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INTERNATIONAL REGULATORY UPDATE 12 – 16 AUGUST 2019

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Single Resolution Board and EU Commission sign MoU on further cooperation

The Single Resolution Board (SRB) has signed a [memorandum of understanding](#) (MoU) with the EU Commission on cooperation and the exchange of information.

The MoU sets out working methods between the SRB and EU Commission in the performance of their tasks under the Single Resolution Mechanism (SRM) Regulation, covering cooperation in resolution, regulatory and communication matters.

The MoU does not cover the cooperation and exchange of information in respect of EU Commission decisions related to State aid in resolution under Article 19 of the SRM Regulation.

The MoU will be reviewed at least every five years.

Brexit: ECB publishes article on banks' preparations

The European Central Bank (ECB) has published an article entitled '[Brexit: stepping up preparations](#)' in the August issue of its [Supervision Newsletter](#).

The article sets out areas where the ECB expects banks to speed up the implementation of contingency plans for a no-deal scenario, such as:

- building-up local risk management capabilities and governance structures;
- preparing for differences in the application of prudential provisions;
- mitigating long-term risks relating to uncleared cross-border derivatives contracts; and
- ensuring sufficient onshore capacity to originate business and access key financial market infrastructures (FMIs) on a continuous basis.

As part of its monitoring of banks' Brexit plans, the ECB also identifies areas where banks currently fall short of supervisory expectations, such as in relation to back-branching, remote booking practices and back-to-back hedging strategies.

ICE Benchmark Administration consults on swap rate enhancements

ICE Benchmark Administration (IBA) has published a [consultation](#) on possible enhancements to the ICE Swap Rate (ISR).

Views are sought on:

- possible approaches for generating ISR rates in time of low liquidity and/or high volatility, such as including non-CLOB data; and
- introducing a new suite of ISR tenors with SONIA as the floating leg, to be introduced in parallel to existing rates.

The consultation closes at 5pm on 14 October 2019.

FCA announces phased implementation for strong customer authentication

The Financial Conduct Authority (FCA) has [agreed a plan](#) for a phased implementation of the EU's strong customer authentication (SCA) rules under

the revised Payment Services Directive (PSD2). The EU's regulatory technical standards (RTS) on SCA will start to apply from 14 September 2019. These RTS set out requirements for the ways in which banks or payment service providers verify their customers' identities and validate certain payment instructions. They are intended to enhance payment security and reduce the risk of fraud during the authentication process.

Following an opinion from the European Banking Authority (EBA), in which the EBA suggested national competent authorities may wish to provide limited additional time to introduce the rules, the FCA has agreed an 18-month phased implementation for the e-commerce industry of card issuers, payments firms and online retailers. Under the agreed plan, the FCA will not take enforcement action against firms that do not meet the SCA requirements, provided there is evidence that they have taken certain steps set out in the plan. Once the phased implementation is over, the FCA will expect all firms to have made the necessary changes to apply SCA.

BaFin publishes circular on interest rate risk in banking book

The German Federal Financial Supervisory Authority (BaFin) has published an [updated circular 06/2019](#) on interest rate risk in the banking book. The new version of the circular transposes the EBA guidelines on the management of interest rate risk arising from non-trading book activities, which were published in July 2018, into national German law.

The addressees of the circular are German credit institutions (other than securities trading banks). The circular extends the requirements for calculating the effects of a sudden and unexpected change in interest rates. In the future, in addition to the Basel standards regarding interest rate risk in the banking book, the institutions will therefore have to consider six further interest rate scenarios. The aim of the updated circular is to provide the supervisory authority with a more complete picture of the institutions' interest rate risks and thus improve the supervisory authority's understanding of the risk structure of both the individual institutions and the banking sector as a whole.

The new version of the circular will enter into force on 31 December 2019. From that point in time, the old version of the circular from 2018 (circular 9/2018 (BA)) is repealed.

Luxembourg bill implementing AMLD5 lodged with Parliament

A [new bill](#) (no. 7467) implementing certain provisions of Directive (EU) 2018/843 of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (AMLD5), has been lodged with the Luxembourg Parliament.

The bill is intended to implement certain AMLD5 provisions relating to the professional obligations and powers of the supervisory authorities and self-regulatory bodies in the area of anti-money laundering and counter terrorist financing, as well as to reinforce and harmonise the treatment of high risk third countries based on recommendations issued by the Financial Action Task Force (FATF). For this purpose, the bill foresees amendments in particular to the Luxembourg law of 12 November 2004 on the prevention of money

laundering and terrorist financing (AML Law). Among other things, the bill specifies the standard and enhanced customer due diligence obligations that professionals subject to the AML Law must apply, and extends the scope of such professionals explicitly to cover providers engaged in exchange services between virtual currencies and fiat currencies, custodian wallet providers and, under certain circumstances, persons trading or acting as intermediaries in the trade or the storing of works of art.

The publication of the bill constitutes the start of the legislative procedure.

CSSF issues circular regarding ESMA guidelines on non-significant benchmarks

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued [circular 19/728](#) dated 1 August 2019 regarding the European Securities and Markets Authority (ESMA) guidelines (ESMA 70-145-1209) on non-significant benchmarks under the Benchmarks Regulation (EU) 2016/11.

The circular is addressed to benchmark administrators and supervised contributors.

The guidelines apply in relation to the provision of non-significant benchmarks and the contribution to non-significant benchmarks. In particular, the guidelines relate to (i) the application of the procedures and characteristics of the oversight function, (ii) the input data, (iii) the transparency of methodology and (iv) the governance and control requirements for supervised contributors (Articles 5, 11, 13, 16 of the Benchmark Regulation). The guidelines aim to ensure the common, uniform and consistent application of those provisions.

The circular entered into force on 1 August 2019.

CSSF issues circular on digitalisation of requests through use of eDesk portal

The CSSF has issued [circular 19/725](#) dated 29 July 2019 on the digitalisation of requests to the CSSF through the use of the eDesk portal. The circular applies to all credit institutions and investment firms incorporated under Luxembourg law and to the Luxembourg branches of credit institutions and investment firms having their registered office in an EU country or a third country.

The circular informs the professionals concerned that the eDesk portal must be used for certain requests to the CSSF, which are specified and regularly updated on the webpage of the eDesk portal. Professionals must, under their responsibility, keep themselves informed of any update of this list of requests. As of the entry into force of the circular, no other means of communication will be accepted by the CSSF in this respect.

Finally, the circular details the steps (creation of a user account/advanced user status/identification means) that have to be taken to access the eDesk portal.

Polish Financial Supervision Authority and National Depository for Securities sign agreement on development of financial innovation sector via blockchain platform

The Polish Financial Supervision Authority (PFSA) and the National Depository for Securities (KDPW) have [signed an agreement](#) on cooperation intended to support the development of the financial innovation sector in Poland. The parties have agreed the main areas of cooperation, and in particular conducting activities aimed at the computerisation of regulatory reporting in the capital and financial market sector, including through the use of the blockchain platform being created by KDPW.

The blockchain platform for the capital market being created by KDPW since 1 July 2019 enables the creation and provision to issuers of lists of persons entitled to participate in general meetings. An eVoting application will shortly be made available on the platform, which will enable remote voting at general meetings.

Polish Financial Supervision Authority publishes standpoint on Prospectus Regulation

The PFSA has issued its [standpoint](#) on the application of the provisions of Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market and the Act of 29 July 2005 on Public Offers and Conditions of Introduction of Financial Instruments to an Organised Trading System and Public Companies in the event the provisions of the above-mentioned regulations are not transposed into national law by 21 July 2019.

The PFSA notes that as of 21 July 2019 entities operating on the capital market should recognise that, starting from that date, the obligation to prepare a prospectus, the way in which it is prepared and the rules on its approval, publication and updating will be regulated by the provisions of Regulation 2017/1129. Moreover, the PFSA presents additional explanations regarding matters which, after 21 July 2019, may create uncertainty on the part of market participants owing to the provisions of Regulation 2017/1129 not having been transposed into national law by that date. In particular, the explanations concern the following issues:

- prospectuses approved prior to 21 July 2019;
- proceedings not completed before 21 July 2019;
- offers addressed to one entity;
- public offers of securities as a result of which the assumed gross proceeds of the issuer or seller, together with the proceeds in the previous 12 months, will be not less than EUR 100,000 but less than EUR 1,000,000;
- public offerings of securities as a result of which the assumed gross proceeds of the issuer or seller, together with the proceeds in the previous 12 months, will be not less than EUR 1,000,000 but less than EUR 2,500,000;
- bonds;
- investment certificates of closed-end investment funds, which are not public closed-end investment funds;

- the validity of the definition of a public offer set out in the Act on Public Offers;
- the obligatory intermediation of an investment company;
- the conducting of promotional campaigns;
- the registration of securities that are the subject of a public offer;
- the scope of application of the supervisory measures provided for in the Act on Public Offers;
- the manner of avoiding the effects of a provision;
- the publication of current reports;
- the registration of issues of bank securities;
- the obligation to prepare a prospectus in the case of bank securities;
- the obtaining of licences by non-public closed-end investment funds;
- the term ‘seller’ in the Act on Public Offers and the term ‘offeror’ in Regulation 2017/1129; and
- prospectus approval proceedings initiated prior to 21 July 2019.

Benchmarks Regulation: WSE Benchmark publishes Consultation Document concerning alignment of WIBID and WIBOR reference rates

WSE Benchmark has published a [Consultation Document](#) concerning the alignment of the WIBID and WIBOR reference rates with the requirements set out in the Benchmarks Regulation (BMR). The objective of WSE Benchmark is to fulfil the requirements provided for in the BMR with respect to interest rate benchmarks, while at the same time ensuring their continuity.

The document presents the method of calculation of the WIBOR rate, constituting the result of the economic, statistical and legal analyses conducted by WSE Benchmark related to the assessment of the possibility, manner and scale of aligning the WIBID and WIBOR reference rates with the requirements set out in the BMR.

WSE Benchmark S.A. is an entity which belongs to the Giełda Papierów Wartościowych w Warszawie S.A. Capital Group responsible for preparing and developing the offer of reference rates for the Polish financial market. The core activity of WSE Benchmark S.A. is administering the process of development of the WIBID and WIBOR reference rates.

HKMA gazettes revised supervisory policy manual modules regarding consolidated supervision of concentration risks and major acquisitions and investments

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) to inform all authorised institutions that it has gazetted the following two revised supervisory policy manual (SPM) modules as statutory guidelines under the Banking Ordinance:

- [CR-L-1](#) on ‘Consolidated Supervision of Concentration Risks: BELR Rule 6’; and

- [CR-L-5](#) on 'Major Acquisitions and Investments: BELR Part 3'.

The revisions of these two modules are incidental to the implementation of the Banking (Exposure Limits) Rules (BELR), which replace the provisions relating to exposure limits formerly set out in Part XV of the Banking Ordinance. Most changes to both SPM modules are minor in nature such as updates on cross references (from provisions in the Banking Ordinance to the BELR) and technical details incidental to the BELR implementation (e.g. the calculation of Tier 1 capital instead of capital base).

A substantial change to the SPM module CR-L-5 is the elaboration on the new exemptions introduced in the BELR for share acquisitions (i.e. acquisition in the insurance business or for trading purposes). These new exemptions have been introduced in response to industry comments received during the making of the BELR.

Korean government approves amendments to Enforcement Decree of Financial Investment Services and Capital Markets Act

The Financial Services Commission (FSC) has [announced](#) that the Korean government has approved amendments to the Enforcement Decree of the Financial Investment Services and Capital Markets Act (FSCMA) to expand the pool of professional investors and open a new trading venue exclusive to professional investors to trade unlisted equity securities. The amendments are intended to encourage professional investors who are aware of the investment-related risks and able to afford such risks to play an active role in funding innovative start-ups and small and medium-sized enterprises.

Amongst other things, the key changes to the Enforcement Decree of the FSCMA include the following:

- pool of professional investors to be expanded by:
 - easing requirements for individual investors to be registered as 'professional investors' – previously, 'professional investors' were required to satisfy two criteria at the same time: loss-absorbing ability and investment experience. The amendments divide those to be registered as 'professional investors' into two categories, namely individual investors without financial expertise, and individual investors with financial expertise; and
 - streamlining the registration procedures for professional investors – the registration procedures for professional investors will be streamlined and they will no longer have to go through the registration procedure with the Korea Financial Investment Association as they previously did. Financial investment companies will be allowed to decide whether their customers qualify as professional investors upon their application. However, inappropriate screening by financial investment companies will be punished as unfair business practice; and
- open a new trading venue for trading of unlisted equity securities – a new trading venue, namely 'KOTC Pro', will be launched for professional investors to trade unlisted equity securities. Given that the new market is exclusive to professional investors, issuers will be exempted from regulations on submission of securities reports and public disclosures.

The amendments to the Enforcement Decree of the FSCMA will be effective on the day of proclamation, expected to take place during August 2019. However, the amendments regarding individual professional investors will be implemented three months following the date of proclamation, after completing the establishment of the necessary electronic system.

FSC announces implementation plan for margin requirements for non-centrally cleared OTC derivatives

The FSC has [announced](#) its adjusted schedule to implement initial margin requirements for non-centrally cleared over-the-counter (OTC) derivative transactions in accordance with internationally agreed standards.

Under the adjustment, initial margin requirements for financial institutions with non-centrally cleared derivatives worth more than KRW 10 trillion and less than KRW 70 trillion will be delayed until 1 September 2021, while the implementation for those with derivatives of KRW 70 trillion or more will be implemented from 1 September 2020 as originally scheduled. The Financial Supervisory Service (FSS) will hold a briefing on implementation plans for initial margin requirements to help financial institutions better prepare for the new rules.

In addition, the FSC plans to propose a bill on margin requirements for non-centrally cleared derivatives in August 2019 as the relevant FSS guidelines are due to expire in August 2020. The bill is to prescribe legal obligations of margin requirements and disciplinary measures against non-compliance in order to ensure the effectiveness of margin requirement rules.

MAS issues information paper on thematic review of collateral management standards and practices of corporate lending business

The Monetary Authority of Singapore (MAS) has issued an [information paper](#) setting out the results of its thematic review of collateral management standards and practices of banks' corporate lending business. This is the third in a series of credit thematic reviews of banks' corporate loan portfolios, which started in 2015. The MAS started this third and final phase of credit thematic reviews in 2018, focusing on the collateral management standards and practices of selected banks. Under the review, the areas assessed by the MAS include the banks' governance over, as well as policies, procedures and practices relating to, collateral management and portfolio monitoring, valuer selection, and valuation.

The review found that banks generally manage collateral as part of their overall credit risk management processes. They have established governance frameworks with respect to the permissible classes or types of collateral that are aligned to their risk appetite and business strategies. Most banks also apply stricter requirements in assessing the valuation of collateral for problem credits or non-performing loans. On the other hand, some banks lacked appropriate mechanisms to monitor collateral composition, and failed to use updated and realistic valuations for collateral, including of loans that turned non-performing.

The information paper sets out sound standards and practices relating to collateral management that the MAS expects to see in banks. In particular:

- board and senior management of banks are expected to set the risk appetite, as well as business and risk strategies, with regard to the acceptance and valuation of collateral for the credit-granting activities, as well as develop appropriate collateral management policies and procedures that are aligned with their risk appetite and strategies;
- banks are required to properly segregate duties exists between the functions responsible for collateral management and front office to ensure independence in monitoring, escalation and reporting of collateral covenants and conditions;
- banks are expected to have timely, accurate and comprehensive information on credit exposures and collateral portfolios to facilitate proactive and prompt credit risk monitoring and oversight by relevant functions, senior management and Board;
- banks should establish adequate processes to manage and regularly review collateral valuations, as well as ensure that valuations obtained are independently sourced, reliable and reflect the market conditions; and
- banks should establish clear approaches for valuation of collateral for problem credits to obtain timely and prudent estimates of the loss allowances required for each problem credit exposure.

RECENT CLIFFORD CHANCE BRIEFINGS

FCA guidance on cryptoassets and the scope of UK regulation

The FCA's final guidance on cryptoassets clarifies which types of cryptoassets the FCA considers to fall within the existing UK regulatory perimeter. In many ways, the guidance simply confirms the status quo, as it reiterates the need to carry out a substantive analysis of the characteristics of a particular cryptoasset or token against the pre-existing UK regulatory framework. Indeed, it is not within the FCA's gift to extend the UK regulatory perimeter; that power lies with HM Treasury, which is expected to consult on whether to bring further types of cryptoassets within scope of UK regulation later this year.

Nevertheless, the FCA guidance does provide a useful insight into the way in which the FCA expects firms to approach this regulatory analysis, as well as some of the FCA's key concerns and areas of focus where firms engage in business relating to both regulated and unregulated cryptoassets. It is likely to be a useful reference guide for firms seeking to structure tokens or cryptoassets in a particular manner and for firms dealing with or providing services in relation to such cryptoassets.

This briefing paper discusses the new FCA guidance.

https://www.cliffordchance.com/briefings/2019/08/fca_guidance_on_cryptoassetsandthescopeofu.html

The UK Parliament can (probably) block a no-deal Brexit

The Withdrawal Agreement seems dead in the water, and negotiations between the UK and EU have stalled. The UK Government is determined to leave the EU on 31 October, but could Parliament stop it? The answer appears to be yes – probably. If a majority to prevent no-deal emerged in Parliament, there appear to be mechanisms that would allow them to achieve that objective.

This briefing paper examines how the Fixed-term Parliaments Act 2011 works, discusses how an alternative government may be formed following a vote of no confidence, and considers other ways Parliament could legislate to avoid no-deal.

https://www.cliffordchance.com/briefings/2019/08/the_uk_parliamentcanprobablyblockano-dea.html

Singapore Convention on Mediation signed by 46 countries

On 7 August 2019, the Singapore Convention on Mediation, the world's first ever convention on mediation, was signed in Singapore. In an early sign of strong multilateral support, 46 countries signed the Convention including the USA, China, India and South Korea. The Convention will come into force once three countries have ratified it; the Convention remains open for further signatures.

This briefing paper answers five key questions about the Convention and its impact on international dispute resolution.

https://www.cliffordchance.com/briefings/2019/08/singapore_conventiononmediationsignedby4.html

Publication of Angola's privatisation programme 2019 – 2022

An important part of the economic reforms contemplated by the Angolan government involves the privatisation of state owned enterprises and the sale of stakes that the Angolan state directly or indirectly holds in enterprises. On 5 August 2019 the eagerly awaited privatisation programme ('PROPRIV') was made public through the publication of Presidential Decree 250/19 of 5 August. The decree is based on the Privatisation Framework Act of 14 May 2019 (Law 10/19). PROPRIV includes assets in Angola as well as assets that are located abroad (but excluding the major investments of the Angolan state in Portugal).

This briefing paper discusses PROPRIV.

https://www.cliffordchance.com/briefings/2019/08/publication_of_angolasprivatisationprogramm.html

FTC's USD 5 billion penalty against Facebook – momentum builds for increased US regulatory focus on data privacy

Recently, the Federal Trade Commission (FTC) announced a record-breaking USD 5 billion penalty against Facebook for a series of data privacy violations culminating in last year's Cambridge Analytica scandal. The fine is far larger than any that has ever been imposed globally for data privacy or cyber

security violations, and one of the largest penalties that has ever been assessed by the US government for any type of violation. The settlement requires Facebook to put into place a series of controls designed to enhance privacy protections in addition to paying the fine. On the same day as the FTC settlement was announced, the SEC also announced penalties against Facebook for making misleading disclosures regarding the risk of misuse of user data. The FTC order came just days after the FTC announced a settlement with Equifax in which the consumer credit reporting agency agreed to pay up to USD 700 million to consumers and state and federal authorities for its 2017 data breach. These enforcement actions are indicative of the increased scrutiny by US regulators on data privacy, and may well be a harbinger of more frequent aggressive actions to come.

This briefing paper discusses the increased regulation on data privacy in the US.

https://www.cliffordchance.com/briefings/2019/08/ftc_s_5_billion_penaltyagainstfacebook.html

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

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