EU APPROVES CAPITAL MARKETS RECOVERY PACKAGE

On 25 March 2021 the European Parliament approved amendments to the Securitisation Regulation and the Capital Requirements Regulation as part of the Capital Markets Recovery Package (CMRP), also commonly known as the Commission's "COVID quick fix" package. Following this approval, the package is expected to be published in the Official Journal around mid-April and enter into force three days thereafter.

The CMRP had two main purposes originally: (1) to facilitate the securitisation of non-performing exposures (NPEs); and (2) to introduce a framework of simple, transparent and standardised (STS) securitisation for synthetic transactions, which have hitherto been largely excluded from the regulatory benefits of STS.

Those two elements remain in the package. Amendments will now be made to the risk retention, due diligence and capital rules to facilitate the securitisation of NPEs. Equally, amendments will be made to introduce special STS criteria for synthetic securitisations, with corresponding favourable capital treatment for bank originators retaining exposures to senior tranches.

That said, recent attention on the securitisation CMRP was focussed on an anti-tax avoidance provision inserted by the European Parliament that threatened (inadvertently, it is widely thought) to render it illegal for EU entities to invest in or otherwise deal with securitisation special purpose entities (SSPEs) established in countries on the EU tax compliance "black list" and "grey list" (being Annexes I, and II, respectively of the EU list of non-cooperative jurisdictions for tax purposes). This caused a great deal of consternation because the grey list included countries such as Australia, Morocco and Turkey (Morocco no longer appears on either list).

In the event, a compromise was reached according to which only the black list is banned, but investments in SSPEs established in grey list countries will be permitted. However, investing in SSPEs established in countries grey-listed for operating "harmful tax regimes" (currently, Australia, Jordan and Jamaica) will have to be notified to the competent authorities of the Member State in which the investor is resident for tax purposes. The notification requirement applies only to investments in securities issued by SSPEs established after the CMRP amendments come into force.

CLIFFORD CHANCE

AUTHORS

Andrew Bryan
Knowledge Director, London

T +44 20 7006 2829
E andrew.bryan@cliffordchance.com

Kevin Ingram
Partner, London

T +44 20 7006 2416
E kevin.ingram@cliffordchance.com

CONTACTS

Timothy Cleary
Partner, London

T +44 20 7006 1449
E timothy.cleary@cliffordchance.com

José Manuel Cuenca
Partner, Madrid

T +34 91 590 7535
E josemanuel.cuenca@cliffordchance.com

Lounia Czupper
Partner, Brussels

T +32 2 533 5987
E lounia.czupper@cliffordchance.com

Eduardo García
Partner, Madrid

T +34 91 590 9411
E Eduardo.garcia@cliffordchance.com

Tineke Kothe
Senior Counsel, Amsterdam

T +31 20 711 9146
E tineke.kothe@cliffordchance.com

Oliver Kronat
Partner, Frankfurt

T +49 69 7199 4575
E oliver.kronat@cliffordchance.com

Jonathan Lewis
Partner, Paris

T +33 1 4405 5281
E jonathan.lewis@cliffordchance.com

Jessica Littlewood
Partner, London

T +44 20 7006 2692
E jessica.littlewood@cliffordchance.com

Emma Matebalavu
Head of Finance, London

T +44 20 7006 4828
E emma.matebalavu@cliffordchance.com

Simeon Radcliff
Partner, London

T +44 20 7006 2786
E simeon.radcliff@cliffordchance.com

Julien Rocherieux
Partner, Paris

T +33 1 4405 5952
E julien.rocherieux@cliffordchance.com

Tanja Svetina
Partner, Milan

T +39 02 8063 4375
E tanja.svetina@cliffordchance.com

Christopher Walsh
Partner, London

T +44 20 7006 2811
E christopher.walsh@cliffordchance.com