that, ten years following the financial crisis, most of the regulatory framework is largely in place, although there is some policy work still ongoing in the insurance sector and with CCPs.

The FSB is now shifting its focus towards implementation and global regulatory cooperation. This includes work to:

- implement the final Basel III reforms;
- operationalise resolution plans for cross-border banks and build effective resolution regimes for insurers and CCPs;
- make OTC derivatives trade reporting more effective; and
- further strengthen the oversight and regulation of non-bank financial intermediation.

The FSB calls for the support of the G20 leaders in implementing the agreed reforms and reinforcing global regulatory cooperation.

Along with the report, the FSB has also published survey responses by member jurisdictions on the implementation of other areas of reform, summary tables, and jurisdiction profiles on implementation progress.

Brexit: UK Government publishes documents as negotiated text of Withdrawal Agreement and Political Declaration laid before Parliament

HM Government has laid copies of the negotiated Withdrawal Agreement and Political Declaration before Parliament, following endorsement of the Withdrawal Agreement and approval of the Political Declaration at a special meeting of the European Council (Art.50) on 25 November 2018.

Among other things, the negotiated text includes new wording at Article 132 on the extension of the transition period providing that the Joint Committee may before 1 July 2020 adopt a single decision extending the transition period by one or two years. In its conclusions, the European Council (Art. 50) restated its determination to have as close as possible a partnership with the UK in the future, in line with the Political Declaration, and that the EU's approach to negotiations will continue to be defined by the positions and principles set out in the previously agreed European Council guidelines.

In a statement accompanying the negotiated texts, which was published for the purposes of s.13 of the European Union (Withdrawal) Act 2018, the Prime Minister, the Rt Hon Theresa May MP, noted that the texts were being presented to Parliament at the earliest opportunity to facilitate the fullest possible scrutiny. The texts are subject to a jurist-linguist translation process, during which time minor technical corrections are expected to be made. Accompanying the texts the Government has also published an explainer document on the Political Declaration, which accompanies the explainer document on the Withdrawal Agreement published on 14 November 2018.

The Prime Minister has also published a letter to the nation, dated 24 November 2018. Among other things, the Prime Minister stated that the meaningful vote on the deal in Parliament will take place in the coming weeks.

HM Government has also published letters from the UK's Permanent Representative to the Secretary General of the EU Council and the Secretary General of the EU Commission on UK sovereignty over Gibraltar, which restates that the UK will negotiate future agreements on behalf of all territories, including Gibraltar, for whose external relations it is responsible.

FCA, BoE and UK Government publish assessment of Brexit scenarios alongside BoE stress test results and Financial Stability Report

The Financial Conduct Authority (FCA) and the Bank of England (BoE) have published analyses of scenarios for the UK's withdrawal from the EU, in response to a request by the House of Commons Treasury Select Committee.

The FCA's report provides an assessment of the impact of Brexit based on the Withdrawal Agreement and Political Declaration, or leaving without an agreement either on 29 March 2019 or after a transition period. Alongside the report, the FCA has published a letter from its Chief Executive, Andrew Bailey, to the Committee Chair, the Rt Hon Nicky Morgan MP, which sets out that from the perspective of its statutory objectives, the FCA views an implementation period as preferable to exit without agreement, in order to have in place a bridge to a new relationship and greater clarity over future regulatory arrangements. The FCA views it as preferable that an implementation period would be kept to a minimum duration, due to remaining uncertainty around the role of the UK in the governance of the pipeline of EU legislation and rule-making during this period. The report highlights that the impact of a no-deal scenario would greatly depend on the extent to which the UK and EU could continue to cooperate and take action together to minimise disruption.

The BoE's report, dated 28 November 2018, analyses how Brexit would affect its ability to deliver its objectives and for monetary policy and financial stability. The report sets out scenarios, not forecasts, which have been calculated for up to five years and, as such, do not provide assessments of the relative long-term merits of different trading relationships. Overall, the BoE has identified that as the UK's trading relationship with the EU changes, the reduction of openness will act to reduce the UK economy's productive capacity and in most scenarios the rate of growth in the short term. The report assesses the economic effects of the Withdrawal Agreement and the Political Declaration, as well as the consequences of leaving the EU without a Withdrawal Agreement. The BoE has found that the impact of EU withdrawal will depend on the direction, magnitude and speed of the effect of reduced openness on the UK economy.

Alongside the report, the BoE also published its Financial Stability Report, Systemic Risk Survey Results (2018 H2) and the results of the 2018 stress test. Overall, the BoE identified that, despite facing loss rates consistent with the global financial crisis in the stress scenario, the major UK banks' aggregate CET1 capital ratio after the stress scenario would still be twice its level before the crisis. All participating banks remained above their risk-weighted CET1 capital and Tier 1 leverage hurdle rates and would be able to continue to meet credit demand from the real economy, even in a very severe stress. The Financial Stability Report also sets out details of the FPC's review of a disorderly Brexit scenario, under which there is no deal and no transition period, leading to a severe economic shock. Based on a comparison of that scenario with the stress test, the FPC judges that the UK banking system is strong enough to continue to serve UK households and businesses even in the event of a disorderly Brexit.

HM Treasury (HMT) also published an economic analysis of Brexit under different scenarios on 28 November, which is intended to provide Parliament and the public with an assessment of the long-term economic impacts of the UK's future relationship with the EU. The paper compares four analytical trade policy scenarios against today's arrangements, holding all other factors constant, in particular:

- the policy position set out by the Government in its July 2018 White Paper entitled 'The future relationship between the United Kingdom and the European Union';
- a hypothetical free trade agreement (FTA), with zero tariffs, reflecting average FTA non-tariff costs such as being outside the Customs Union and standard customs arrangements with the EU, regulatory barriers and other costs;
- a modelled EEA-type scenario; and
- modelled no-deal.

Brexit: SIs under the EU (Withdrawal) Act for 26 – 30 November 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 Credit Rating Agencies (Amendments etc.) (EU Exit) Regulations 2018, which proposes, among other things, amendments to the Credit Rating Agencies Regulations 2010 and the EU retained law Regulation (EC) No 1060/2009. The draft instrument is still in development and the guidance draft is intended to provide Parliament and stakeholders with further details on HM Treasury's approach to onshoring financial services legislation.

HMT also published explanatory information on the draft Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2018, which have been laid for sifting alongside the draft Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2018. SIs going through the sifting process are considered by a committee in the House of Commons and the House of Lords, which determine the suitability of the 'negative procedure'. The sifting end date for both instruments is 18 December 2018.

The draft Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2018 and the draft Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2018, which propose amendments relating to the UK implementation of the Wire Transfers Regulations (2015/847 – WTRs), have been laid before Parliament.

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

Banks and Building Societies (Priorities on Insolvency) Order 2018 laid before Parliament

The Banks and Building Societies (Priorities on Insolvency) Order 2018 (SI 2018/1244) has been laid before Parliament. The Order implements the obligations in the EU Bank Creditor Hierarchy Directive (2017/2399), which amends the Bank Recovery and Resolution Directive (BRRD) as regards the ranking of unsecured debt instruments in insolvency hierarchy. The Directive provides for a new class of nonpreferred senior debt to be issued by credit institutions, investment firms and others. In insolvency proceedings, debts in this class are to rank below ordinary unsecured debts but above own funds investments and subordinated liabilities that do not qualify as own funds instruments.

Among other things, the Order sets out amendments to the Insolvency Act 1986 and the Insolvent Partnerships Order 1994, as well as consequential amendments to the Banking Act 2009.

Alongside the Order being laid, HM Treasury (HMT) has published its response to the technical consultation on implementing the Bank Creditor Hierarchy Directive, which closed on 10 October 2018. The response sets out details of HMT's final approach, which includes creating a new section 176AZA (non-preferential debts of financial institutions) in the Insolvency Act 1986.

The Order will come into force on 19 December 2018.

FCA publishes approach to authorisation

The FCA has published a document on its approach to authorisation, as part of a series of documents on the FCA Mission. The publication follows a public consultation, which closed on 12 March 2018. Authorisation is one of the tools given to the FCA by Parliament to deliver its objectives. The document discusses the purpose of authorisation, the FCA's approach to using this power, the public value it delivers and changes the FCA is making to improve its approach.

In particular, the document sets out:

- the legal basis of authorisation;
- minimum standards that firms must meet to be authorised and how the FCA evaluates whether firms and individuals meet its requirements;
- the difference between authorisation and registration;
- options available if the FCA decides not to authorise a firm or individual;
- how authorisation relates to competition;
- how the FCA evaluates the effectiveness of its authorisation decisions; and
- how and why the FCA may revoke authorisation.

Insurance Distribution Directive: Consob amends Issuers Regulation in relation to public offering regime applicable to insurance based investment products issued by insurers

Following a public consultation, the Commissione Nazionale per le Società e la Borsa (CONSOB) has amended its Issuers Regulation (No. 11971/1999) concerning insurance based investment products (IBIPs) issued by insurance undertakings, in compliance with amendments made to the relevant Italian primary legislation, which was in turn amended to implement the Insurance Distribution Directive (IDD).

In particular, the definition of 'financial products issued by insurance companies' has been repealed from Article 1 of the Italian Financial Act (Legislative Decree no. 58/1998) and Article 185 of the Italian Insurance Act (Legislative Decree no. 209/2005) has been amended to introduce a new transparency regime for IBIPs. The amendments made by Consob are intended to standardise and simplify the pre-contractual transparency requirements with regard to IBIPs, providing for the inapplicability of the discipline of the public offer and the elimination of the obligation to publish a prospectus.

After 1 January 2019, when the amendments come into force together with IVASS Regulation No. 41/2018, the pre-contractual documentation to be made available to investors will be as follows:

- a PRIIPs KID, which illustrates the key elements of the product; and
- the additional pre-contractual information document provided for by IVASS, including information about the issuer, in order to fulfil the requirements laid down by Solvency II, also including reference to the report on solvency and additional information on the rights and obligations of the contracting parties.

DNB publishes supervisory agenda for 2019

The Dutch Central Bank (DNB) has published its Supervision Outlook for 2019, which highlights areas that DNB plans to devote additional attention to in 2019 alongside its ongoing prudential supervision. The various elements of the Supervision Outlook follow on from its three long-term supervision goals to 2022, which are:

- responding to technological innovation;
- fostering future orientation and sustainability; and
- taking a hard stance against financial and economic crime.

The Supervision Outlook includes work on digital technology and blockchain, sustainability, financial institutions' gatekeeper role and tail risks, in particular:

- considering whether digital technology could help DNB take a more risk-based approach, detecting relevant risks at acceptable costs and improving its response to such risks' underlying coherence, as well as further research on the implications of adopting blockchain technology and potential regulation of cryptos;

- work to assess options for incorporating climate-related risks in its assessment frameworks for supervising banks, insurance firms and pension funds;
- calling on financial institutions to strengthen their gatekeeper role alongside thematic examinations focusing on tax risks and social impropriety, and combatting organised crime; and
- devoting special attention to tail risks, which are risks that have a small likelihood of occurring but could have major consequences.

The Supervisory Outlook also highlights relevant regulatory developments and their impact on banks, insurers, investment firms, pension funds, payment institutions and trust offices.

Royal Decree-Law on payment services and other urgent measures on financial matters published in Spain

Royal Decree-Law, of 23 November 2018, on payment services and other urgent measures on financial matters has been published. The main purpose of the Royal Decree-Law is to implement a series of EU Directives, including PSD2, for which the implementation deadlines have passed and an infringement procedure is open. It also aims to adapt the Spanish legal system to certain European regulations.

The Royal Decree-Law is intended to guarantee investor protection and market integrity and improve supervisory efficacy by:

- granting powers to punish and prosecute conduct related to market manipulation, the sale of certain products that are particularly complex, or index manipulation;
- in matters of solvency supervision, creating a system of claims on a no-name basis and improve cooperation with other supervisors; and
- defining supervisory powers, and promoting innovation and more competition to increase investor protection.

In addition to matters on payment services, the Royal Decree includes:

- a modification of the Spanish Company Act adding a new scenario preventing the separation of shareholders because of a lack of dividend distribution in credit and other financial institutions closely held in accordance with the CRR;
- a modification of the regulation of electronic money institutions;
- a modification of the sanctions regime of Law 10/2014, of 26 June, on the organisation, supervision and solvency of credit institutions in order to adapt it to the provision of payment services and complete the implementation of CRD 4;
- a modification of Law 5/2015, of 27 April, on business promotion, granting the Bank of Spain the power to authorise hybrid financial institutions;
- a modification of Law 11/2015, of 8 June, on the recovery and resolution of credit institutions amending the definition of branches in Spain of entities subject to Spanish law. The purpose of this amendment is to implement correctly what is provided for branches of entities established outside the EU. It also modifies Article 53 in order to allow FROB to gather contributions from the Spanish branches of entities established outside the

EU and recognises FROB competences as the executive resolution authority in accordance with the BRRD; and

- a modification of the Spanish Securities Market Law approved by legislative Royal Decree 4/2015 of 23 October with the aim of improving its provisions and adapt the content to a series of regulations that have already entered into force, namely the Market Abuse Regulation, Benchmarks Regulation, PRIIPs Regulation and EMIR.

PBoC, CBIRC and CSRC issue guiding opinions on regulation of systemically important financial institutions

The People's Bank of China (PBoC), the China Banking and Insurance Regulatory Commission (CBIRC) and the China Securities Regulatory Commission (CSRC) have jointly issued the 'Guiding Opinions on Improving the Regulation of Systemically Important Financial Institutions', which are intended to improve the regulatory framework for systemically important financial institutions (SIFIs), prevent systemic risks and maintain the sound and sustainable operation of the financial system.

Amongst other things, the following key aspects with respect to the Guiding Opinions are worth noting:

- definition and scope of SIFI – according to the Guiding Opinions, SIFIs are financial institutions whose failure, because of their size, complexity and systemic interconnectedness as well as the difficulty of finding alternative providers of their key services, would cause a significant negative impact on the wider financial system and real economy and trigger systemic risks. In-scope SIFIs include banks, securities firms, insurance companies and other institutions (e.g. financial holding companies), subject to the annual assessment and identification by financial regulators and the State Council Financial Stability Development Commission;
- regulatory approach – SIFIs will be subject to additional regulation in two aspects: (i) in addition to the existing regulatory measures for financial institutions, special regulatory requirements will be imposed on SIFIs by the relevant regulator (e.g. PBOC, CBIRC and/or CSRC); and (ii) each SIFI is required to establish a special resolution regime to ensure the safe, timely and effective resolution of material risks and keep their key business and services uninterrupted, with the aim of preventing SIFIs from becoming 'too big to fail';
- special regulatory requirements – among other prudential regulatory requirements, additional capital and leverage ratio requirements will be imposed on SIFIs. SIFIs will also be subject to further requirements in respect of corporate governance, risk management and information systems; and
- special resolution regime – the recovery and resolution plans of SIFIs should be updated on a yearly basis. Regulators may regularly carry out resolvability assessments on SIFIs to review the feasibility and credibility of their resolution plans.

Financial Services Development Council releases report on ESG strategy

The Financial Services Development Council (FSDC) has released a research report entitled 'Environmental, Social and Governance (ESG) Strategy for

Hong Kong'. The report sets out key recommendations for fostering the development of an ESG ecosystem in Hong Kong.

The report is intended to present the value proposition of ESG integration from the perspectives of both financial investors and investee companies, and recommends:

- the Hong Kong Government to take the leadership role in encouraging public funds' support for ESG integration;
- the Hong Kong Monetary Authority to scale up ESG requirements on their external investment managers;
- the Mandatory Provident Fund Schemes Authority to incorporate ESG factors into its trustee approval and monitoring process and to encourage trustees to take into account international ESG standards;
- the Securities and Futures Commission (SFC) to strengthen the emphasis on ESG through upgrading the Principles of Responsible Ownership to at least 'comply or explain';
- the SFC and the other regulators to provide more guidance on ESG thematic investment products; and
- the Stock Exchange of Hong Kong to strengthen the emphasis on ESG for both listing applicants and listed companies.

Singapore Government issues Banking (Amendment) Act 2016 commencement notification

The Singapore Government has issued the Banking (Amendment) Act 2016 (Commencement) Notification 2018 to announce that the majority of the provisions of the Banking (Amendment) Act 2016 came into operation on 30 November 2018, except for sections 12(2) and 13(2).

The Act was passed by the Singapore Parliament on 29 February 2016 and is intended to enhance:

- prudential safeguards, by empowering the Monetary Authority of Singapore (MAS) to:
  - require foreign banks to incorporate all or part of their banking business locally if it is in the interest of the public, depositors of the bank or the financial system of Singapore; and
  - set prudential requirements that cap banks' leverage ensuring that they maintain sufficient liquidity in line with international safeguards;
- corporate governance, by providing protection from liability for banks' external auditors who disclose information in good faith in the course of their duties and empowering MAS to:
  - remove holders of key appointments if they are not fit and proper;
  - direct banks to remove their external auditors if they have not discharged their statutory duties satisfactorily; and
  - prohibit, restrict or direct a bank to terminate any transaction that the bank has entered into with its related parties if it is deemed to be detrimental to depositors' interests; and

- risk management controls, including provisions on:
  - formalising MAS' expectation for banks to institute risk management systems and controls appropriate to the bank's business profile and operations, including the ability for MAS to impose penalties if a bank fails to do so; and
  - introducing a requirement for banks to obtain MAS' approval to establish new places of business where non-banking activities are conducted.

Other provisions of the Act will:

- formalise the expectations placed on banks to immediately notify MAS of material adverse developments;
- require banks to immediately notify MAS as soon as they become aware of any material information which may negatively affect the fitness or propriety of its directors or executive officers;
- provide MAS with the express power to inspect the overseas subsidiaries of a bank incorporated in Singapore;
- enable MAS to collect application fees for new bank licences and the registration of representative offices; and
- align the range of penalties in the Banking Act.

Singapore and US sign declaration of intent on cybersecurity technical assistance programme

The Cyber Security Agency of Singapore (CSA) has signed a Declaration of Intent (DOI) with the US Department of State to collaborate on a Singapore-US cybersecurity technical assistance programme for ASEAN Member States to further strengthen partnerships in regional cybersecurity capacity building. The programme builds on existing collaboration under a Memorandum of Understanding (MoU) on cybersecurity co-operation between Singapore and the USA, which was signed in August 2016.

The programme will use elements of both Singapore's ASEAN Cyber Capacity Programme and the US' Digital Connectivity and Cybersecurity Partnership initiative and will extend the work of the annual Singapore-US Third Country Training Programme Workshop on Cybersecurity, with the intention to deliver three workshops annually with the involvement of key industry partners. The training workshops will take place in Singapore as well as selected regional venues, in partnership with interested ASEAN partners.

APRA responds to feedback on ADI leverage ratio and extends timeline for broader capital framework reforms

The Australian Prudential Regulation Authority (APRA) has published its responses to the feedback it received on its February 2018 public consultation on the introduction of a leverage ratio requirement for authorised deposit-taking institutions (ADIs).

The feedback broadly supported the introduction of a minimum leverage ratio, but raised concerns about the calibration of the minimum requirement and calculation methodology. In response to the concerns raised, the APRA has proposed to:

- set the minimum requirement for ADIs using the internal ratings-based approach (IRB ADIs) to determining capital adequacy at 3.5%, rather than 4%;
- keep the leverage ratio for ADIs that use the standardised approach to determine capital adequacy (standardised ADIs) at 3%;
- allow standardised ADIs to use Australian accounting standards rather than the Basel III methodology to calculate certain parts of the ratio; and
- require IRB ADIs to largely follow the Basel III methodology to calculate their leverage ratios.

ADIs' leverage ratio requirements are outlined in the draft amended Prudential Standard APS 110: Capital Adequacy (APS 110). APRA is also introducing a new reporting standard, ARS 110.1: Leverage Ratio (ARS 110.1). Small ADIs that qualify for the simplified prudential framework – which is intended to introduce more proportionate and tailored prudential requirements for smaller and less complex ADIs – will be exempt from the leverage ratio requirements, but will still be required to report to APRA under ARS 110.1. Although still consulting on its final design, APRA is considering an eligibility threshold for the simplified framework of AUD 15 billion in total assets, which will be complemented by other qualitative measures. Comments on the new and revised draft standards are due by 22 February 2019.

Additionally, APRA proposes to extend commencement of its February 2018 revisions to the capital framework from 1 January 2021 to 1 January 2022, the internationally agreed implementation date set by the BCBS. The extension has been granted in response to industry concerns.

Australian government consults on second tranche of Treasury Laws Amendment (Mutual Entities) Bill 2018

The Australian government has launched a public consultation on the second tranche of an exposure draft of the Treasury Laws Amendment (Mutual Entities) Bill 2018 and explanatory materials to implement the recommendations of the inquiry into reforms for cooperatives, mutuals and member-owned firms, conducted by Greg Hammond OAM.

Greg Hammond OAM's recommendations are covered in a report, released on 8 November 2017, entitled 'Report on Reforms for Cooperatives, Mutuals and Member-owned Firms'. The first tranche consultation on the Treasury Laws Amendment (Mutual entities) Bill 2018 that was launched on 4 October 2018 closed on 1 November 2018.

The second tranche exposure draft:

- provides for mutual capital instruments (MCIs) as a new bespoke capital instrument for mutual entities. MCIs can be issued by eligible mutual entities that are companies limited by shares, companies limited by guarantee and companies limited by shares and guarantee; and
- provides a standard process to allow eligible mutual entities to amend their constitutions to allow them to take advantage of these reforms to issue MCIs.

Comments on the second tranche consultation are due by 24 December 2018.

RECENT CLIFFORD CHANCE BRIEFINGS

Renewable Incentives Guide: Towards a Subsidy-Free World?

The renewable energy sector continues to show strong growth. Renewable incentives still have a significant role in that growth, although we are increasingly seeing the incentives being reduced and even removed as the costs of generation from renewable technologies continue to fall, and more instances of renewable projects proving competitive without subsidy.

Changing investor goals and sustainability regulation are leading to the emergence of new funding models for investment in green infrastructure. Corporate power purchase agreements for renewable electricity are taking off in a big way in a number of jurisdictions around the world as larger corporates seek ways of fulfilling their CSR commitments, and we are seeing the emergence of a new market for green finance products.

The latest edition of the Renewable Incentives Guide, which now covers renewable incentives in 21 major countries, examines these and other investment opportunities in the renewable energy sector.

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

The draft Political Declaration – The future for the UK and EU after Brexit

The UK and the EU have released a draft Political Declaration on the future relationship between them. This follows the draft Withdrawal Agreement published on 14 November 2018.

This briefing considers the contents and implications of the long-awaited Political Declaration, including what it may mean for goods and financial services, customs and regulation and the UK's desire to have an independent trade policy.

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

Germany prepares for 'No Deal' Brexit

To prevent market disruption and negative implications for the financial markets in case of a 'no deal Brexit', the German Ministry of Finance has published a draft law to preserve market access for UK firms offering banking business, financial services or insurance services in Germany under the European passport regime.

This briefing discusses the draft law.

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

CVAs and the struggling high street retailer – a new battleground for landlords?

The Company Voluntary Arrangement (CVA) has become an insolvency procedure of choice for companies experiencing financial distress. 2018 has already seen prominent high street brands such as Mothercare, Carpetright, New Look and House of Fraser implement CVAs in a bid for survival.

Given their resurgence, this briefing discusses why CVAs have become so popular amongst high street retailers, the types of objections that landlords might make and how this may impact how landlords transact in the future.

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

Remuneration policies and practices for banks and banking groups

With an update of 23 October 2018, Banca di Italia, the Italian Central Bank, amended the provisions governing compensation policies and practices for banks and banking groups to reflect the guidelines on sound remuneration policies issued by the European Banking Authority in implementation of CRD 4.

This briefing provides an overview of the amendments.

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

The new UAE Banking Law and its impact on Islamic financing in the UAE

On 23 September 2018, the President of the United Arab Emirates promulgated Federal Law No 14 of 2018 on the Central Bank and Organisation of Financial Institutions and Activities. The new law came into force on 30 September 2018 on the day of its publication in the Official Gazette.

This briefing discusses the new law, which will impact on the regulatory landscape in the UAE for both fully fledged Islamic financial institutions and conventional financial institutions operating through an Islamic finance window.

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

Commerce Department Request for Comments Forecasts Increased National Security Controls on Array of Emerging Technology

On 19 November 2018, the US Department of Commerce's Bureau of Industry and Security issued an important notice of proposed rulemaking (ANPRM) as the first step in expanding US export and foreign investment controls to cover a range of emerging technologies deemed critical to US national security in coming decades.

The results of this process will help define the trajectory of US and multilateral controls on cutting edge technologies for years to come, and may restrict how US companies engage with the rest of the world in fields as diverse and important as artificial intelligence, autonomy, robotics, additive manufacturing, drones, logistics and advanced computing.

This briefing discusses the ANPRM and the fourteen technology areas under scrutiny. The ANPRM solicits public comment on how those technologies should be identified and controlled going forward. Companies exposed to any of the technologies at issue should consider making their voices heard during the comment period (closes 19 December 2018) and afterwards.

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

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