

International Regulatory Update

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Independent Commission on Banking publishes interim report

The Independent Commission on Banking has published its [interim report](#) on the UK banking sector, which sets out the Commission's current and provisional views on the need for reform and on possible reform options, and which seeks views, evidence and analysis in response.

The Commission has proposed to focus its work on further consideration of a UK retail ring-fence, in which UK retail banking activities can continue to be provided by universal banks but must be contained within separately capitalised subsidiaries. The Commission has also proposed introducing, over time, greater loss-absorbing capacity for systemically important banks, comprising: (1) an equity surcharge of at least 3% above Basel III requirements for systemically important banks; (2) additional loss-absorbency provided by debt through bail-in mechanisms and possibly contingent capital; and (3) some form of depositor preference.

In addition, the interim report suggests that a radically improved system for switching accounts should be introduced at a reasonable cost within a short timescale. The report also highlights the importance of competition in the sector being the subject of more active regulatory monitoring and improvement. The Commission believes that giving the Financial Conduct Authority (FCA) a primary duty to promote competition could enhance competition in UK retail banking.

Responses to the interim report are due by 4 July 2011. The Commission intends to publish its final report in September 2011.

[Executive summary](#)

AIFM Directive: ESMA seeks preliminary views on implementing measures

ESMA has published a [discussion paper](#) setting out its proposed approach for developing implementing measures on the AIFM Directive. On 2 December 2010, the European Commission sent a request for assistance to ESMA's predecessor, CESR, on the content of the implementing measures. Following receipt of this request, CESR published a call for evidence in order to gather input from external stakeholders. ESMA's discussion paper now seeks views from market participants on numerous policy options that ESMA has identified with regards to the Commission's mandate.

ESMA intends to use the responses to narrow down its policy approach and to develop a formal proposal for possible implementing measures in the summer of 2011. The proposal will be subject to a public consultation, the results of which will be used by ESMA to finalise its advice to the Commission.

Credit rating agencies: ESMA consults on technical advice on fees for supervision

ESMA has published a [consultation paper](#) in relation to the European Commission's request for technical advice on formulating a regulation on fees for credit rating agencies (CRAs) by delegated act. The consultation paper sets out the possible options ESMA has considered for the fee structure for CRA supervision and registration in the EU and invites comments to assist in the finalisation of the advice. For on-going supervisory fees, ESMA is considering a single periodic fee based on the turnover of the CRA relative to other CRAs registered in the EU. For registration fees to be charged to applicant CRAs, ESMA is considering different registration assessment fee bands based on objective criteria for assessing the complexity of the application.

Comments are due by 27 April 2011. The advice is due to be delivered to the Commission by 13 May 2011.

UCITS: ESMA sets out guidelines on risk measurement and calculation of global exposure

ESMA has published its [final report](#) on the guidelines on risk measurement and the calculation of the global exposure for certain types of structured UCITS. The guidelines supplement CESR's guidelines on risk measurement and the calculation of global exposure and counterparty risk for UCITS published in July 2010.

The purpose of ESMA's guidelines is to propose, for certain types of structured UCITS, an optional regime for the calculation of the global exposure. The specific approach adopted by ESMA consists of the calculation, for each scenario to which investors can be exposed at any one time, of the global exposure using the commitment approach. Under this approach, each scenario must comply at all times with the 100% global exposure limit.

The guidelines will take effect once they have been translated into all the EU languages and they will accompany the Level 2 implementing measures of the UCITS Directive that take effect on 1 July 2011.

Investor compensation schemes proposal: ECON Committee approves report

The European Parliament's ECON Committee has approved a January 2011 [draft report](#) on the European Commission's July 2010 proposal for a Directive amending the Investor Compensation Schemes Directive. The report, drafted by Olle Schmidt, calls for, amongst other things, full harmonisation on the level of minimum compensation at a fixed level of EUR 100,000 per investor (a higher limit would also be permitted).

Single Market Act: European Commission publishes communication

The European Commission has published a [Communication](#) entitled 'Single Market Act – Twelve levers to boost growth and strengthen confidence', which sets out twelve projects intended to 'relaunch' the European Union's single market. Each project includes a 'key action' for which the Commission intends to issue legislative proposals during 2011, with a view to their adoption by the European Parliament and the Council by the end of 2012.

Alongside the twelve 'key actions', the Single Market Act puts forward more than sixty additional policy actions which the Commission intends to propose. Amongst other things, the Commission has indicated that it intends to present an initiative concerning access to a basic payment account for all citizens at a reasonable cost. It also intends to work on the protection of consumers of retail financial services will continue, with particular regard to the transparency of bank fees and better protection of borrowers in the mortgage market.

[FAQs](#)

ESMA Chair sets out priorities and discusses regulation of derivatives markets

The Chair of ESMA, Steven Maijoor, has given a [speech](#) at ISDA's AGM in which he discussed ESMA's role in the new European system of financial supervision, in particular with respect to the reform of derivatives markets. Mr. Maijoor noted that the industry has worked to improve the resilience of the OTC derivatives markets, but argued that industry commitments, while important, are not sufficient. He indicated that, in order to reduce counterparty and systemic risk and increase transparency to both market participants and regulators, global financial reforms are needed.

In relation to post-trading, Mr. Maijoor emphasised that, as a result of the European Market Infrastructure Regulation, central counterparties will face risks to which they were not exposed in the past and that these risks must be appropriately managed. Similarly, he stressed that while trade repositories will play a major role in improving transparency, it is essential that they are appropriately regulated, supervised and monitored.

On the trading side, Mr. Maijoor discussed the European Commission's proposal for all trading in derivatives which are eligible for clearing and sufficiently liquid to be moved to regulated markets, MTFs or other organised trading facilities. Although he noted that there are limits to what can actually be traded on these types of organised platforms and that there are also differences in the way in which derivatives can be traded compared to equities trading, he argued that certain features of the equities market structure need to be brought to derivatives trading, notably transparency, liquidity, operational efficiency and equal market access.

Credit rating agencies: EU Council adopts amending regulation enhancing ESMA's powers

The EU Council has formally approved the [regulation](#) amending the EU rules on credit rating agencies (CRAs) which provides ESMA with enhanced powers to oversee CRA activities. The regulation was approved by the European Parliament's plenary session in December 2010.

Amongst other things, the regulation: (1) entrusts ESMA with the direct supervision of CRAs by July 2011; (2) empowers ESMA to make dawn raids, impose fines, and ensure agencies evaluate the accuracy of their past ratings – ESMA will be able to impose fines of up to 20% of a CRA's turnover for the previous year; and (3) gives ESMA a mandate to carry out checks on all CRAs by 2014.

[Addendum](#)

OTC derivatives and market infrastructures: Hungarian EU Presidency publishes compromise proposal

The Hungarian EU Council Presidency has published a [compromise text](#) for the proposed regulation on OTC derivatives and market infrastructures.

EBA announces benchmark to be used in 2011 stress test

EBA has agreed to adopt a benchmark of Core Tier 1 against which to assess banks in the 2011 EU-wide stress test. The Core Tier 1 benchmark will be set at 5% of risk weighted assets. The 5% Core Tier 1 benchmark is not a legal minimum requirement. However, EBA expects any bank failing to meet the benchmark, or showing specific weaknesses in the stress test, to agree with the relevant supervisory authority the appropriate remedial measures and execute them in due time. EBA expects these measures to be disclosed separately.

The EBA has also published the following supporting documents to assist in the understanding of the definition of capital:

- a list of the [sample of banks](#) involved in the EU-wide stress exercise;
- a technical template which outlines the [capital definition criteria](#) used in defining Core Tier 1 for the EBA's 2011 EU-wide stress test;
- a draft of the publication template which will be used for [disclosure of the results](#) of the stress test in 2012; and
- a template which outlines the [disclosure of mitigating measures](#).

IOSCO reports on commodities markets work

IOSCO has published a [report](#) from its Task Force on Commodity Futures Markets to the Financial Stability Board (FSB), which sets out IOSCO's current work on the supervision of commodity derivative markets, market transparency, and the ongoing monitoring of developments in OTC financial oil markets. The report has been prepared in response to the G20's November 2010 request for an update to be provided to the FSB on IOSCO's work in support of improving the regulation and supervision of exchange-traded, OTC derivative and physical commodity markets. It also outlines IOSCO's future plans and possible additional new areas of focus.

Amongst other things, the report highlights IOSCO's work on: (1) updating and reviewing the existing guidance on contract design and market surveillance for commodity contracts set out in the 1997 Tokyo Communiqué on Supervision of Commodity Futures Markets; (2) assessing the impact of oil price reporting agencies on overall market functioning and on financial markets in particular, in line with previous recommendations made on the need for improved physical market transparency; and (3) improving oversight, understanding and transparency of OTC financial oil derivative markets by creating a trade repository for these products by Q1 2012.

ISDA releases white paper on product representation for standardised derivatives

ISDA has published a white paper on the representation of standardised derivative products and a proposal to link unique identifiers to these products. The paper calls for the establishment of a new central Derivative Product Registry infrastructure, leveraging the FpML standard for data representation. The central Derivative Product Registry would maintain a reference data representation for standardised derivatives, which the paper broadly defines as OTC derivatives that are electronically executed or centrally cleared, and issue product identifiers for each of those derivatives. The Derivatives Product Registry would also disseminate the reference information to all market participants.

The proposal is intended to provide better support for regulatory reform initiatives such as price transparency reporting and reporting to data repositories, as well as simplifying the trade processing and reporting architecture across the marketplace for standardised derivatives by enabling market participants to abstract the trade economics through reference data instead of having to specify them as part of each transaction.

Comments on the proposals are due by 6 May 2011. The white paper is available in the ['Press Releases' section](#) of the ISDA website.

BIS publishes working paper on market structures and systemic risks of exchange-traded funds

The Bank for International Settlements (BIS) has published a [working paper](#) which examines the operational frameworks of ETFs, as well as recent market developments and their potential implications for financial market stability as growth of ETF assets under management gathers pace.

The paper discusses: (1) the market for ETFs and legal structures; (2) synthetic and exotic structures; (3) motives for synthetic replication; and (4) risks to financial stability.

IMF issues Global Financial Stability Report

The IMF has released its [Global Financial Stability Report](#), which provides a semi-annual assessment of global financial markets and addresses emerging market financing in a global context. The report notes that global financial stability has improved over the past six months, bolstered by better macroeconomic performance and continued accommodative macroeconomic policies, but that fragilities remain.

Amongst other things, the report states that advanced economies need to shift to more structural policies to address: (1) Banks with thin capital buffers and weak asset quality; (2) sovereigns facing debt affordability challenges; and (3) households with large debt burdens and negative equity.

[Executive summary](#)

FSB publishes notes on shadow banking and exchange-traded funds

The Financial Stability Board (FSB) has published two background notes.

'[Potential financial stability issues arising from recent trends in Exchange-Traded Funds \(ETFs\)](#)' highlights recent developments in the ETF market and the possible emerging issues for financial stability. In particular, the FSB has encouraged the financial industry to adapt its risk management practices, disclosure and transparency to the pace of innovation in this market early in the product cycle.

'[Shadow Banking – Scoping the Issues](#)' provides information on the FSB's work on developing recommendations to strengthen the oversight and regulation of the shadow banking system. In particular, the FSB proposes that monitoring and policy responses should be guided by a two-stage approach – initially casting the net widely to cover all non-bank credit intermediation so as to identify potential areas where new risks might arise, and then narrowing the focus to those parts of the system where maturity/liquidity transformation, flawed credit risk transfer, and/or leverage create important systemic risks.

MiFID: David Lawton outlines FSA's current and future strategy for securities markets regulation

David Lawton, Head of Markets Infrastructure and Policy at the FSA, has given a [speech](#) outlining the FSA's current and future strategy for securities markets regulation against the background of the European Commission's MiFID review.

In particular, Mr. Lawton discussed: (1) how the trading landscape might be redefined through the introduction of new types of trading venue; (2) the steps that are needed to get better consolidation of equity trading data; (3) how greater transparency should be introduced into non-equity markets, while not damaging liquidity; (4) how MiFID should respond to the challenges being posed by new types of market practice, such as high frequency trading; (5) the importance of transaction reporting as a tool to protect market integrity; (6) how financial regulation can best contribute to the broader agenda on commodities; and (7) the overarching importance of European markets remaining open to non-EU firms.

HM Treasury consults on REITs measures

HM Treasury has launched an [informal consultation](#) on the measures announced in the 2011 Budget to support the development and growth of the UK Real Estate Investment Trusts (REITs) market.

Amongst other things, the consultation invites views on: (1) the introduction of a diverse ownership rule for institutional investors; (2) the introduction of a fixed grace period for new REITs to meet the non close company requirement; (3) relaxing the listing requirement for UK REITs; (4) the abolition of the conversion charge for companies joining the REIT regime; and (5) allowing cash to be a 'good' asset for the purpose of the REIT balance of business asset test.

The informal consultation will close on 10 June 2011. The government intends to publish the draft legislation on these REITs measures in the autumn of 2011.

[Issues for discussion](#)

FINMA issues new guidelines on notification requirements for banks and securities dealers establishing overseas presence

The Swiss Financial Market Supervisory Authority (FINMA) has published its '[Guidelines on preliminary reporting requirements for establishing a physical presence abroad](#)'. The guidelines outline the duty for banks and

securities dealers to inform FINMA if they intend to establish a physical presence abroad (including setting up subsidiaries, branches, representative offices and business offices), or if they intend to acquire participating interests in foreign companies involved in the financial industry.

French Financial Markets Authority announces organisational changes and new appointments

The Financial Markets Authority (AMF) has [announced](#) that it is reviewing its organisation and expanding its activities for operational monitoring of market organisation, post-trading and market players. In particular, the AMF is setting up a new entity for market monitoring and surveillance, infrastructure and market players, which will be part of the Asset Management and Markets Division, the new name given to the existing Investment Services and Asset Management Division. The AMF is also merging investigations and inspections into the same division with the creation of the Investigation and Inspection Division, which replaces the Investigation and Market Surveillance Division (DESM).

Sophie Baranger has been appointed as managing director of the new Investigation and Inspection Division (DEC), whilst Arnaud Oseredczuk will hold the same office within the Asset Management and Markets Division.

These appointments became effective on 1 April 2011 and implementation of the new [organisation chart](#) will follow gradually.

UCITS IV Directive implementation in Italy: consultation process launched

On 14 April 2011, the Treasury Department of the Ministry of Economy and Finance launched a [consultation paper](#) (ending on 8 May 2011) on the draft legislative decree aimed to implement the UCITS IV Directive in Italy. The draft legislative decree, once enacted, will amend the Italian Consolidated Financial Act (TUF). In order to align second-level provisions with the TUF, both CONSOB and the Bank of Italy will issue amended rules and regulations.

It is currently envisaged that the deadline for the implementation of the UCITS IV Directive (1 July 2011) will be met.

HKMA publishes letter to authorised institutions on credit growth

The Hong Kong Monetary Authority (HKMA) has published a [letter](#) to all authorised institutions which discusses credit growth in Hong Kong and the HKMA's plans for increased monitoring of authorised institution's funding strategies for the rest of 2011. The HKMA notes that total loans grew by 29% or HKD 940 billion in 2010. According to the HKMA, the primary causes for this credit growth were strong demand for credit in property lending, which was up 19%, and non-bank Mainland China exposures, which was up 47%. The letter further notes that the figures for January and February 2011 indicate that total bank loans continued to grow at an annualised rate of 26%, with the Hong Kong dollar and US dollar loan-to-deposit ratios rising to 81% and 59% respectively.

Consequently, the HKMA has required authorised institutions to reassess their business plan and funding strategies for the remainder of 2011 and submit them to the HKMA for review by 30 April 2011.

MAS issues revised code on collective investment schemes

The Monetary Authority of Singapore (MAS) has issued a [revised Code on Collective Investment Schemes](#), together with its [response to the feedback it received](#) to the May 2010 public consultation on proposed amendments to the code. The revisions are intended to provide greater clarity and increase flexibility for fund managers in managing their funds, while enhancing safeguards for retail investors. The key changes include strengthening core investment requirements, setting new guidelines for certain fund categories, such as those funds which track an index, and introducing other safeguards to enhance investor protection.

The revised code will come into effect on 1 October 2011 and will apply to all authorised schemes other than structured product funds. In view of the industry's feedback that structured product funds have customised structures which require time and potentially higher costs to unwind, the MAS has decided to allow such funds to comply with the revised code by 1 April 2012 or be grandfathered. Structured product funds that are grandfathered may not take in new subscription monies from retail investors on or after 1 April 2012. The MAS intends to recognise a new foreign scheme if, amongst other things, it is subject to investment guidelines which are substantially similar to those set out in the revised code.

The MAS has indicated that amendments will be made to the Notice on Investment-Linked Life Insurance Policies (MAS Notice 307) to take into account the changes to the code. The changes will apply to investment-

linked life insurance policy sub-funds (ILP sub-funds) from 1 October 2011, while structured product ILP sub-funds will be subject to the same transitional provisions as structured product funds.

ASIC issues guidance on substantial holdings disclosure for securities lending

ASIC has issued a new [regulatory guide \(RG 222\)](#) and a [class order \(CO 11/272\)](#) intended to improve disclosure by parties that are engaging in securities lending of substantial holdings in listed entities.

Under the new guidance, ASIC sets out its expectations as to how: (1) parties involved in securities lending (including securities lenders and borrowers) will disclose substantial holdings in listed entities (interest of 5% or more); and (2) prime brokers – who may have on-going borrowing agreements with their clients – will disclose substantial holdings.

ASIC has also set out its expectations of the content of substantial holding notices that parties engaged in securities lending will have to provide. In addition, ASIC has published a [report \(REP 235\)](#) which summarises the consultation with industry that has led to the new regulatory guidance.

ASIC consults on improving quality of prospectuses

ASIC has published a [consultation paper \(CP 155\)](#) setting out its proposals for new guidance on how to word and present prospectuses and other documents in a 'clear, concise and effective manner', and on how to prepare prospectuses that satisfy the content requirement in section 710 of the Corporations Act 2001.

The draft regulatory guide included in CP 155 is intended to make prospectuses easier for retail investors to use and to improve the quality of information on the proposed business model and the associated risks.

Comments are due by 7 June 2011.

FRB and FDIC propose rule on resolution plans and credit exposure reports

The Board of Governors of the Federal Reserve System (FRB) and the Federal Deposit Insurance Corporation (FDIC) have approved a joint [Notice of Proposed Rulemaking](#) for certain organizations to file and report resolution plans and credit exposure reports as required in Title I, section 165 of the Dodd-Frank Act. The FDIC approved this rule on 29 March 2011, and it has now also been approved by the FRB and issued jointly by the two agencies.

The proposed rule requires periodic submission of: (1) a plan for the rapid and orderly resolution under the Bankruptcy Code in the event of material financial distress or failure of a covered company (resolution plan); and (2) a report on credit exposures to other significant nonbank financial companies and significant bank holding companies (credit exposure report).

Resolution plans would have to be submitted within 180 days of the effective date of a final regulation, and credit exposure reports would have to be filed 30 days after the end of each calendar quarter.

Comments on the proposed rule will be accepted until 10 June 2011.

US agencies propose rule on swap margin and capital requirements

The Board of Governors of the Federal Reserve System (FRB), the Farm Credit Administration, the Federal Deposit Insurance Corporation (FDIC), the Federal Housing Finance Agency, and the Office of the Comptroller of the Currency (OCC) have [invited comments](#) on a proposed rule to establish margin and capital requirements for swap dealers, major swap participants, security-based swap dealers and major security-based swap participants as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The proposed rule would require swap entities regulated by the five agencies to collect minimum amounts of initial margin and variation margin from counterparties to non-cleared swaps and non-cleared, security-based swaps. The amount of margin required under the proposed rule would vary based on the relative risk of the counterparty and of the swap or security-based swap. The proposed margin requirements would apply to new, non-cleared swaps or security-based swaps entered into after the proposed rule's effective date. The proposal also seeks comments on several alternative approaches to establishing margin requirements.

Provisions in the Dodd-Frank Act also require the agencies to establish capital requirements for regulated swap entities. The proposed rule would implement these provisions by requiring swap entities to comply with the existing capital standards that apply to those entities as part of their prudential regulation.

Comments are due by 24 June 2011.

RECENT CLIFFORD CHANCE BRIEFINGS

European Regulatory Reform Progress Report

This updated version of the report outlines the progress on the European regulatory reform agenda for the financial sector. This report presents a very brief overview of the progress of the major regulatory initiatives, indicating the current status, next main steps and estimated implementation date for each measure. In addition, the report highlights significant new developments since the second edition of the report in January 2011 and outlines the major legislative proposals scheduled to be issued this year. Although the focus is on EU-level reforms, the report includes some coverage of national reforms.

http://www.cliffordchance.com/publicationviews/publications/2011/04/european_regulatoryreformprogressreport-1.html

The UK Independent Commission on Banking's Interim Report

This briefing discusses the Independent Commission on Banking (ICB) Interim Report, which was published on 11 April 2011. The ICB's current view is that all systemically important banks (including wholesale and investment banks) and any other large UK retail banks should have a minimum capital ratio of common equity tier 1 to risk weighted assets of 10%. The ICB provisionally recommends ring-fencing UK retail banks into separate subsidiaries and has confirmed that it will not pursue a number of more severe structural measures. The ICB's Interim Report also looks at, and suggests means to tackle, the perceived weakening of competition in, and perceived barriers to entry to, the UK retail banking market.

http://www.cliffordchance.com/publicationviews/publications/2011/04/the_uk_independentcommissiononbanking.html

Reform of the UK Competition Regime – What's on the Table?

This briefing discusses the options that the UK Government has set out for a major reform of the UK competition regime. The consultation issued by the Department for Business, Innovation and Skills (BIS) on 16 March 2011 contains proposals touching on every area of competition regulation. The consultation explains that the key aims of the reforms are to improve the robustness of decisions and strengthen the regime, support the competition authorities in taking forward the right cases, and improve speed and predictability for business.

http://www.cliffordchance.com/publicationviews/publications/2011/04/reform_of_the_ukcompetitionregimewhatso.html

Luxembourg Quarterly Update

This edition of the Luxembourg Quarterly Update discusses, amongst other things: (1) the adoption of CESR's guidelines on UCITS IV (Level 3 measures); (2) the European Commission's feedback on changes to the depositary function and managers' remuneration under UCITS V; (3) the latest developments on the AIFM Directive; and (4) the ECON's report on the proposed regulation on OTC derivatives and market infrastructures.

In particular, the last section discusses measures taken in Luxembourg relating to the implementation of the UCITS IV Directive and tax changes impacting UCIs.

http://www.cliffordchance.com/publicationviews/publications/2011/04/luxembourg_fundsquarterlyupdate-april2011.html

New Definition of 'Investment Fund'

The Italian Government is opening a consultation on proposed amendments to the secondary legislation governing investment funds. The consultation period closes on Friday 23 April 2011. The proposed amendments to the secondary legislation are meant to implement the new definition of 'investment fund' as introduced by Article 32 of Decree Law No. 78 of 31 May 2010.

This briefing discusses the new definition of 'investment fund'.

http://www.cliffordchance.com/publicationviews/publications/2011/04/new_definition_ofinvestmentfund.html

Taking Security in the Russian Federation

There are six types of security expressly referred to in the list of security in the Civil Code of the Russian Federation: (1) pledge or mortgage; (2) suretyship; (3) bank guarantee; (4) possessory lien; (5) security deposit; and (6) penalty. Although this list is stated not to be exhaustive (for example, the Civil Code provisions on factoring contemplate an assignment of a claim by way of security), the legal status of other forms of security such as an assignment is not clear. Of the listed types of security, only the pledge or mortgage allows the creation of a non-possessory security interest in an asset, and affords a creditor the status of a secured creditor in the insolvency of the pledgor or mortgagor.

This briefing describes those types of security that are commonly used for cross-border financing transactions with a Russian element.

English version

http://www.cliffordchance.com/publicationviews/publications/2011/04/taking_security_intherussianfederatio0.html

Russian version

http://www.cliffordchance.com/publicationviews/publications/2011/04/taking_security_intherussianfederatio.html

India eases foreign investment norms

As a part of its regular half yearly exercise, the government of India has released a new edition of its Consolidated FDI Policy, in which it has introduced a number of policy changes aimed at increasing the inflow of FDI in India.

This briefing discussing the changes.

http://www.cliffordchance.com/publicationviews/publications/2011/04/india_eases_foreigninvestmentnorms.html

Fukushima – Potential nuclear liabilities

As a result of the earthquake and subsequent tsunami in the Tohoku region of Japan on 11 March 2011, nuclear power plants operated by The Tokyo Electric Power Company, Incorporated (TEPCO) sustained damage that has led to the release of radioactive materials.

This briefing looks at TEPCO's potential liability arising out of the nuclear accident.

English version

http://www.cliffordchance.com/publicationviews/publications/2011/04/fukushima_potentialnuclearliabilities.html

Japanese version

http://www.cliffordchance.com/publicationviews/publications/2011/04/fukushima_potentialnuclearliabilitie.html

Amendments to the Merger Filing Procedure in Japan

On 4 March 2011, the Japan Fair Trade Commission (JFTC) announced its intention to amend its implementing regulations and guidelines on merger filings, including the abolishment of the prior consultation system. This change is expected to facilitate M&A transactions in Japan by simplifying and speeding up the merger control (antitrust) review process. The JFTC has invited comments from the public on these amendments. The JFTC intends to implement the revised system in July 2011.

This briefing describes the key features of these amendments.

http://www.cliffordchance.com/publicationviews/publications/2011/04/amendments_to_themergerfilingprocedureinjapan.html

Japan Airlines Back to Normal – Completion of the JAL Corporate Reorganisation

On 28 March 2011, Japan Airlines (JAL) successfully exited its corporate reorganisation proceedings following the approval of the Tokyo District Court. The corporate reorganisation proceedings of JAL commenced on 19 January 2010, and the Court approved its reorganisation plan on 30 November 2010. While companies typically take about 2 years to exit reorganisation proceedings, JAL managed to return to normal business by refinancing most of its reorganisation claims after 1 year, 2 months from the commencement of proceedings.

This briefing analyses how and why JAL exited very much ahead of the average timeframe.

English version

http://www.cliffordchance.com/publicationviews/publications/2011/04/japan_airlines_backtonormal-completionofth0.html

Japanese version

http://www.cliffordchance.com/publicationviews/publications/2011/04/japan_airlines_backtonormal-completionofth.html

‘Foreign Officials’ Under the Foreign Corrupt Practices Act – It means what the DOJ says it means

On April 1, 2011, in a rare judicial ruling on the reach of the Foreign Corrupt Practices Act (FCPA), a US District Court in California confirmed that employees of state-owned or state-controlled entities (SOE) can be included in the term ‘foreign official’. The Court agreed with the US Department of Justice (DOJ) that SOEs may be ‘instrumentalities’ of foreign governments. Accordingly, payments to officers and employees of SOEs, like traditional government agencies and officials, for the purpose of obtaining or retaining business, constitute bribery prohibited by the FCPA.

This briefing discusses the case.

http://www.cliffordchance.com/publicationviews/publications/2011/04/foreign_officialsundertheforeigncorrup.html

Supplemental IRS guidance on upcoming compliance obligations of non-US banks, financial intermediaries and investment vehicles

On 8 April 2011, the US Internal Revenue Service (IRS) issued supplemental guidance on the new compliance obligations enacted under the Hiring Incentives to Restore Employment Act of 2010 (the HIRE Act) that will be imposed beginning in 2013, subject to certain transitional rules, on non-US banks, financial intermediaries and investment vehicles holding US investments directly or through intermediaries.

The guidance, published under Notice 2011-34, supplements guidance set forth in Notice 2010-60 on how the IRS will apply new US tax compliance rules beginning in 2013 to non-US banks, financial intermediaries and investment vehicles. The guidance in the two Notices will help non-US banks, financial intermediaries and investment vehicles (‘Foreign Financial Institutions’ or ‘FFIs’) evaluate their options for avoiding a new 30% withholding tax on proceeds from investments in US financial assets. In considering its options, an FFI must consider not only the scope of the obligations, but whether the FFI will be permitted to take such measures under its local law and whether affiliated FFIs are also able to comply.

This briefing discusses the guidance.

http://www.cliffordchance.com/publicationviews/publications/2011/04/supplemental_irsguidanceonupcomingcompliance.html

US regulators propose to use global assets to determine US systemic significance

Many experts have said that a determination of systemic significance requires an understanding of a wide range of characteristics of a financial institution and its business. Nonetheless, the Dodd-Frank Wall Street Reform and Consumer Protection Act emerged from Congress with a threshold that effectively deems as systemically significant any company that controls a US bank and has USD 50 billion or more in consolidated assets. Presumably because of their significance to the US financial system, each of these US bank holding companies will be subject to ‘enhanced prudential requirements.’

But what about non-US banks that are deemed to be US bank holding companies because they have US banking operations? Many non-US banks are deemed to be US bank holding companies simply because they operate a branch or an agency in the United States. Now the Federal Reserve and the Federal Deposit Insurance Corporation (FDIC) have proposed rules that would bring under the scope of the Dodd-Frank Act provisions for systemically significant institutions any non-US bank with US banking operations that has USD 50 billion or more in consolidated global assets. Consequently, it would not matter if a non-US-based bank had only insignificant US operations. If it has USD 50 billion or more in consolidated global assets, it will be treated in the same manner as the most systemically significant US bank holding company.

This briefing discusses the proposals.

http://www.cliffordchance.com/publicationviews/publications/2011/04/us_regulators_proposetouseglobalassetst.html

SEC likely to postpone deadlines for compliance with investment adviser registration and reporting requirements under Dodd-Frank Act

The staff of the SEC has indicated that it will consider postponing to the first quarter of 2012 the 21 July 2011 registration deadline for currently unregistered private equity and hedge fund advisers who are required to register with the SEC under the Dodd-Frank Wall Street Reform and Consumer Protection Act – and presumably also the 20 August 2011 reporting deadline for 'exempt reporting advisers' under the Dodd-Frank Act.

This briefing discusses the likely postponement of the deadlines.

http://www.cliffordchance.com/publicationviews/publications/2011/04/sec_likely_to_postponedeadlinesforcompliance.html

SEC Proposes Rules for Compensation Committees and Compensation Consultants under Dodd-Frank

The SEC issued a proposed rule on 30 March 2011 to implement Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which generally requires the SEC to adopt certain listing standards related to the compensation committee of a company's board of directors, as well as its compensation advisers. The proposed rule would also require new disclosures from companies concerning their use of compensation consultants and conflicts of interest.

This briefing paper discusses the proposed rule.

http://www.cliffordchance.com/publicationviews/publications/2011/04/sec_proposes_rulesforcompensationcommittees.html

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