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EU Commission publishes communication on equivalence

The EU Commission has published a communication on its policy on equivalence in the area of financial services, including how it grants equivalence to third countries.

Building on a 2017 Staff Working Document, the communication sets out policy priorities, an overview of the assessment and decision-making processes and recent legislative changes, including:

- a strengthened role for the European Supervisory Authorities (ESAs) in monitoring equivalent third countries;
- updated rules on third-country central counterparties under the European Market Infrastructure Regulation (EMIR); and
- new assessment criteria and additional reporting obligations for third-country firms under the Investment Firms Regulation (IFR).

The communication also presents recent and ongoing work on equivalence assessments and monitoring.

Equivalence decisions for financial benchmarks in Australia and Singapore published in Official Journal

Commission Implementing Decisions on the equivalence of the legal and supervisory frameworks applicable to benchmarks in Singapore and in Australia, in accordance with the Benchmarks Regulation ((EU) 2016/1011), have been published in the Official Journal.

Commission Implementing Decision (EU) 2019/1274 of 29 July 2019 states that the legal and supervisory framework of Australia applicable to the administrators of benchmarks which are identified as significant by means of the ASIC Corporations (Significant Financial Benchmarks) Instrument 2018/420, shall be considered to be equivalent to the requirements laid down in the Benchmarks Regulation and to be subject to effective supervision and enforcement on an ongoing basis.

Commission Implementing Decision (EU) 2019/1275 of 29 July 2019 states that the legal and supervisory framework of Singapore applicable to the administrators of financial benchmarks that are designated as designated benchmarks by means of the Securities and Futures (Designated Benchmarks) Order 2018 shall be considered to be equivalent to the requirements laid down in the Benchmarks Regulation and to be subject to effective supervision and enforcement on an ongoing basis.

The Implementing Decisions will enter into force on 19 August 2019.

Credit rating agencies: nine implementing decisions on third country equivalence published in Official Journal

Commission Implementing Decisions on the equivalence of the legal and supervisory frameworks for credit rating agencies (CRAs) of Australia, Canada, Singapore, United States, Mexico, Brazil, Argentina, Japan and Hong Kong in accordance with the CRA Regulation (EC) 1060/2009 have been published in the Official Journal.

The Implementing Decisions set out the Commission's conclusion that the legal and supervisory frameworks in Hong Kong, Japan, Mexico and the United States shall be considered as equivalent to the requirements of the CRA Regulation, whereas those in Argentina, Australia, Brazil, Canada and Singapore cannot be considered as equivalent.

On that basis, the Implementing Decisions are intended to allow CRAs from Hong Kong, Japan, Mexico and the United States to apply for certification with the European Securities and Market Authority (ESMA).

The Implementing Decisions will enter into force on 19 August 2019.

€STR governance guideline published in Official Journal

The European Central Bank (ECB) has published Guideline (EU) 2019/1265 on the euro short-term rate (€STR) (ECB/2019/19) in the Official Journal.

The guideline establishes the ECB's responsibility for the administration of €STR and the oversight of the euro short-term rate determination process. It also establishes the tasks and responsibilities of the ECB and the national central banks (NCBs) with respect to their contribution to the euro short-term rate determination process and other business procedures.

The guideline takes effect on the day of its notification to the NCBs. The NCBs should comply with the guideline at the latest from 1 October 2019.

Securitisation Regulation: EBA consults on draft guidelines on weighted average maturity of contractual payments due under tranche

The European Banking Authority (EBA) has launched a consultation on draft guidelines on the determination of the weighted average maturity (WAM) of the contractual payments due under the tranche of a securitisation transaction.

The revised Capital Requirements Regulation (CRR) framework for securitisation has introduced two alternative approaches to calculate the maturity of a tranche: the WAM of the contractual payments due under the tranche and the final legal maturity of the tranche. To that end, the draft guidelines are intended to provide guiding principles to institutions when opting to use the WAM approach instead of the final legal maturity approach.

The draft guidelines cover four key areas:

- meaning of contractual payments due under the tranche;

- data and information requirements;
- methodologies for determining the contractual payments of the securitised exposures, and of the tranches, both for traditional and synthetic securitisations; and
- implementation and use of the WAM model.

Comments are due by 31 October 2019.

IOSCO publishes statement on benchmarks transition

The International Organization of Securities Commissions (IOSCO) has published a statement setting out issues for market participants to consider if they have exposure to LIBOR, particularly USD LIBOR, in light of its expected cessation after the end of 2021. IOSCO observes that:

- risk-free rates (RFRs) provide a robust alternative to IBORs and can be used in the majority of products;
- in both new and existing IBOR contacts, the inclusion of robust fallbacks should be considered a priority;
- the best risk mitigation to a LIBOR cessation event is moving to RFRs now; and
- it is prudent risk management for market participants to engage early in the LIBOR transition process in preparation for the cessation of LIBOR post-2021.

The statement is aimed at all market participants that have significant exposure to the USD LIBOR benchmark through, for example, the trading of financial instruments and other arrangements that reference this benchmark directly. It is also intended for participants that reference another rate which, in turn, uses USD LIBOR as an input for its calculation.

ISDA publishes preliminary results of benchmark fallbacks consultation

The International Swaps and Derivatives Association (ISDA) has published a statement summarising the preliminary results of a supplemental consultation on adjustments that would apply to fallback rates in the event certain interbank offered rates (IBORs) are permanently discontinued.

The supplemental consultation was launched in May 2019 and set out options for spread and term adjustments if fallbacks are triggered for derivatives referencing US dollar LIBOR, Hong Kong's HIBOR and Canada's CDOR.

ISDA states that the overwhelming majority of respondents preferred the compounded setting in arrears rate for the adjusted risk-free rate and the historical mean/median approach for the spread adjustment.

Subject to the ultimate decision of the ISDA Board Benchmark Committee, ISDA expects to proceed with developing fallbacks for inclusion in its standard definitions based on the compounded setting in arrears rate and the historical mean/median approach to the spread adjustment for USD LIBOR, CDOR and HIBOR.

ISDA intends to publish an anonymised and aggregated summary of the feedback received, together with the ISDA Board Benchmark Committee's final decision on the approach, in August 2019. ISDA also aims to publish a consultation on the final parameters for the historical mean/median approach to the spread adjustment.

BoE and PRA set out resolvability assessment framework

The Bank of England (BoE) and the Prudential Regulation Authority (PRA) have published a package of documents which together form the finalised resolvability assessment framework (RAF). The RAF builds on the existing resolution regime and is intended to ensure that banks are held accountable for their own resolvability and that they are able to fail in an orderly manner. It sets out the BoE and PRA's expectation of firms with regard to resolvability capabilities and disclosure. It comprises a BoE statement of policy and a PRA supervisory statement, along with the addition of a new 'Resolution Assessment' part to the PRA Rulebook.

Amongst other things, the BoE requires that firms demonstrate that they have adequate financial resources, are able to continue to conduct business through resolution and restructuring and can communicate and coordinate within the firm and with authorities. The requirements are applicable to all UK firms with a bail-in or partial transfer resolution strategy and material UK subsidiaries of overseas-based firms. They are not directly applicable to UK branches of overseas-based firms, although the BoE intends to work with their relevant home authorities to achieve broadly comparable resolvability outcomes. Firms must be compliant with the BoE's requirements by 1 January 2020.

The PRA's rules include requirements that UK banks with GBP 50 billion or more in retail deposits assess their resolution preparations, submit reports of their assessment to the PRA and publicly disclose a summary of their reports. The deadline for the submission of reports to the PRA is October 2020 and the public disclosure of the summaries is June 2021. The process will then run on a two-year cycle.

Bank of England publishes policy statement on 2019/20 fees regime for financial market infrastructure supervision

The BoE has published a policy statement setting out final fees and feedback to its consultation, 'Fees regime for financial market infrastructure supervision 2019/20 and other related policy changes'. The BoE received three responses to its consultation and none required changes to the proposed policy. The final policy has therefore been published as consulted upon. It covers:

- the final fee rates to meet the BoE's 2019/20 funding requirement for its financial market infrastructure (FMI) supervisory activity and the policy activity the fees support;
- how the BoE will apportion the surplus and shortfalls from the 2018/19 FMI fee year;
- the fee for non-UK central securities depository (CSD) recognition; and
- a change to the fee regime for certain central counterparty (CCP) and CSD authorisation applications (this section should be read in conjunction with the 'Fees regime for the supervision of financial market infrastructure (FMI) Policy Statement June 2018').

The BoE intends to issue invoices for the 2019/20 fee year in August 2019.

FCA publishes cryptoassets guidance

The Financial Conduct Authority (FCA) has published a policy statement setting out final guidance and feedback to its consultation (CP19/3) on the cryptoasset activities it regulates. Responses to CP19/3 were broadly supportive and the FCA has made some minor changes to improve clarity but otherwise finalised most of its guidance as consulted upon.

The guidance uses a framework developed by the Cryptoasset Taskforce for different types of cryptoassets and explains whether they are within the FCA's regulatory remit and, if so, what this means for market participants. It is intended to help firms understand whether their cryptoasset activities fall within the FCA's perimeter or are otherwise regulated and what they need to do to ensure they are compliant with any relevant regulation.

Amongst other things, the guidance notes that:

- exchange tokens (such as Bitcoin or Ether) are not currently regulated, although, when the fifth Anti-money Laundering Directive (AMLD 5) is transposed into UK law, it will introduce anti-money laundering requirements to certain activities involving exchange tokens;
- security tokens fall under the definition of 'specified investments' and thus are within the FCA's regulatory perimeter; and
- utility tokens are not classified as specified investments, although they might meet the definition of e-money in some circumstances, in which case related activities could be regulated.

FCA publishes final rules on SM&CR amendments

The FCA has published a policy statement setting out consultation feedback and final rules on amendments to the Senior Managers & Certification Regime (SM&CR).

The main changes to the rules, most of which are being implemented as proposed, include:

- confirming that the Head of Legal function is excluded from the requirement to be approved as a Senior Manager;
- amending the intermediary revenue criterion for the Enhanced regime;
- clarifying the requirements and scope of the Certification Regime; and
- extending Senior Manager Conduct Rule 4 (SC4) to non-approved Executive Directors at Limited Scope firms.

The PS also sets out final rules on the extension of the SM&CR to FCA solo-regulated firms, including claims management companies (CMCs), and on a new Directory of individuals working in financial services.

Firms affected by the changes will move to the new regime on 9 December 2019.

FCA consults on content and format of STS notifications under onshored Securitisation Regulation

The FCA has launched a consultation on the draft technical standards in relation to the content and format of Simple, Transparent and Standardised (STS) notifications under the onshored Securitisation Regulation.

The Securitisation (Amendment) (EU Exit) Regulations 2019 transfer the responsibility for receiving UK STS notifications and to maintain a list of UK STS securitisations from the European Securities and Markets Authority (ESMA) to the FCA.

The consultation is intended to introduce a set of proposals to ensure that the UK securitisation market continues to work effectively in the event of a no-deal Brexit. In particular, the consultation includes technical standards:

- specifying the information that originators and sponsors are required to provide to comply with the STS notification requirement; and
- establishing the templates to be used for the provision of the required information.

Comments on the consultation are due by 27 August 2019.

PSR consults on updated powers and procedures guidance

The Payment Systems Regulator (PSR) has launched a consultation on proposed changes to its powers and procedures guidance (PPG). The amended PPG is intended to reflect the current scope and scale of the PSR's work, as well as its current processes, which have expanded and changed since the PPG was first published in 2015.

Amongst other things the revised PPG sets out:

- the PSR's current role and remit;
- its collaboration with other regulators and authorities;
- further detail on the procedures and processes used in relation to its powers under the Financial Services Banking Reform Act 2013, including how enforcement investigations are conducted and how enforcement decisions are made; and
- the PSR's intended approach to future challenges, including its plans to improve the settlement and disclosure procedures in enforcement cases.

Comments are due by 17 October 2019.

PSR issues direction on implementation of Confirmation of Payee

The PSR has issued a direction which requires the UK's six largest banking groups to implement Confirmation of Payee (CoP) by 31 March 2020. CoP is a process by which the name of the account a payer is sending money to is checked to ensure it matches the name the payer has entered. If it does not match, the payer will be alerted, allowing them to correct the mistake before a payment is made. It is intended to protect people from accidental payments and from authorised push payment scams.

The direction requires that:

- directed banks must be ready to respond to CoP requests by 31 December 2019; and
- directed banks must be capable of sending CoP requests and notifying the payer of the outcome by 31 March 2020.

German Federal Ministries of Finance and Justice and Consumer Protection publish joint position paper on transfer of supervision of financial investment intermediaries to BaFin

The German Federal Ministry of Finance (BMF) and the Federal Ministry of Justice and Consumer Protection (BMJV) have published a joint position paper on the transfer of supervision of financial investment intermediaries to the Federal Financial Supervisory Authority (BaFin). The position paper outlines the intended gradual transfer of supervision to BaFin provided for in the coalition agreement. At present, financial investment intermediaries are supervised by trade offices or chambers of industry and commerce, depending on their domicile.

This supervisory structure results not only in an organisational but also in a technical fragmentation of supervision, which may impair the consistency and quality of supervision. For this reason, the coalition agreement provides for the gradual transfer of supervision of independent financial investment intermediaries to BaFin in order to achieve consistent and high-quality financial supervision.

To facilitate the transfer of supervision to BaFin, the position paper provides for, amongst other things, the introduction of a new authorisation requirement for financial investment intermediaries and investment advisors on a royalty basis into the German Securities Trading Act (WpHG) to replace the authorisation requirements in section 34f and 34h of the German Trade Regulation (GewO), the incorporation of the material provisions of the German Financial Investment Intermediaries Regulation (FinVermV), which are currently being revised, into the WpHG and an extensive digitalisation of supervisory processes.

The transfer of supervision to BaFin is intended to become effective on 1 January 2021. Existing authorisations under the GewO will continue to be valid subject to a verification procedure to be conducted by BaFin successively and in a risk-oriented order.

BaFin publishes final version of circular regarding minimum requirements for implementing a bail-in

BaFin has published the final version of its circular regarding the minimum requirements for implementing a bail-in (MaBail-in).

The circular was subject to a public consultation in February/March 2019 and the comments received were subsequently discussed with representatives from institutions and the bank associations. The final draft of the circular has been submitted to the National Regulatory Control Council (NKR – Normenkontrollrat) for approval.

The circular is addressed to all institutions under the responsibility of BaFin as national resolution authority, provided that BaFin has informed institutions in the context of resolution planning that it has to be complied with.

The circular sets out the minimum requirements for information to be provided and for the technical and organisational resources needed to ensure the provision of information. These requirements are important prerequisites for a swift and precise implementation of the WDCCI power (Write Down and Conversion of Capital Instruments) and the bail-in tool pursuant to sections 89 and 90 of the German Act on the Recovery and Resolution of Institutions and Financial Groups (SAG) and Articles 21 and 27 of the Regulation on the Single Resolution Mechanism (SRMR).

Register of beneficial owners: Luxembourg registered entities to comply with RBE Law by 31 August 2019

The transitional period provided by the law of 13 January 2019 on creating a register of beneficial owners (RBE Law) will come to an end on 31 August 2019.

By that date, all entities registered with the Luxembourg Trade and Companies Register, including without limitation, commercial companies (such as S.A., S.C.A., S.à r.l., S.C.S or S.C.Sp.), investments funds (whatever their legal form), non-profit associations and branches must comply with the RBE Law.

To comply with the RBE Law, registered entities shall:

- collect and maintain, at their registered office, the relevant information on their beneficial owner(s) along with supporting documents; and
- file information regarding their beneficial owner(s) with the register of beneficial owners (RBE).

Criminal sanctions consisting in fines of up to EUR 1,250,000 may be imposed on registered entities as well as beneficial owners who do not comply with the RBE Law.

Please also see our briefing paper on this subject below, which was originally published in January 2019 and has been updated as of July 2019.

Polish Financial Supervision Authority issues bulletin on introduction of additional requirements for offering CFDs to retail customers

The Polish Financial Supervision Authority (PFSA) has issued a bulletin setting out its standpoint on the introduction of additional requirements for offering contracts for differences (CFDs) to retail customers.

In its standpoint, the PFSA introduces restrictions whereby providers of CFDs must provide retail customers with:

- protection of the initial security deposit, i.e. apply financial leverage limits for the relevant type of investment;
- protection by closing a position – the CFD provider is obliged to close the transactions of a customer that are incurring the greatest losses if the value of the funds paid into the account decrease to below a certain level;

- protection against a debit balance, i.e. they must prevent the customer from incurring a loss exceeding the value of the money paid in;
- access only to materials and advertising on CFDs that contain an appropriate disclaimer concerning the risks associated with investments in CFDs; and
- they must not provide any financial or non-financial bonuses with the aim of inducing customers to invest in CFDs.

In addition, the PFSA has introduced the category of so-called experienced retail customer and specified the criteria that a customer must satisfy to gain such status.

The standpoint of the PFSA applies to all entities offering CFDs in Poland, i.e. investment firms, banks, branches of foreign investment firms and credit institutions and entities acting on a cross-border basis based on freedom to provide services.

SFC reports on annual asset and wealth management activities survey for 2018

The Securities and Futures Commission (SFC) has published a report on its annual asset and wealth management activities survey 2018. The survey found that the assets under management (AUM) of the asset and wealth management business in Hong Kong amounted to HKD 23,955 billion as at 31 December 2018.

The scope of the survey has been extended to cover the assets held by firms providing trust services in Hong Kong (trustees) to provide a more comprehensive overview of the asset and wealth management industry in Hong Kong.

Amongst other things, the report notes that:

- net fund inflows of HKD 783 billion were recorded in 2018 despite a 5% year-on-year dip in the adjusted AUM of the asset and wealth management business to HKD 23,047 billion at a time when leading Asia-Pacific equity markets experienced more substantial corrections amidst global market volatility;
- the AUM of the asset management and fund advisory business conducted by licensed corporations and registered institutions decreased by 6% to HKD 16,447 billion;
- the AUM of the private banking and private wealth management business decreased slightly by 2% to HKD 7,624 billion;
- assets held under trusts amounted to HKD 4,333 billion;
- non-Hong Kong investors remained a major source of funding for the asset and wealth management business, accounting for 62% of the AUM;
- assets managed in Hong Kong made up 55% of the AUM of the asset management business, with 50% of these assets invested in equities; and
- the total number of staff in the asset and wealth management business was 42,821, with a growing proportion of staff engaged outside of sales and marketing activities.

SFC issues circular on data standards for order life cycles

The SFC has issued a circular setting out the data standards for order life cycles which prescribe the minimum content and presentation format of trading-related data to be submitted by licensed securities brokers to the SFC upon request.

The circular clarifies that, initially, only equities listed on the Stock Exchange of Hong Kong Limited (SEHK) will be considered 'In-Scope Products' for the purpose of complying with the data standards. In addition, only brokers whose trading turnover in SEHK-listed equities in a calendar year reaches or exceeds 2% of that year's total market trading volume will be considered 'In-Scope Brokers'.

The SFC expects In-Scope brokers to implement system changes and make other arrangements needed for compliance with the data standards within 15 months. Licensed securities brokers with trading turnover which reached or exceeded the 2% mark for the calendar year 2018 will also be expected to comply with the data standards by the end of October 2020. Moreover, as soon as the total market trading volume is reported for each subsequent calendar year (i.e. 2019 and beyond), licensed brokers which are not already In-Scope Brokers are advised to check if their trading turnover in SEHK-listed equities has reached or exceeded the 2% mark. If so, they will have 15 months to develop and test their systems to prepare for compliance with the data standards. Accordingly, the due implementation date for brokers classified for the first time as In-Scope Brokers in view of their 2019 turnover would be in April 2021.

The circular also clarifies that the data standards will not be applied retroactively. In-Scope Brokers will only need to submit data in accordance with the data standards with regards to trading activity undertaken after the due implementation date which applies to them. Further, regular data reporting will not be required at this stage, but In-Scope Brokers should be ready to submit trading data requested by it, whether for supervisory or other purposes, in the format specified in the data standards.

The SFC has encouraged securities brokers to refer to the data standards to support their in-house monitoring and surveillance programmes. It has also indicated that it will continue to streamline the data validation and submission process and develop more automated scripts to execute compliance tests. Separately, it will keep in view the need and feasibility to expand the current data standard including to cover more product types, transaction types and regulated activities.

In addition, the SFC has published a set of frequently asked questions on data standards for order life cycles to provide additional guidance on the expectations set forth in the technical specifications for the data standards and help In-Scope Brokers ensure compliance.

JPX announces regulatory changes regarding product transfers from Tokyo Commodity Exchange to Osaka Exchange

Japan Exchange Group Inc. (JPX) has announced the development and revision of rules and regulations, including trading and trading participant rules, associated with product transfers from the Tokyo Commodity Exchange

(TOCOM) to the Osaka Exchange (OSE). In line with the business integration between JPX and TOCOM scheduled for October 2019, some of the products listed on TOCOM will be transferred to OSE, a JPX subsidiary, in order to create a comprehensive exchange that allows for one-stop trading of a wide range of financial and commodity products. The revised rules and arrangements are set out in the JPX announcement.

The new regime is currently subject to a public consultation and is tentatively scheduled to be launched in July 2020.

MAS publishes revised guidelines on margin requirements for non-centrally cleared OTC derivatives contracts

The Monetary Authority of Singapore (MAS) has published revised guidelines on margin requirements for non-centrally cleared over-the-counter (OTC) derivatives contracts.

Amongst other things, the revised guidelines:

- provide that the margin requirements will not apply to a securities-based derivatives contract until 29 February 2020. Previously, the exemption from the application of the margins requirements to such contracts was granted until 31 August 2019;
- clarify that a MAS covered entity is not required to put in place documentation, custodial or operational requirements if the bilateral initial margin (IM) amount does not cross the IM threshold of SGD 80,000,000. However, a MAS covered entity is expected to act diligently when its exposures approach the IM threshold to ensure that the relevant arrangements needed are in place if the IM threshold is exceeded; and
- amend the phase-in schedule for the exchange of IM by including a threshold of SGD 80 billion for the revised Phase 5 commencing 1 September 2020 and for the final phase with a threshold of SGD 13 billion to commence from 1 September 2021.

Banking (Corporate Governance) (Amendment) Regulations 2019 gazetted

The Ministry of Law has gazetted the Banking (Corporate Governance) (Amendment) Regulations 2019, which amend the Banking (Corporate Governance) Regulations 2005. Amongst other things, they do so by:

- limiting the definition of 'affiliate' for substantial shareholders of banks in Singapore to exclude entities (rather than just companies) in which the relevant bank or its parent company hold a major stake;
- replacing the term 'major stake financial company' with the term 'major stake financial entity', such that an entity that is not a company (e.g. a co-operative society or trust) will be subject to corporate governance requirements if (i) a Singapore incorporated bank acquires or holds a major stake in that entity and (ii) it is regulated by the Monetary Authority of Singapore (MAS);
- deleting provisions requiring Singapore-incorporated banks to obtain the prior approval of the MAS for the appointment of various persons, such as directors and principal officers (i.e. the chief executive officer, deputy chief executive officer, chief financial officer, and chief risk officer). Singapore-

incorporated banks are now required to obtain the prior approval of the MAS for the appointment of various persons (e.g. directors and chief executive officers) under Section 53A(1) of the Banking Act (Cap. 19); and

- deleting provisions empowering the MAS to remove the principal officers of Singapore-incorporated banks in certain circumstances (e.g. where a principal officer fails to discharge any of the duties of his office). The MAS may now direct a bank in Singapore to remove a director (where that bank is incorporated in Singapore) or an executive officer from his office or employment, as the case may be, under Section 54(2) of the Banking Act (Cap. 19).

The Banking (Corporate Governance) (Amendment) Regulations 2019 are effective from 1 August 2019.

Financial Advisers (Amendment No. 4) Regulations 2019 gazetted

The Ministry of Law has gazetted the Financial Advisers (Amendment No. 4) Regulations 2019, which amend the Financial Advisers Regulations 2002. Amongst other things, they do so:

- in connection with the ASEAN Capital Market Professional Mobility Framework, by clarifying the exemption for entities supervised by an authority of an ASEAN country providing financial advisory services in respect of ASEAN capital markets products; and
- by clarifying the scope of activities that would constitute distribution of a direct purchase insurance product.

The Financial Advisers (Amendment No. 4) Regulations 2019 are effective from 1 August 2019.

RECENT CLIFFORD CHANCE BRIEFINGS

EU cross-border payments – price equality and FX transparency

The revised EU cross-border payments regulation is due to extend the current price equality rule for cross-border transactions in euro to ensure they are no more expensive than domestic transactions in the national currency of non-euro area Member States. It will also introduce transparency requirements for currency conversion services provided in relation to card transactions and online-initiated credit transfers.

This briefing paper discusses the regulation.

https://www.cliffordchance.com/briefings/2019/07/eu_cross-border_paymentspriceequalityandf.html

Bankruptcy laws of EU Member States will soon become more like Chapter 11

Late last month, the European Union's long awaited Directive on business restructurings officially became effective. The Directive requires each EU Member State to revise their corporate restructuring laws within the next two years to ensure that they satisfy certain EU-defined principles. Many of the principles are inspired by US Chapter 11 bankruptcy law. For example, the

Directive requires Member State laws to (a) permit a debtor to file for bankruptcy prior to becoming insolvent, (b) protect a debtor from certain creditor enforcement actions for a period of time, (c) provide that a debtor may remain in control of its business during its bankruptcy, (d) create enhanced protections for debtor financing, and (e) ensure that a majority of creditors in each class (not to exceed 75%) who support a restructuring proposal may bind the minority.

This briefing paper discusses the new Directive.

https://www.cliffordchance.com/briefings/2019/07/bankruptcy_laws_ofeumemberstateswillsoo.html

From junk bonds to just bonds – the increasing importance of ESG financing in European high yield

Increasingly, investors want to know that their capital is contributing to a more sustainable future, and the capital markets have responded with a wide range of financial products to meet this investor demand. While historically there has been substantial focus on 'green' financing products that raise funds for projects with tangible environmental benefits, investors are increasingly looking to issuers' broader ESG credentials as part of their commitment to sustainable investing. Issuers have the ability to design a product that conforms with 'green' principles, such as Getlink SE's green bond to provide capital for clean transportation and energy efficient projects, or to focus on improving their overall ESG rating through initiatives like carbon emissions reduction or closing the gender pay gap. As such, the Financial Times has declared 2019 'the year when environmental, social and governance considerations are moving out of a specialised niche into the mainstream'.

This briefing paper discusses the emerging demand for ESG financing.

https://www.cliffordchance.com/briefings/2019/07/from_junk_bonds_tojustbonds-theincreasin.html

LIBOR and Operating Leases II

A year since our briefing 'LIBOR and Operating Leases' and the aviation sector is still waiting for a clear contender to replace LIBOR as the common reference rate in aircraft financings, operating leases and related hedging arrangements. The FCA's December 2021 deadline for LIBOR discontinuation is approaching but the 'legacy book' of aircraft loans and leases which use LIBOR for rental and other payment provisions continues to grow.

In the wake of the ECB's 'Dear CEO' letter requiring board-level responses from regulated firms on preparedness for benchmark reform and Andrew Bailey of the FCA's latest speech at SIFMA, borrowers, lessors and lenders should consider taking precautionary action now in relation to their new transactions and any existing deals which will extend beyond 2021.

This briefing paper discusses the implications for new and legacy deals, as well as contractual continuity and unintended consequences.

https://www.cliffordchance.com/briefings/2019/07/libor_and_operatingleasesii.html

Growing the green economy – addressing the sustainability challenges and opportunities

The severe warnings on climate change starkly documented by the IPCC report and others demonstrate why urgent action to meet the goals of the Paris Agreement is needed. The public, governments and legislators are taking notice and taking action. Much of the legislative effort to date has been focused on the financial system but there is an increasing emphasis on non-financial entities and the requirements that are beginning to be expected of them. These requirements stem from legislation, public pressure and possible litigation.

This briefing paper looks at the impact of regulatory and legislative sustainability changes on, amongst others, corporates, banks and asset managers; the rise of climate change litigation and the developments in 'green' and sustainable financial products across the world.

https://www.cliffordchance.com/briefings/2019/07/growing_the_greeneconomy addressingth.html

BCBS/IOSCO announce phase 5 initial margin split

Global standard setters BCBS and IOSCO have announced that the fifth implementation phase for initial margin (IM) rules for uncleared OTC derivatives will now be split into two phases, with smaller buy-side firms granted an extra year to implement these requirements.

Under the revised international timeline, firms with an average aggregate notional amount (AANA) of uncleared derivatives of more than USD 50 billion will need to comply with IM requirements from the existing phase 5 implementation deadline of 1 September 2020. However, firms with an AANA of uncleared derivatives between USD 8 billion and USD 50 billion will have an extra year to implement IM requirements, until 1 September 2021.

This follows an earlier statement from March 2019, in which BCBS and IOSCO indicated that firms in scope of phase 5 IM requirements may nevertheless be able to continue trading without new documentation in place, provided that the amount of IM they owe to an individual counterparty is below the USD 50 million IM transfer threshold.

This briefing paper provides an overview of this change to the international IM implementation timetable and considers what steps national policy makers and regulators may need to take.

https://www.cliffordchance.com/briefings/2019/07/bcbs_iosco_announcephase 5initialmarginsplit.html

The treatment of cryptotokens at English law – back to the future

There has been much discussion around the appropriate treatment and characterisation of cryptotokens, both under English law and internationally. At the date of writing the current value of the largest virtual currency in existence, Bitcoin, is USD 185bn, the value of the second largest, Ethereum, is USD 23bn, and the value of the 100th largest – Stratis – is USD 55m. What these numbers tell us is that in discussing the legal structure which should apply to transactions in cryptotokens we are not proposing a framework for a future product, but establishing what the law is as regards a significant commercial activity existing today.

This briefing paper discusses this and the relevant existing frameworks under English law.

https://www.cliffordchance.com/briefings/2019/07/the_treatment_ofcryptotokensatenglishlaw.html

Amendment to Foreign Exchange and Foreign Trade Act of Japan – expansion of regulated sectors for foreign direct investments into Japan

Japan currently requires prior approval for foreign direct investments into a very limited number of sectors closely related to national security and public order. With effect from 1 August 2019, however, such regulated sectors will be expanded to include information processing equipment and software, and a wider range of telecommunications and IT services. Multinationals, acquirers and investors in such additional sectors must review existing plans and bear this amendment in mind, to allow time for such prior approval process and to resolve any uncertainty surrounding their transactions.

This briefing paper discusses the expansion.

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

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C H A N C E

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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