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EU Council and Parliament reach political agreement on prudential regime for investment firms

The EU Council and EU Parliament have reached a political agreement on the text of the proposed Regulation and the proposed Directive on the prudential requirements for investment firms.

The proposed measures, which would amend the fourth Capital Requirements Regulation (CRD4) and Capital Requirements Regulation (CRR) and MiFID2/MiFIR, set out a new regulatory and supervisory framework aimed at adapting existing requirements (such as capital holdings, reporting, corporate governance and remuneration) to investment firms' size, nature and complexity.

Under the new framework, smaller firms not considered systemic would be subject to the new bespoke regime, while large investment firms that provide bank-like services and engage in bank-like activities would be subject to the full banking prudential regime and supervised as credit institutions. The agreed text provides for a five-year transition period.

The text also sets out greater detail on the equivalence regime that would apply to third country investment firms, and extends the tick size regime to systematic internalisers.

Once endorsed and following a legal linguistic revision, the EU Parliament and EU Council will be called on to adopt the proposed measures at first reading.

Capital Markets Union: EU Council agrees position on legislative proposal on SME financing

The EU Council has adopted its position on the proposed regulation on easier access to new sources of funding for small and medium-sized enterprises (SMEs).

The proposed regulation, which amends the Market Abuse Regulation and the Prospectus Regulation, aims to:

- reduce administrative burdens and further incentivise SMEs to access capital markets through SME growth markets; and
- provide a simplified prospectus for issuers whose equity securities are admitted to trading on either a regulated market or an SME growth market.

As the EU Parliament adopted its position on 7 December 2018, trilogue negotiations can now begin. The first trilogue is scheduled for 6 March, with a view to reaching an agreement at first reading.

Benchmarks Regulation: political agreement reached on low carbon benchmarks and transitional period for benchmarks extended

The EU Parliament and the EU Council have reached agreement in trilogue on the low-carbon benchmarks regulation.

The low-carbon benchmarks regulation amends the EU Benchmarks Regulation to create two new categories intended to provide greater information on an investment portfolio's carbon footprint:

- EU climate transition benchmarks, which aim to lower the carbon footprint of a standard investment portfolio; and
- EU Paris-aligned benchmarks, which have the goal to select only components that contribute to attaining the 2°C reduction set out in the Paris climate agreement.

The two new categories are voluntary labels designed to orient the choice of investors who wish to adopt a climate-conscious investment strategy.

Additionally, an extension of the transition regime for critical and third-country benchmarks until 31 December 2021 has been agreed. This will grant providers of critical benchmarks, such as EURIBOR and EONIA, two additional years to comply with the EU Benchmarks Regulation. It will also provide two additional years for work with non-EU regulators on how third-country benchmarks can be recognised as equivalent or otherwise endorsed for use in the EU.

The finalisation of the text will follow further technical talks. The EU Parliament and Council will have to formally adopt the new rules before they can enter into force.

EMIR: EU Commission consults on draft Implementing Decision on the equivalence of derivatives transactions supervised by the JFSA

The EU Commission has launched a consultation on draft Implementing Regulations on the recognition of legal, supervisory and enforcement arrangements of derivatives transactions supervised by the Japan Financial Services Agency (JFSA) as equivalent to the requirements under Article 11 of the European Market Infrastructure Regulation (EMIR).

Comments on the draft Implementing Regulations are due by 26 March 2018.

CSDR: ESMA to recognise UK CSD in the event of a no-deal Brexit

The European Securities and Markets Authority (ESMA) has adopted a decision recognising Euroclear UK and Ireland Limited, a UK central securities depositary (CSD), as a third country CSD to provide its services in the EU in the event of a no-deal Brexit.

ESMA has adopted the recognition decision to allow Euroclear to serve Irish securities and to avoid any negative impact on the Irish securities market.

The decision would take effect on the date following Brexit date in a no-deal scenario.

ESMA reports on trends, risks and vulnerabilities

ESMA has published its first report for 2019 on trends, risks and vulnerabilities (TRV) for European financial markets, which covers the second half of 2018.

The TRV report found that overall risks levels for EU financial markets remained stable but at high levels for most risk categories, particularly liquidity, market contagion and credit risk.

ESMA expects financial markets to become more sensitive to increasing political and economic uncertainty, with concerns over a no-deal Brexit impacting on economic and market expectations.

CRR: EBA consults on credit risk mitigation for institutions applying advanced internal rating-based approach

The European Banking Authority (EBA) has launched a consultation on draft guidelines on the credit risk mitigation (CRM) framework in the context of the advanced internal rating-based (A-IRB) approach. These proposed guidelines are intended to provide clarity on the CRM provisions set out in the CRR and to reduce inconsistency in approach caused by different supervisory practices or bank-specific choices. They supplement the EBA's earlier report, which focused on the standardised and foundation IRB approaches.

Amongst other things, the EBA is seeking feedback on proposed guidelines on:

- the application of the current CRR provisions for the eligibility and methods of different CRM techniques available to institutions under the A-IRB approach;
- eligibility requirements and treatment of funded and unfunded credit protection; and

- how institutions may recognise the effects of different CRM techniques for capital requirement purposes.

Comments are due by 25 May 2019.

EBA publishes revised guidelines on outsourcing arrangements

The EBA has published revised guidelines on outsourcing arrangements, setting out specific provisions for governance frameworks regarding outsourcing arrangements and related supervisory expectations and processes.

The new guidelines aim at ensuring that financial institutions within the scope of the EBA's mandate can apply a single framework on outsourcing for all their banking, investment and payment activities and services. The recommendation on outsourcing to cloud service providers, published in December 2017, has also been integrated into the guidelines.

The revised guidelines clarify that the management body of each financial institution remains responsible for that institution and its activities. They also clarify which arrangements with third parties are to be considered as outsourcing and differentiate between requirements on critical outsourcing arrangements and other outsourcing arrangements.

Competent authorities are required to supervise financial institutions' outsourcing arrangements, including identifying and monitoring risk concentrations at individual service providers and assessing whether such concentrations could pose a risk to the stability of the financial system.

The guidelines enter into force on 30 September 2019. There are some transitional periods for implementing a register of all outsourcing arrangements, agreeing cooperation agreements between competent authorities, reintegrating outsourced functions or moving them to other service providers if the requirements of the guidelines cannot be met.

Brexit: UK and US authorities release joint statement on continuity of derivatives trading and clearing

The Bank of England (BoE), Prudential Regulation Authority (PRA), Financial Conduct Authority (FCA) and the US Commodity Futures Trading Commission (CFTC) have issued a joint statement on the continuity of derivatives trading and clearing activities after Brexit.

The statement affirms the regulators' commitment to continued close cooperation and sets out a series of measures they intend to take by the end of March 2019 to ensure continuity and stability for consumers, investors and other market participants after the UK leaves the EU.

These measures include:

- continued supervisory cooperation and information-sharing to support effective cross-border oversight of derivatives markets and participants;
- extending the existing regulatory relief granted by the CFTC to EU market participants in the form of no-action letters to also cover the UK; and
- upholding in the UK the EU Commission's equivalence and recognition decisions in relation to the CFTC regime and CFTC-registered central

counterparties (CCPs), to allow US trading venues, firms and CCPs to continue to provide services in the UK.

Brexit: FCA publishes guidance for regulated firms and consumers

The FCA has published new and updated information for the firms it regulates aimed at helping them prepare for Brexit. The guidance includes:

- general preparations for Brexit, including considerations for UK firms and EEA firms conducting business in the UK;
- information for participants in the wholesale markets operating in the UK, including wholesale banks, wholesale markets and asset managers;
- information for the banking and payment sectors;
- information for general insurers and intermediaries;
- information for life insurers regarding pensions and retirement income;
- information for retail investments firms; and
- information for consumers.

Brexit: SIs under the EU (Withdrawal) Act for 25 February – 1 March 2019

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

The draft Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019, withdrawn and re-laid on 11 February, were again withdrawn and re-laid. The draft Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 2) Regulations 2019 were published and laid for sifting.

The draft Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 and the draft Cash Controls (Amendment) (EU Exit) Regulations 2019 were laid before Parliament.

The following statutory instruments were made:

- the Companies, Limited Liability Partnerships and Partnerships (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/348);
- the Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (SI 2019/405);
- the Money Market Funds (Amendment) (EU Exit) Regulations 2019 (SI 2019/394);
- the Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019 (SI 2019/403);
- the Sanctions (Amendment) (EU Exit) (No 2) Regulations 2019 (SI 2019/380); and
- the Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019 (SI 2019/407).

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 disclosure of costs reviews and PRIIPS feedback statement

The FCA has published the findings of its supervisory work assessing the effectiveness of disclosure by asset managers to retail customers. In January 2018, new disclosure requirements on costs and charges were introduced by the Packaged Retails and Insurance-based Investment Products (PRIIPs) Regulation, prompting the FCA to begin its review.

The FCA's review of disclosure of costs by asset managers found a good level of compliance but identified problems with the calculation of transaction costs and how prominently they are disclosed. The review also found that asset managers generally do not disclose all associated costs and charges, and that inconsistencies between documents and a website could make the information difficult for consumers to understand.

In its review of costs by retail intermediaries, such as wealth managers and direct-to-consumer platforms, the FCA found that firms in its sample interpreted rules inconsistently and called on firms involved in the design and distribution of products to work together to ensure that all costs and charges are disclosed correctly to customers.

The FCA have also published a feedback statement (FS19/1) summarising responses to its Call for Input on the PRIIPs Regulation. While the FCA maintains that the PRIIPs methodology is working as intended, the Call for Input highlighted concerns that some key information documents (KIDs) displaying negative, zero, or very high transaction costs are unlikely to fairly represent the true transaction cost of the product. The FCA will continue to work with firms to increase understanding of the PRIIPS Regulation and will consider whether further guidance is needed.

Alongside the reviews and feedback statement, the FCA has also published a consultation paper (CP19/10) on disclosing costs and charges to workplace pension scheme members. The deadline for comments is 28 May 2019.

Brexit: draft law addressing no deal scenario tabled in Belgian Parliament

The Belgian government has tabled a draft law in Parliament addressing certain aspects of a no deal Brexit scenario. With respect to financial services, the draft law provides that:

- the 'light touch' regime remains available to third country firms (including UK firms when the UK will have left the EU) but the government may impose additional obligations on third country firms that applied for the light touch regime – in particular, the government may require those firms to comply with the MiFID/MiFIR reporting obligations;
- the wording of the law is aligned with Article 46 of MiFIR and refers to third country firms 'providing investment services or performing investment activities' – in the past, Belgian law only referred to third country firms 'providing investment services';
- the government will be entitled to impose additional conditions on third country regulated markets, MTFs and OTFs, where those markets are active in Belgium – in particular, the government may set criteria to determine when those activities are exercised in Belgium; and

- the government will be entitled to take measures on continuity of contracts – the government notes that certain life cycle events may result in a new investment service or investment activity being provided, which would then breach the licensing requirements (after Brexit). The government may grant temporary permissions or grandfathering for existing contracts, but also define what life cycle events would indeed give rise to a new investment service or investment activity being provided.

The law is expected to be voted on before Brexit, together with implementing royal decrees.

FSMA issues communication on provision of investment services by UK firms after Brexit

The Financial Services and Markets Authority (FSMA) has issued a communication on the provision of investment services by UK firms after Brexit, in conjunction with a draft law which addresses the impact of a no deal scenario on certain financial services.

The FSMA communication confirms that the 'light touch' regime will be available to UK firms when the UK will have left the EU. The 'light touch' regime enables certain third country firms to provide investment services to eligible clients in Belgium.

This 'light touch' regime is, however, subject to a number of conditions, including the condition that the home state of the applicant must offer the same market access opportunities to Belgian firms. The FSMA has confirmed that the temporary permissions regime in the UK satisfies this condition, but only as long as the regime remains in force.

The communication also confirms that UK firms should not wait for Brexit to take place before they notify the FSMA of their intention to rely on the 'light touch' regime. Instead, the FSMA encourages UK firms to notify the FSMA as soon as possible, with these notifications only having legal effect after Brexit has taken place.

Finally, the communication examines the impact of Brexit on continuity of contracts. The communication confirms that UK investment firms should be able to continue to perform and honour existing derivatives agreements after Brexit, on the condition that no life-cycle event has taken place that results in a new contract.

Czech Brexit Act Approved

The Senate of the Czech Parliament has approved the Government Bill that will temporarily regulate relations between the Czech Republic and the UK in the event of a no-deal Brexit. The Bill deals with areas that affect UK citizens such as residency, working permits, certifications and pensions as well as with areas that affect UK businesses such as those providing financial services in the Czech Republic.

The Bill was approved by the Chamber of Deputies of the Czech Parliament in January. The Bill must be signed by the President and published in the collection of laws in order to become valid Act. For further details about the Bill please refer to the Clifford Chance briefing https://www.cliffordchance.com/briefings/2019/02/czech_brexit_actandfinancialservices.html

German Federal Government publishes information on its sustainable finance strategy

The State Secretaries' Committee for Sustainable Development (Staatssekretärsausschuss für nachhaltige Entwicklung) has decided to develop a sustainable finance strategy for the German Federal Government. The aim of the strategy is to develop Germany into a leading sustainable finance location.

The Committee has further decided to set up a Sustainable Finance Advisory Board, to continue the exchange of experiences with sustainable finance for federal investments, to develop a communication strategy to make sustainable finance better known to both consumers and the financial industry and to review whether the issue of green or sustainable German federal bonds in Germany is economically viable within the envisaged respective follow-up financing.

Many financial market actors are already incorporating sustainability aspects into their decision-making processes. Due to the importance of sustainable finance, the State Secretaries' Committee is encouraging financial market participants to analyse the consequences of their actions for people and the environment in an appropriate manner.

The German Federal Government is of the view that sustainable finance can contribute to achieving the 17 Sustainable Development Goals of the UN-2030 Agenda, the Addis Ababa Action Agenda and the objectives of the Paris Agreement of 2015 while maintaining financial stability. It is intended to pool the strengths of the financial sector, the real economy, civil society and academia to take advantage of the opportunities of sustainable finance for Germany as financial centre.

BaFin publishes digitalisation strategy

The German Federal Financial Supervisory Authority (BaFin) has published information on its digitalisation strategy.

In light of increasing digitalisation and its implications for the financial market, in August 2018 BaFin adopted a digitalisation strategy in which it formulated three basic questions relating to supervision and regulation, IT security and supervision and the transformation of BaFin.

BaFin's digitalisation strategy is intended to show the future course it intends to set in these three fields of action. From 2025 BaFin aims to be one of the world's leading supervisory authorities in terms of managing the progress of digitalisation.

To achieve this goal, the digitalisation strategy defines overarching goals for each field of action. In addition to setting out the initial situation, it also presents a selection of the next steps planned to achieve these goals. Due to digital change and dynamic developments, this description can however not cover the entire spectrum of all necessary measures, which is why it needs to be reviewed and adapted on a continuing basis.

Luxembourg bill amending regulatory regime of Luxembourg Export Credit Agency published

A new bill (No. 7408) concerning the Luxembourg Export Credit Agency, Office du Ducroire Luxembourg (ODL), has been lodged with the Luxembourg Parliament.

The bill intends to replace the existing legal/regulatory regime of the ODL which consists of the Law of 24 July 1995, the Grand Ducal Regulation of 27 July 1997, and the Grand Ducal Regulation of 11 November 2008.

The bill responds to the increasing demand for new products by enlarging the scope of activities of the ODL. Under the new bill, the ODL would be able to offer specific insurance products covering risks related to export activities which, in turn, would facilitate access to financing for Luxembourg enterprises pursuing such activities.

Additionally, the support of Luxembourg exports by means of a partial contribution in the promotion, exhibition and export training expenses will be formally included into the mission of the ODL. Previously, this mission has only been conferred to the ODL by a convention concluded between the ODL and the Luxembourg Government in 2002.

The second objective of the bill is to introduce an internal governance structure with a board of directors, consisting of management and staff. While the board of directors holds the main decision-making powers, the management will be in charge of the day-to-day business of the ODL. Under the proposed regime, the board of directors will also have the power to create expert committees, such as a credit committee, which will advise the other bodies of the ODL on technical questions. Moreover, the bill intends to formally create the Committee for the Promotion of Luxembourg Exports (COPEL Committee) as a decision-making body.

The lodging of the bill with the Parliament constitutes the start of the legislative procedure.

Brexit: CSSF issues communication on implications for MiFIR transaction reporting, ESMA databases and MiFID2 calculations

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a communication regarding ESMA's February 2019 statement on the use of UK data in ESMA databases and the performance of calculations in case of a no deal Brexit as well as on the implications of a no deal Brexit on the transactions reporting regime under MiFIR.

The communication highlights certain points in relation to the obligation to report transactions as foreseen by Article 26 MiFIR in the special context of the UK's withdrawal from the European Union.

- approved reporting mechanisms (ARM) – the CSSF encourages investment firms and credit institutions falling within the scope of the MiFIR reporting obligation and using the services offered by an ARM established in the UK to contact their ARM to verify whether continuity of service will be ensured after the withdrawal date. In compliance with EU regulations, as of the withdrawal date, ARMs established in the UK will be third-country entities. Credit institutions and investment firms must ensure that they continue to comply with Article 26 (7) MiFIR after the withdrawal date;

- transmission of an order under Article 4 of Commission Delegated Regulation (EU) 2017/590 (RTS 22) – Article 3 of RTS 22 provides that an investment firm or a credit institution shall not be deemed to have executed a transaction where it has transmitted an order in accordance with Article 4 of RTS 22. One of the three conditions provided by Article 4(1) RTS 22 to be fulfilled in the context of a transmission of an order is that the receiving firm is subject to Article 26(1) MiFIR and agrees either to report the transaction resulting from the relevant order or to transmit the order details in accordance with this Article to another investment firm or credit institution. The CSSF has emphasised that credit institutions and investment firms have to ensure that their transmission agreements remain in compliance with European regulations or ensure themselves the obligation to report transactions if the conditions listed under Article 4(1) of RTS 22 are no longer met after the withdrawal date; and
- financial instruments falling within the reporting scope – pursuant to Article 15(1) of RTS 22, reporting entities shall have mechanisms in place to avoid reporting of transactions in financial instruments which are not within the scope of MiFIR. The CSSF notes that Brexit may have a considerable impact on the instruments' scope and that credit institutions and investment firms should take the necessary precautions, without prejudice to the Brexit outcome, to ensure that their transaction reporting systems will still comply with the MiFIR requirements after the withdrawal date.

Grand-Ducal Regulation on the registration, payment of administrative fees and access to information recorded in the register of beneficial owners published

The Grand-Ducal Regulation dated 15 February 2019 on the registration, payment of administrative fees and access to information recorded in the register of beneficial owners (RBE) has been published in the Mémorial A.

The new regulation specifies

- the registration process of the information that needs to be filed with the RBE; and
- the conditions to access information contained in the RBE in accordance with the law of 13 January 2019 setting up the RBE.

The new Regulation also foresees the applicable administrative fees.

The Regulation will enter into force on 1 March 2019.

CAA issues circular on forms for the notification of natural persons subject to supervision

The Luxembourg Insurance Sector Supervisory Authority (CAA) has issued Circular 19/5 introducing new forms for the notification of natural persons subject to the supervision of the CAA.

The Circular notes that, until now, notifications submitted to the CAA by persons subject to its supervision were submitted using different methods depending on the function performed and often deviating from the templates proposed or imposed by the CAA. Efforts to harmonise these requirements have been undertaken since the entry into force of the law of 7 December

2015 on the insurance sector (as amended, inter alia, by the Insurance Distribution Directive (EU) 2016/97 ("IDD") implementing law ("ISL")). The IDD requires the identification and mitigation of conflicts of interest be included in the application or notification files. In addition, with regard to insurance intermediaries, the IDD requires that IT tools are made available for the required notifications.

In light of these developments, the CAA will provide electronic forms to all-natural persons subject to a notification requirement, harmonising their content and structure as far as possible. The forms will be available for download on the CAA website and will initially need to be printed and signed by the applicants, before being sent to the CAA in paper format.

The following six types of files will be introduced:

- file for notification or request for authorisation of a natural person for a position with a company supervised by the CAA other than an insurance or reinsurance intermediary;
- file for notification or request for authorisation of a natural person for a function at the level of an insurance group for which the CAA is the controller of the group;
- file for authorisation or notification of a natural person as an agent or as an officer or administrator of an insurance agency;
- file for authorisation or notification of a natural person as a broker or officer of a brokerage firm or director of a brokerage company;
- file for authorisation or notification of a natural person as an insurance sub-broker; and
- file for registration of a natural person as an insurance intermediary as an accessory activity (IATA).

The Circular and table annexed provide additional guidance and information in relation to the content of the above notifications or authorisation request files, the person or entity obliged to notify or request authorisation and the formalities for filing in the templates.

The Circular will apply to authorisation requests and notifications from 1 July 2019.

CAA information notice regarding statistical reporting of Luxembourg branches of foreign undertakings published

The CAA has issued an information notice regarding the statistical reporting of Luxembourg branches of foreign undertakings for 2018.

The notice informs Luxembourg branches of foreign undertakings that the relevant documentation concerning the statistical report of 2018 and information sheet will be sent out to the concerned entities within a few days of the publication of the Notice. Reporting standards have not been changed since last year and the CAA reminds firms that any reporting documents must be sent to the CAA via encrypted email.

The notice requests the general manager of the branch to sign the required forms and return them to the CAA by 19 April 2019.

CAA publishes notice regarding 2018 annual reporting for direct insurance undertakings

The CAA has issued an information notice regarding 2018 annual reporting for direct insurance undertakings licensed in Luxembourg.

The notice informs direct insurance undertakings that the relevant documentation concerning the 2018 annual reporting programmes (other than Solvency II) and information sheet will be sent to them shortly after the publication of the notice via SOFiE or E FILE.

The notice emphasises that reporting standards have not significantly been changed since last year, except for certain provisions on AML/CTF and international sanctions.

The signed reports must be returned to the CAA, electronically (in compliance with the security standards set out in circular LC15/10) and via postal mail (signed by the insurance undertaking manager).

For undertakings where the financial year ended on 31 December 2018, the relevant reports must be submitted to the CAA before 19 April 2019, except for the separate report, which must be submitted one week later at the latest.

Polish Ministry of Finance publishes draft Strategy of Development of the Capital Market

The Ministry of Finance has published a draft of its Strategy of Development of the Capital Market for public consultation. The draft sets out the most important actions that have been proposed, which constitute a response to the most important barriers to the development of the capital market in Poland.

The actions have been grouped into key areas, including among others:

- general issues, primarily financial education and domestic savings;
- supervision and reforms with regard to the regulations, including among others reforms aimed at strengthening the protection of retail investors and ensuring the effective servicing of issuers and capital market entities;
- tax incentives and improvements with regard to the fiscal administration;
- actions aimed at increasing the competitiveness of the capital market; and
- innovation and actions aimed at achieving greater use of new technologies on the Polish market.

The draft has been submitted for public consultations, inter-ministerial consultations and opining by financial market institutions.

FINMA provisionally recognises equivalence of UK derivatives regulations

The Swiss Financial Supervisory Authority (FINMA), in its FINMA Guidance 01/2019, has provisionally recognised as equivalent under the Financial Market Infrastructure Act (FMIA) and the Financial Market Infrastructure Ordinance (FMIO) relevant provisions of the UK's European Union (Withdrawal) Act 2018 in conjunction with the Over the Counter Derivatives, Central Counterparties and Trade Repositories Regulations 2018 (EMIR Transposition Act), which transposes EMIR into domestic UK law.

FINMA previously recognised various EMIR provisions of the European Union as provisionally equivalent in its FINMA Guidance 01/2016.

The provisional recognition of equivalence will enter into force when the EMIR transposition act is passed by the British Parliament.

CBIRC issues new measures on prevention of money laundering and terrorism financing by banking financial institutions

The China Banking and Insurance Regulatory Commission (CBIRC) has issued the Administrative Measures on Anti-money Laundering and Anti-terrorism Financing of Banking Financial Institutions, which are intended to enhance anti-money laundering and anti-terrorism financing and implement and improve the risk management systems of banks. Other financial institutions regulated by the banking regulatory authorities, e.g. financial asset management companies, auto finance companies, consumer finance companies, should also comply with the Administrative Measures by reference.

Amongst other things, the following key aspects with respect to the Administrative Measures are worth noting:

- risk management and internal control: banks are required to build a well-established risk management system and internal control system;
- key duties: banks should also establish and improve know your customer (KYC) procedures, a retention system for customer identification information and trading record and a reporting system on large-amount and suspicious transactions for performing anti-money laundering and anti-terrorism financing obligations;
- governance structure: banks are obligated to establish a sound governance structure with the board of directors taking final responsibilities and the senior management taking charge of implementation in respect of risk management concerning anti-money laundering and anti-terrorism financing; and
- qualification requirements: satisfaction of anti-money laundering and anti-terrorism financing conditions should be considered as one of the qualification requirements for market access, including approval on the establishment of banks and branches, change in shareholding structure and registered capital, adjustment in business scope, increasing in business category, and appointment of director and senior management.

HKEX publishes guidance material facilitating implementation of changes to documentary requirements relating to listed issuers

The Stock Exchange of Hong Kong Limited (SEHK), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), has published the following updated guidance materials to facilitate the implementation of changes to documentary requirements relating to listed issuers and other minor rule amendments:

- guidance on confirmations required on the accountants' report, pro forma financial information and profit forecast in application proofs and subsequent draft listing documents (GL 58-13);

- guidance for long suspended companies (GL 66-13); and
- guidance on long suspension and delisting (GL 95-18).

The changes to the documentary requirements relating to listed issuers are intended to simplify the administrative procedures and reduce the documents that need to be submitted by listed issuers and their directors and supervisors, require certain information currently disclosed to the SEHK to also be disclosed to the public and codify existing practices. Other minor rule amendments are intended to bring the Main Board Rules and the GEM Rules in line with each other, codify or improve certain existing practices and clarify certain rule applications.

The changes to the documentary requirements relating to listed issuers and other minor rule amendments are effective from 1 March 2019.

The HKEX has also published updated checklists and forms, frequently asked questions and listing decisions to facilitate the implementation of changes to documentary requirements relating to listed issuers and other minor rule amendments.

HKEX announces strategic plan for 2019-2021

The HKEX has announced its strategic plan for 2019-2021. Under the plan, the HKEX intends to focus its efforts on:

- supporting international portfolio diversification by Mainland China investors and facilitating further internationalisation of the domestic capital markets through secure, effective and transparent channels across asset classes;
- attracting global liquidity to Hong Kong by providing broader and more effective access to Asia Pacific underlying assets, creating a comprehensive and competitive one-stop shop for China and Asian exposure; and
- leveraging new technology and innovation to modernise the HKEX's core business and explore new frontiers through strategic partnerships with technology leaders.

The HKEX has indicated that to support its strategic objectives it will also make further investments in talent, capabilities, and developing the right corporate culture to help drive a more commercial, innovative and customer-centric approach throughout the organisation.

Refinements to legislative framework of automatic exchange of financial account information in tax matters gazetted

The Hong Kong Government has gazetted the Inland Revenue (Amendment) (No. 2) Ordinance 2019 (Amendment Ordinance). The Amendment Ordinance is intended to refine the legislative framework of automatic exchange of financial account information in tax matters (AEOI) under the Inland Revenue Ordinance (IRO) to better align the relevant provisions with the requirements promulgated by the Organisation for Economic Co-operation and Development. The Ordinance will take effect from 1 January 2020.

The Amendment Ordinance requires mandatory provident fund schemes, occupational retirement schemes registered under the Occupational

Retirement Schemes Ordinance, pooling agreements, approved pooled investment funds and credit unions to comply with the due diligence and reporting obligations relating to AEOI starting from 2020. If members of the institutions concerned are tax residents of the reportable jurisdictions, such institutions will need to report in 2021 for the first time to the Inland Revenue Department (IRD) the financial account information of the relevant members, covering the year 2020, for transmission to the relevant tax authorities.

Further, Hong Kong's network for tax information exchange has been expanded since the Convention on Mutual Administrative Assistance in Tax Matters came into force in Hong Kong on 1 September 2018. The Amendment Ordinance increases the number of reportable jurisdictions under the IRO from the current 75 to 126.

The Amendment Ordinance has also introduced technical refinements to certain AEOI-related provisions of the IRO.

MPFA issues circular on complaints handling by MPF approved trustees

The Mandatory Provident Fund Schemes Authority (MPFA) has issued a circular to all approved trustees to share with them the areas that need more attention as well as some good practices observed in the context of complaints handling. The circular is intended to facilitate approved trustees in self-assessment of their situations so as to institute improvements or remediate any potential deficiencies, where necessary, in order to foster a member-centric culture and enhance the experience for scheme members and participating employers.

The MPFA observed that the majority of the complaints against the inspected trustees concerned the quality of customer services and scheme administration processes, such as the time taken in following up employers' contribution status. It also noted that the inspected trustees have generally established mechanisms to measure their performance and timeliness in their complaint resolution framework.

The MPFA has advised approved trustees to note that, regardless of whether the complaints are handled by themselves or service providers, they are ultimately responsible for ensuring that complaints are handled properly and in timely manner. Approved trustees are also advised to be well prepared to deal with any negative and challenging feedback positively and transparently.

In addition, the MPFA requires approved trustees to review regularly the existing controls and measures of complaints handling and ensure that the complaint handling programme is effective, and reminds them to make reference to the compliance standards and related circulars issued by it from time to time when designing and implementing their complaints management programme.

Further, the MPFA has indicated that it will continue to follow up with the inspected trustees and monitor approved trustees' compliance with the obligation on complaints handling and implementation of a comprehensive complaint handling framework.

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RECENT CLIFFORD CHANCE BRIEFINGS

Big data and artificial intelligence - Evolving market misconduct risks

Commentary on big data and artificial intelligence risk has tended to focus on the risks associated with treating data subjects and customers unfairly or unlawfully, principally under the General Data Protection Regulation (GDPR). There has been less focus on new wholesale market misconduct risks. That is surprising given the exponential growth in the use of alternative data and artificial intelligence (AI) in the financial markets and given the regulatory focus on market misconduct since the financial crisis.

On 13 February 2019 Julia Hoggett, Director of Market Oversight at the FCA, gave a speech to the Association for Financial Markets in Europe (AFME) in which she remarked on the evolving market misconduct risks associated with big data and AI.

Firms and senior managers need to understand these new risks which can give rise to serious criminal and civil liability.

This briefing paper considers two specific risks: insider dealing risk associated with big data and the manipulation risks associated with AI.

https://www.cliffordchance.com/briefings/2019/03/big_data_and_artificialintelligence-evolvin.html

Asia Pacific Companies Take Cover as US Tests New Sanctions Strategies on Russia, Venezuela

It appears the Trump administration has decided to embrace economic sanctions as a tactical foreign policy weapon, using the US Office of Foreign Assets Control (OFAC) to maximize its leverage over foreign adversaries. In particular, OFAC is sanctioning major companies – United Company RUSAL (RUSAL) and Petróleos de Venezuela (PdVSA), to name just two – as a way to influence their beneficial owners and more importantly, their home governments.

This briefing paper discusses what this means for bystanders in Asia Pacific and elsewhere.

https://www.cliffordchance.com/briefings/2019/02/asia_pacific_companiestakecoverasustestsne.html

Rate Expectations: Transitioning away from LIBOR – practical guidance for corporate treasurers

It has been over 18 months since Andrew Bailey, Chief Executive of the UK's FCA, announced the need for the market to transition away from LIBOR before the end of 2021. As we get ever closer to that December 2021 end date, this briefing paper explores the current state of LIBOR transition, what a move to risk-free rates will mean in practice for corporate treasurers, and some key steps that treasurers might take in the near term to ready themselves for LIBOR's potential demise.

https://www.cliffordchance.com/briefings/2019/02/rate_expectationstransitioningawayfromlibo.html

Discretion and Loss

The question of how much latitude a non-defaulting party has when calculating loss under the 1992 ISDA Master Agreement is considered in the judgment in Lehman Brothers Finance AG (in liquidation) v (1) Klaus Tschira Stiftung GmbH (2) Dr H C Tschira Beteiligungs GmbH & Co KG [2019] EWHC 379 (Ch), handed down on 22 February 2019. This briefing paper discusses the case.

https://www.cliffordchance.com/briefings/2019/02/discretion_and_loss.html

UK Financial Conduct Authority issues first competition decision

The UK's FCA has imposed antitrust fines on three asset management firms, for sharing strategic information during one initial public offering and one placing, shortly before the share prices were set. This is the FCA's first formal decision under its competition enforcement powers. This briefing paper discusses the decision.

https://www.cliffordchance.com/briefings/2019/02/uk_financial_conductauthorityissuesfirs.html

CFTC declines to appeal sharply worded rejection of its bid to expand the offense of price manipulation

In December 2018, a New York federal court rejected an attempt by the CFTC to redefine the scienter requirement for market manipulation from an intent to create an artificial price to an intent to merely influence the price. The Court's decision came in the long-running CFTC civil enforcement case against DRW Investments, LLC and its CEO.

This briefing paper discusses the CFTC's recent decision not to appeal the judgment.

https://www.cliffordchance.com/briefings/2019/02/cftc_declines_toappealsharplywordedrejectio.html

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