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integrate recent national and European legislative and regulatory developments

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European System of Financial Supervision: EU Council adopts texts of review package

The EU Council has adopted the texts of the European System of Financial Supervision (ESFS) review package.

The package, consisting of two regulations (the Omnibus Regulation and the Regulation amending the ESRB Regulation) and a directive (the Omnibus Directive), includes:

- changes to the existing system for supervisory convergence, including the elaboration of a strategic supervisory plan at EU level and reinforcing existing mechanisms such as peer reviews and consultations;
- reinforcing the role and powers of a management board within the European Supervisory Authorities' (ESAs') governance structure, which would be accountable to the EU Parliament and EU Council;

- giving the European Securities and Markets Authority (ESMA) direct supervisory powers over critical benchmarks and consolidated tape providers; and
- strengthening the role and powers of the European Banking Authority (EBA) as regards anti-money laundering supervision for financial institutions.

The regulations and directive are expected to be published in the Official Journal by the end of the year.

Recovery and resolution of CCPs: EU Council adopts negotiating position

The EU Council has adopted its negotiating position on the proposed regulation on a framework for the recovery and resolution of central counterparties (CCPs). Trilogue negotiations with the EU Parliament can now proceed.

The Council has suggested that the new framework should begin to apply two years after the date of entry into force of the regulation to allow time for the adoption of all implementing measures and for market participants to take necessary steps to comply with the new rules.

Money laundering: EU Council sets priorities for further reforms

The EU Council has approved strategic priorities on anti-money laundering and countering the financing of terrorism (AML). The conclusions are intended to be a direct response to the EU strategic agenda for 2019-2024.

Building on the EU Commission's communication and four reports published in July 2019 providing an overview of current challenges and identifying a range of shortcomings, the Council invites the Commission to consider:

- ways of ensuring more robust and effective cooperation between authorities and bodies involved in anti-money laundering and terrorist financing, including through addressing impediments to the exchange of information;
- whether some aspects could be better addressed through a regulation; and
- the possibilities, advantages and disadvantages of conferring supervisory responsibilities and powers on an EU body.

The Council also points to significant recent enhancements to the AML regulatory framework. It calls for the swift transposition and stronger implementation of AML legislation into national law.

Capital Markets Union: EU Council adopts conclusions on next steps

The EU Council has adopted conclusions on the deepening of the Capital Markets Union (CMU) project.

Because the smooth movement of capital and access to financial products in the financial sector is still hampered by regulatory and other barriers, the Council considers it essential to further deepen the CMU project, launched in April 2015.

The Council's conclusions set out five main objectives for deepening the CMU:

- increased access to equity and debt finance for EU enterprises, notably SMEs;
- removal of structural and legal barriers for increased cross-border capital flows;
- increasing retail participation;
- transition to sustainable economies; and
- technological progress and digitalisation.

The Council stresses that, as a matter of priority, the EU Commission and Member States should seek ways to increase access to finance for European enterprises, particularly SMEs, and invites them to identify remaining structural or legal barriers to cross-border equity and debt funding and ways to reduce or remove such barriers to cross-border investments.

EU Council and Commission adopt joint statement on stablecoins

The EU Council and EU Commission have adopted a joint statement on 'stablecoins' (a type of cryptocurrency for which mechanisms are established to minimise price fluctuations and to 'stabilise' its value, such as pegging it to a fiat currency). The joint statement acknowledges the potential benefits of stablecoins as a cheap and fast method of payment, however it also highlights the challenges and risk they pose (including to consumer protection, privacy, operational resilience, money laundering, terrorist financing and financial stability). These risks are exacerbated when a stablecoin initiative is launched on a global scale. The EU Council and Commission therefore state that no global stablecoin projects should come into operation until all the legal, regulatory and oversight risks and concerns are properly identified and addressed.

In particular, they call for work to clarify the legal status of stablecoin arrangements and for any entity intending to issue or carry out activities relating to stablecoins within the EU to ensure they provide full and adequate information to allow the EU to effectively assess whether and how its existing regulatory framework applies. The EU Council and Commission reaffirm their willingness to act swiftly in cooperation with the European Central Bank (ECB) and national and European supervisory authorities to clarify the status of stablecoins, including the establishment of new legislation for a common EU approach, if required. They also call on central banks, in cooperation with other relevant authorities, to continue to assess the costs and benefits of central bank digital currencies, and to engage with European payment actors regarding the role of the private sector in achieving efficient, fast and inexpensive cross-border payments.

Regulation and Directive on prudential regime for investment firms published in Official Journal

Regulation (EU) 2019/2033 on the prudential requirements of investment firms and Directive (EU) 2019/2034 on the prudential supervision of investment firms have been published in the Official Journal.

The Regulation and Directive will enter into force on 25 December 2019. The Regulation will apply from 26 July 2021. Member States have until 26 June 2021 to transpose the Directive.

EU Commission adopts Delegated Regulations on securitisation repositories

The following two Delegated Regulations containing regulatory technical standards (RTS) for securitisation repositories have been adopted by the EU Commission:

- Commission Delegated Regulation with regard to RTS on securitisation repository operational standards for data collection, aggregation, comparison, access and verification of completeness and consistency; and
- Commission Delegated Regulation with regard to RTS specifying the details of the application for registration of a securitisation repository and the details of the simplified application for an extension of registration of a trade repository.

Both Delegated Regulations will enter into force on the twentieth day following their publication in the Official Journal.

Eurogroup President reports on deepening economic and monetary union

The President of the Eurogroup, Mário Centeno, has sent a letter to the President of the Euro Summit, Charles Michel, on the progress made on the deepening of the economic and monetary union (EMU).

The letter outlines the state of play of the mandate given to the Eurogroup at the June Euro Summit, covering work on:

- European Stability Mechanism (ESM) reform;
- strengthening the Banking Union, noting the continued work of the High-Level Working Group; and
- the Budgetary Instrument for Convergence and Competitiveness (BICC), highlighting the agreement reached on a term sheet covering remaining open issues, including the need to define appropriate arrangements for non-euro area Member States not participating in the BICC, and noting that technical work has started on an Intergovernmental Agreement (IGA).

The leaders of the euro area countries will take stock of progress made at the Euro Summit being held on 13 December 2019.

Sustainable finance: EBA publishes action plan

The EBA has published its Action Plan on sustainable finance. The paper outlines the EBA's plans on deliverables and activities related to environmental, social and governance (ESG) factors and risks, and explains the phased approach and associated timelines for the reports, advice, guidelines and technical standards mandated to the EBA.

The plan also sets out key policy messages to provide clarity to financial institutions on the EBA's high-level policy direction and expectations about ESG risks. These expectations emphasise strategy and risk management, disclosure, and scenario analysis as three areas where institutions are

encouraged to take steps before the EU legal framework is formally updated and the EBA regulatory mandates delivered.

The EBA's mandates cover ESG-related factors and ESG risks. In order to account for their materiality and other ongoing work initiatives the initial phase of work will specifically analyse risks stemming from environmental factors and climate change.

EMMI confirms phase-in of EURIBOR panel banks to hybrid methodology

The European Money Markets Institute (EMMI) has confirmed that it has successfully completed the phase-in of all panel banks to the EURIBOR hybrid methodology.

EMMI was authorised by the Belgian Financial Services and Markets Authority (FSMA) as the benchmark administrator of EURIBOR in July 2019. The authorisation followed EMMI's reforms meeting EU Benchmarks Regulation requirements, including the development of a new hybrid methodology for EURIBOR.

The phase-in began in Q2 2019 and was implemented gradually in order to minimise operational and technological risks for panel banks, EURIBOR users, and the benchmark itself. EMMI reports that the progressive implementation of the hybrid methodology for EURIBOR is now complete and all panel banks have moved to the new contribution and reporting guidelines.

The EURIBOR Governance Framework has now entered fully into application, including the EURIBOR Code of Obligations of Panel Banks and the Benchmark Determination Methodology for EURIBOR.

ECON Committee publishes draft report on credit servicers, credit purchasers and recovery of collateral directive

The EU Parliament Economic and Monetary Affairs (ECON) Committee has published its draft report on the proposed directive on credit servicers, credit purchasers and the recovery of collateral.

The committee is scheduled to vote on the draft report on 17 February 2020.

MiFID2/MiFIR: ESMA publishes first review report on consolidated tape and cost of market data

ESMA has published the first MiFID2 review report setting out its assessment and recommendations on the development in prices for pre- and post-trade data and on the consolidated tape (CT) for equity instruments.

In relation to the CT, ESMA recommends that an EU-wide real-time CT be established, while noting, among other things, that putting in place the necessary legislative framework, technical infrastructure and governance framework to establish an equity CT will require a significant amount of time.

In relation to the prices and cost of market data, ESMA considers that MiFID2 has not delivered on its objective to reduce the price of market data, and therefore recommends both legislative changes and supervisory guidance to improve transparency. To that end, ESMA intends to begin work on supervisory guidance on the application of the provision to provide market data on a reasonable commercial basis (RBC).

The report has been submitted to the EU Commission to feed into the review report it will present to the EU Parliament and Council in 2020.

ESMA publishes guidance on securitisation repositories registration

ESMA has published a guidance note on the registration process for companies that intend to become securitisation repositories (SRs) under the Securitisation Regulation (EU) 2017/2402.

The guidance clarifies that companies which are already registered under the European Market Infrastructure Regulation (EMIR) or the Securities Financing Transactions Regulation (SFTR) need to apply for an extension of registration if they also intend to register under the Securitisation Regulation.

The note includes information on:

- timing of applications;
- tasks for companies to carry out before submitting the application;
- assessment of an application's completeness and compliance;
- registration decision and notification to companies; and
- registration fees.

Credit rating agencies: ESMA consults on guidelines for internal control functions

ESMA has launched a consultation on proposed guidelines on the framework and function of credit rating agencies' (CRAs') internal controls. The Credit Rating Agencies Regulation sets out a number of requirements relating to the internal control systems that CRAs must have in place in order to prevent or mitigate any potential conflicts of interest that could impact the independence of their credit rating activities.

ESMA's draft guidelines set out its expectations of CRAs with regard to the components and characteristics of an effective framework for internal controls and effective internal control functions. For the framework, it provides proposed guidance on control environment, risk management, control activities, information and communications and monitoring activities. For the functions, it focuses on specific roles, including compliance, review, risk management, information security, and internal audit.

Comments are due by 16 March 2020 and ESMA intends to publish its final report by the third quarter of 2020.

Prospectus Regulation: ESMA publishes final report on draft RTS

ESMA has published its final report on draft RTS amending Delegated Regulation (EU) 2019/979 under the Prospectus Regulation.

The final report sets out minor amendments to the Delegated Regulation to:

- remove all references to issuers of securities convertible or exchangeable into third party shares from the list in Article 18(1);
- add a new column to table 3 of Annex I to ensure that cash flow information is included for each year covered by the historical financial information included in the prospectus;

- amend Field 26 of Annex VII, which refers to depository receipt (DRCP); and
- add the word 'available' to Article 21, which was omitted due to a clerical mistake.

ESMA will submit the final report to the EU Commission.

EMIR: ESMA issues final report on RTS on risk mitigation for non-cleared OTC derivatives and statement on introduction of fallbacks in OTC derivative contracts

ESMA has published a final report on draft RTS on risk mitigation techniques for OTC derivative contracts not cleared by a CCP (bilateral margining) and a statement issued jointly with the other ESAs, the EBA and the European Insurance and Occupational Pensions Authority (EIOPA), on the introduction of fallbacks in OTC derivative contracts and the requirement to exchange collateral.

The draft RTS, developed under the European Market Infrastructure Regulation (EMIR), propose to introduce amendments to the Delegated Regulation on bilateral margining that take into account the international framework agreed by the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO).

The ESAs have submitted the draft RTS to the Commission for endorsement. Being mindful of approaching deadlines with regard to the bilateral margin requirements and the treatment of physically settled FX forwards and swap contracts, intragroup contracts, equity option contracts and the implementation of the last phase of the initial margin (IM) requirements as proposed in the draft RTS, the ESAs expect competent authorities to apply the EU framework in a risk-based and proportionate manner until the amended RTS enter into force.

The joint statement addresses the potential impact of the Benchmarks Regulation requirement to include fallbacks in contracts on outstanding uncleared OTC derivative contracts (legacy contracts) entered into before clearing and/or margining requirements started to apply, and whether amending legacy contracts to include the required fallbacks could trigger clearing and/or margining requirements. The ESAs take the view that amendments made to legacy contracts to introduce such fallbacks should not create new obligations on these legacy contracts, and particularly that margining requirements should not apply to these legacy contracts where they had not applied previously.

BoE, PRA and FCA publish policy summary and consultations on operational resilience

The Bank of England (BoE), Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) have published a policy proposal and co-ordinated consultation papers aimed at strengthening the regulatory framework to promote the operational resilience of firms and financial market infrastructures (FMIs).

The policy summary sets out the response of the supervisory authorities to the 2018 discussion paper on operational resilience and the overall approach being taken to the policy proposals set out in the consultation papers published by each authority.

The BoE consultation papers seek views on proposals for the BoE's expectations for:

- central counterparties (CCPs);
- central securities depositories (CSDs); and
- recognised payment system operators and specific service providers.

The PRA has published:

- a consultation paper (PRA CP29/19) on draft rules, a supervisory statement and statement of policy aimed at addressing risks to operational resilience; and
- a consultation paper (PRA CP30/19) on a draft supervisory statement on outsourcing and third party risk management.

The FCA's consultation paper (FCA CP19/32) on draft rules and guidance relating to operational resilience also contains a chapter on outsourcing and feedback to the 2018 discussion paper.

The consultations close on 3 April 2020, with final policy statements expected in Autumn 2020.

Lower Chamber of Czech Parliament approves changes to MiFID passporting regime

The Lower Chamber of the Czech Parliament has approved a draft Bill amending the Czech Capital Markets Act, which regulates, among other things, the provision of investment services by MiFID investment firms in the Czech Republic under the MiFID passport. Under the draft Bill, this regulation would change so that MiFID investment firms from another EEA Member State wishing to provide services covered by the MiFID passport in the Czech Republic under the freedom to provide services (i.e. without a branch) would be able to do so only on a temporary or occasional basis unless the services are provided to MiFID professional clients. If the services are provided to MiFID professional clients, MiFID investment firms would be allowed to provide the services under their freedom to provide services passport irrespective of whether the services are provided only on a temporary or occasional basis. The exception applicable to services provided to MiFID professional clients was not included in the original draft Bill submitted to the Parliament and was proposed during a hearing in the Parliament.

In order for the draft Bill to become effective, it must be approved by the Senate of the Czech Parliament, signed by the President and published in the Collection of Laws.

For further information about the draft Bill please refer to the Clifford Chance briefing paper prepared in August 2019, before the exception was proposed and the draft Bill approved by the Lower Chamber.

AMF updates its policy relating to UCITS and AIFs in order to integrate recent national and European legislative and regulatory developments

The Autorité des Marchés Financiers (AMF) has published updated versions of five instructions relating to collective investment undertakings (CIU) in order to integrate changes in the applicable texts, and in particular the entry into force of the EU regulation on money market funds (MMFs). The instructions

have been adapted to take into account the new European framework and the resulting disclosure requirements, in line with the instruction guide to MMFs for portfolio asset management companies published by the AMF in July 2018 and updated in November 2018.

French decree on assessment period for applications for approval or registration of digital assets service providers published

A French decree implementing provisions regarding the assessment period for applications for approval or registration of digital assets service providers (DASPs) provided for in Articles 85 and 86 of the PACTE law (law no. 2019-486 of 22 May 2019) has been published in the Official Journal.

The decree is intended to:

- derogate from the rule that silence by the administration for a period of longer than two months is equivalent to its acceptance of a request (Article 1);
- make adjustments to Title V of Book V of the Monetary and Financial Code as a result of changes made by the PACTE law (Article 2); and
- define the conditions of activity regarding an occasional customer, by setting a threshold of EUR 1,000 or its equivalent in the context of exchanges of digital assets, by providing for the appointment of a déclarant and correspondant Tracfin and by opening up the possibility of using an external service provider (Article 3).

The decree entered into force on the day after its publication.

BaFin requests expressions of interest to conduct crypto safe custody business from 1 January 2020

The German Federal Financial Supervisory Authority (BaFin) has published a statement asking undertakings that intend to provide crypto safe custody business from 1 January 2020 to indicate their interest now.

The Act implementing the Amending Directive to the Fourth EU Anti-Money Laundering Directive, which will enter into force on 1 January 2020, amends the German Banking Act (KWG) to specify crypto safe custody business as a (new) financial service requiring BaFin authorisation under section 32 KWG.

Even though BaFin will only accept applications for authorisation once the law has entered into force, it is already requesting informal and non-binding expressions of interest from undertakings that provide or intend to provide this financial service from 1 January 2020 to ensure a smooth transition to the new legal framework and obtain an overview of the market.

Expressions of interest should be made by email or post and include the name of the undertaking, the contact person and a brief description of the business model. BaFin intends to provide such undertakings with more detailed information and guidance when it has confirmed its administrative practice in respect of the authorisation and ongoing supervision for the new financial service.

The expression of interest does not replace the formal notification required under section 64y KWG (new version). Section 64y KWG contains transitional provisions for undertakings already providing crypto safe custody business.

For undertakings that qualify as financial service institutions from 1 January 2020 due to the introduction of crypto safe custody business as a new financial service, an authorisation to conduct such business is deemed to be temporarily granted on that date provided that a complete application for authorisation is filed by 30 November 2020 and the intention to file such an application is notified to BaFin in writing by 31 March 2020.

CSSF issues regulation on systemically important institutions authorised in Luxembourg

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a new regulation (19-09) concerning systemically important institutions authorised in Luxembourg.

The regulation identifies eight systemically important institutions (SIIs) authorised in Luxembourg. All eight SIIs qualify as other systemically important institutions (O-SIIs). Consequently, there is no global systemically important institution (G-SII) authorised in Luxembourg.

Four of these institutions qualify as O-SIIs by exceeding the threshold laid down in accordance with the relevant EBA guidelines (EBA/GL/2014/10). The remaining four institutions are categorised as O-SIIs due to their contribution to the Luxembourg economy, due to their exposure to the real estate market, due to the importance of their deposits, due to their importance as market infrastructure, and/or due to their importance for the investment fund sector or the asset management industry.

The regulation maintains the capital buffer rates for these O-SIIs set on 1 January 2019 by CSSF regulation 18-06, which is repealed by the new regulation.

The regulation will enter into force on 1 January 2020.

Ministry of Finance consults on amendment of AML/CTF Act

The Dutch Ministry of Finance has published a consultation document on an amendment of the Dutch AML/CTF Act (Wet ter voorkoming van witwassen en financieren van terrorisme). The document, which is effectively a draft legislative proposal, contains three broad measures. The first concerns a ban on cash payments above EUR 3,000. The second measure enables institutions such as banks, which have a legal obligation to monitor transactions, to exchange data with each other more easily. The third measure ensures that institutions that must comply with the AML/CTF Act can share information with each other when there are signs of integrity risks with their clients.

APRA consults on further amendments to authorised deposit-taking institution leverage ratio

The Australian Prudential Regulation Authority (APRA) has released for consultation a response letter and draft Prudential Standard APS 110: Capital Adequacy on the leverage ratio requirement for authorised deposit-taking institutions (ADIs).

The consultation sets out APRA's response to industry submissions in relation to its November 2018 public consultation on the leverage ratio requirement for ADIs, as well as proposing further amendments to incorporate recent technical

changes to the Basel Committee on Banking Supervision's leverage ratio standard. APRA has clarified that the proposals outlined in the consultation relate solely to the leverage ratio requirement for ADIs that apply the internal ratings-based (IRB) approach to credit risk.

Based on the feedback received APRA has, amongst other things, clarified its proposals as follows:

- regarding leverage ratio disclosures, APRA will allow IRB ADIs to adopt a modified standardised approach to measuring counterparty credit risk (SA-CCR) early for the purpose of their leverage ratio disclosures under Prudential Standard APS 330: Public Disclosure. IRB ADIs that intend to adopt a modified SA-CCR early will be required to obtain APRA's prior approval; and
- regarding frequency of reporting requirements, APRA is proposing to align with the Basel Committee's revised disclosure requirements relating to the leverage ratio and limit the calculation of daily average values to SFT exposures. APRA has indicated that a revised leverage ratio reporting standard reflecting this requirement will be released when it consults more broadly on changes to reporting standards in 2020.

Further, subsequent to APRA's November 2018 consultation, the Basel Committee released a revised leverage ratio standard that amended the treatment of client cleared derivatives. The revised treatment allows banks to apply the SA-CCR to its client exposures. This amendment seeks to ensure that the leverage ratio does not discourage banks from providing client clearing services. APRA is proposing to adopt the Basel Committee's revised treatment for client cleared derivatives.

Comments on the consultation are due by 7 February 2020.

APRA sets out enhanced approach to regulating and supervising governance, culture, remuneration and accountability risks

The APRA has published an information paper to set out a more intensive regulatory approach to transform governance, culture, remuneration and accountability (GCRA) practices across the prudentially regulated financial sector, in line with a key commitment made in its 2019-2023 Corporate Plan.

The new approach builds on a programme of work that APRA commenced in 2015, including its thematic reviews of risk culture and remuneration, the Prudential Inquiry into the Commonwealth Bank of Australia, and the results of the subsequent self-assessments of a range of large financial institutions. It also responds to recommendations from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry and the APRA Capability Review.

APRA's new approach to GCRA is intended to:

- strengthen the prudential framework in areas such as remuneration and risk management, and incorporate the wider use of risk governance declarations and self-assessments;
- sharpen APRA's supervisory focus by increasing internal resourcing and capabilities for GCRA supervision, adopting new tools to assess GCRA practices and holding entities more forcefully to account when deficiencies are identified; and

- share APRA's insights to better inform industry and the public about its work, promote better GCRA practices, and drive greater accountability among boards and management.

ASIC outlines approach to advice licensee obligations for Financial Planners and Advisers Code of Ethics 2019

The Australian Securities and Investments Commission (ASIC) has outlined its approach to advice licensee obligations for the Financial Planners and Advisers Code of Ethics 2019, following its announcement on 14 November 2019 with regard to relief from financial adviser compliance scheme obligations.

ASIC has clarified that it will not monitor or enforce individual advisers' compliance with the Code as, under the Corporations Act 2001 (Commonwealth), it does not have a role as a code monitoring body and is specifically prevented from exercising its power to ban an adviser for breaches of the Code.

ASIC has also clarified that financial advisers will still be required to comply with the Code from 1 January 2020 and Australian Financial Services Licensees will still be required to take reasonable steps to ensure that their financial advisers comply with the Code. However, after consultation with Financial Adviser Standards and Ethics Authority (FASEA), ASIC will take a facilitative approach to compliance with Standards 3 (conflicts) and 7 (client fee and benefit agreement) of the Code until the new single disciplinary body is operational.

ASIC has indicated that it will continue to take action where there are breaches of the law by financial advisers or their licensees.

PBoC issues amended measures for registration of pledge of accounts receivables

The People's Bank of China (PBoC) has issued the amended 'Measures for the Registration of Pledge of Accounts Receivables', which will take effect from 1 January 2020. The following amendments under the Measures are worth noting:

- the Measures shall apply, by reference, to the registration of other security interests, including but not limited to financial leases, pledges of security deposit, pledges of inventory and warehouse warrants;
- the mechanism of 'registration agreement' is removed, i.e. the pledgee is no longer required to enter into a fixed form registration agreement with the pledgor for the purpose of any registration (including any amendment/extension registration) or to upload such registration agreement onto the online registration system as a schedule to the registration;
- the shortest registration period has been changed from six months to one month, and the shortest extension registration period has been changed from one year to one month;
- when conducting any receivables financing business, a pledgee should verify the underlying accounts receivables, and carry out due diligence on the existing encumbrance on such accounts receivables through the online registration system; and

- the relevant registering party shall be responsible for the authenticity, completeness and legality of the registration information.

China releases interim measures for administration of credit rating business

PBoC, the National Development and Reform Commission (NDRC), the Ministry of Finance (MoF), and the China Securities Regulatory Commission (CSRC) have jointly released the 'Interim Measures for Administration of Credit Rating Business', which set out regulatory requirements for conducting a credit rating business for commercial entities and debt financing instruments (including loans, bonds, and structured financing products). The Interim Measures will come into force on 26 December 2019. Among other things, the following aspects are worth noting:

- filing/reporting requirements for credit rating institutions – the Interim Measures adopt a filing/reporting mechanism. The establishment of a credit rating institution; change of key corporate information, major shareholders and/or actual controllers; as well as information of senior management and credit rating practitioners, are subject to filing requirements and insolvency events must be reported to the competent regulators. In addition, credit rating institutions will need separate approvals from competent regulators to engage in specific types of rating business. Foreign-invested institutions shall also follow general filing requirements applicable to foreign investment enterprises;
- independence requirements for credit rating institutions and practitioners – in order to ensure the independence of rating results, the Interim Measures set out various independence requirements, covering practising behaviour, institutions, practitioners, credit rating business departments and remuneration of practitioners; and
- enhanced supervision and regulatory measures – under the Interim Measures, the regulators will adopt certain supervision approaches to strengthen the regulation of the credit rating industry, including, without limitation, detailed disclosure requirements, enhanced onsite inspection and offsite supervision measures, as well as more serious penalties (including a penalty for carrying out business while affected by conflicts of interest).

MAS and Bank of Japan renew bilateral local currency swap arrangement

The Monetary Authority of Singapore (MAS) has announced the renewal of the bilateral local currency swap arrangement with the Bank of Japan (BOJ) for another three years (i.e. until 29 November 2022) to enhance the financial stability of Singapore and Japan.

The agreement was established in November 2016 to enable the two central banks to exchange local currencies with each other of up to SGD 15 billion or JPY 1.1 trillion.

Under the arrangement, the MAS will be able to provide Japanese Yen liquidity to eligible Singapore financial institutions to support their cross-border operations.

Cross-Industry Committee on JPY Interest Rate Benchmarks publishes final report regarding

consultation on appropriate choice and usage of JPY interest rate benchmarks

The Cross-Industry Committee on Japanese Yen (JPY) Interest Rate Benchmarks has published a final report on the public consultation it held in July 2019 on the appropriate choice and usage of JPY interest rate benchmarks. The consultation outlined the outcome of the past deliberations in the Committee and sought feedback regarding the future structure of JPY interest rate benchmarks.

The Committee solicited comments from a range of entities on 18 issues, in particular, actions to prepare for the permanent discontinuation of JPY London Inter-bank Offered Rate (LIBOR), which it believes is an urgent issue at the moment. As part of this, the Committee sought comments on transition and fallbacks, focusing on the five options to be used as alternative benchmarks upon transition and replacement benchmarks.

According to the Committee, with regard to all issues subject to comments, respondents supported most of the deliberations and recommendations by it and preferred to choose and use alternative benchmarks according to the nature of financial instruments and transactions. The detailed results of the public consultation are set out in the final report.

The Committee has indicated that the final report on feedback obtained through the public consultation will be used as a reference point going forward. Moreover, in the next phase, the contractual arrangements, such as approach to new contracts and existing contracts, will be introduced according to the transition plan as indicated in the consultation paper. The Committee has clarified that the arrangements will be based on firm-wide initiatives to identify specific financial instruments and transactions referencing LIBOR, and a market-wide action plan toward the development of term reference rates.

The Committee has further indicated that it will continue to examine the progress of interest rate benchmark reform and provide support for market-wide initiatives toward the development of term reference rates.

FSC announces measures to promote fintech scale-ups

The Financial Services Commission (FSC) has announced measures to promote fintech scale-ups, which includes 24 key tasks in eight different policy areas, in order to further develop Korea's fintech industry and its ecosystem.

Amongst other things, the key measures include the following:

- improving the current regulatory sandbox system;
- carrying out regulatory reforms to facilitate fintech development;
- lowering entry barriers to the financial industry;
- establishing regulatory foundations for the digital era;
- developing new growth engines for financial innovation;
- promoting investment in fintech and fostering an ecosystem for venture capital centred on private sector investment;
- assisting fintech firms with overseas expansion; and
- expanding public sector support for fintech firms.

The detailed implementation schedule for these key tasks is set out in the announcement.

RECENT CLIFFORD CHANCE BRIEFINGS

The new European Commission 2019 – 2024

The European Parliament confirmed the new class of European Commissioners with 461 votes in favour, 157 against and 89 abstentions on 27 November 2019. The new President of the European Commission, Ursula von der Leyen, and her team of European Commissioners took office on 1 December 2019 and will drive the EU's agenda for the next five years. Ms von der Leyen, the former German defence minister, says that it will be a 'geopolitical Commission', signalling an intention to position Europe as a heavyweight on the world stage.

This briefing paper assesses the priorities for the von der Leyen Commission.

https://www.cliffordchance.com/briefings/2019/12/the-new-european-commission-2019---2024.html

Brexit – next steps

As the UK heads towards a general election on 12 December 2019, the UK's EU withdrawal date has been pushed back to 31 January 2020 at the latest. The progression into law of the Brexit deal negotiated by Prime Minister Boris Johnson has been put on hold by the election, but businesses will need to consider what the election means for Brexit, and what would happen on exit day and beyond.

This briefing paper discusses the next steps for both the UK and the EU.

https://www.cliffordchance.com/briefings/2019/11/brexit--next-steps.html

Do we now have crypto certainty under English law?

Cryptoassets are capable of being property which can be owned and smart contracts can be legally enforceable, says a legal statement published by the UK Jurisdiction Taskforce of the LawTech Delivery Panel (UKJT) earlier this year. While the legal statement is not binding, it will give market participants greater certainty around crypto transactions.

The legal statement confirms our view expressed earlier this year that cryptoassets are capable of being owned and transferred as property under English law, reflecting that existing cryptoassets (for example Bitcoin) are already universally dealt with in this way – i.e., there is not, and should not be, any such thing as a 'law of cryptoassets'. The legal statement also confirms that smart contracts are capable of constituting binding legal contracts.

This briefing paper discusses the legal statement and its impact.

https://www.cliffordchance.com/briefings/2019/11/do-we-now-have-crypto-certainty-under-english-law-.html

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