

International Regulatory Update

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Euro area leaders issue statement on eurozone summit

The euro area Heads of State or Government have issued a [statement](#) following the first day of their summit to resolve the eurozone crisis.

The leaders agreed on a new 'fiscal compact' and on strengthened economic policy coordination. They noted that the fiscal compact will require a new deal between euro area Member States, to be transposed into national legislation. Accordingly, an intergovernmental Fiscal Compact Treaty to make this agreement binding will be drafted by March 2012. The Treaty will be open to non-eurozone countries for ratification as well.

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In addition, the leaders agreed on the need to strengthen stabilisation tools to face short-term challenges. In particular, they agreed:

- the European Financial Stability Facility (EFSF) leveraging will be rapidly deployed;
- the entry into force of the European Stability Mechanism (ESM) Treaty will be accelerated – the Treaty will enter into force as soon as Member States representing 90% of the capital commitments have ratified it, and the common objective is for the ESM to enter into force in July 2012;
- euro area and other Member States will consider, and confirm within 10 days, the provision of additional resources for the IMF of up to EUR 200 billion (USD 270 billion), in the form of bilateral loans, to ensure that the IMF has adequate resources to deal with the crisis – the leaders noted that they are looking forward to parallel contributions from the international community;
- to adhere to the well established IMF principles and practices concerning involvement of the private sector; and
- to change voting rules in the ESM to include an emergency procedure – the mutual agreement rule will be replaced by a qualified majority of 85% in case the Commission and the ECB conclude that an urgent decision related to financial assistance is needed when the financial and economic sustainability of the euro area is threatened.

[Herman Van Rompuy's remarks](#)

European venture capital funds: European Commission proposes regulation

The European Commission has published a [proposal for a regulation](#) setting uniform rules for the marketing of venture capital funds under the designation 'European Venture Capital Funds', which would act as a passport allowing venture capitalists to market their funds across the EU. A venture capital fund would qualify for this designation if it fulfils the following requirements: (1) it invests 70% of the capital committed by its sponsors into unlisted SMEs; (2) it provides equity or quasi-equity to these SMEs; and (3) it does not employ leverage (i.e. it does not invest more capital than that committed by investors, so it is not indebted).

Under the Commission's proposal, the home Member State regulator would only register funds that comply with the essential requirements of the framework. Once registered, the manager would have access to the passport. All funds that operate under this designation would have to abide by uniform rules and quality standards (including disclosure standards to investors and operational requirements) in raising funds. The home Member State regulator would also be able to withdraw the passport if the venture capital fund manager does not fulfil all of the essential requirements.

[Impact Assessment – full text](#)

[Impact Assessment – summary](#)

[FAQs](#)

Social entrepreneurship funds: European Commission proposes regulation

The European Commission has published a [proposal for a regulation](#) which introduces a new 'European Social Entrepreneurship Funds' label to assist investors to identify more easily funds that focus on investing in social businesses. Under the Commission's proposal, funds that market themselves using the 'European Social Entrepreneurship Funds' brand would have to invest at least 70% of their money in social businesses. Each European Social Entrepreneurship Fund would have to provide key information to investors in a standardised way, covering areas such as the social objectives of the fund, the social businesses it invests in, and how the fund will assess how well these businesses achieve their social goals.

The 'European Social Entrepreneurship Funds' label would also act as a passport. Once a fund has provided the required information and fulfilled certain organisational and conduct requirements, it would have the right to gather investments from investors across the EU. European Social Entrepreneurship Funds would be supervised by the authorities in the Member State where they are based.

[Impact Assessment – full text](#)

[Impact Assessment – summary](#)

[FAQs](#)

EBA publishes formal recommendation and final figures relating to banks' recapitalisation needs

EBA has published a formal [recommendation](#) and the final figures related to banks' recapitalisation needs. The recommendation states that national supervisory authorities should require the banks included in the sample to strengthen their capital positions by building up an exceptional and temporary capital buffer against sovereign debt exposures to reflect market prices as at the end of September. In addition, banks will be required to establish an exceptional and temporary buffer such that the Core Tier 1 capital ratio reaches a level of 9% by the end of June 2012. EBA has noted that sales of sovereign bonds will not alleviate the buffer requirement to be achieved by June 2012.

With respect to next steps, the recommendation indicates that national authorities will require banks to submit, by 20 January 2012, their plans detailing the actions they intend to take to reach the set targets. These plans will have to be agreed with national authorities and reviewed, shared and consulted on with EBA and with other relevant competent authorities within colleges of supervisors as appropriate. National authorities will seek to ensure that throughout the colleges' discussions of capital plans the need to maintain exposure levels of banking groups in all Member States is taken into account, recalling that if and where necessary EBA will use its mediation role to that effect.

EBA has noted that these measures form part of a broader European package, agreed by the European Council on 26 October and confirmed during the ECOFIN Council on 30 November, to address the current situation in the EU by restoring stability and confidence in the markets.

[2011 EU Capital Exercise results](#)

Qualifying Holdings Directive: European Commission consults on application

The European Commission has issued a [consultation paper](#) on the application of Directive 2007/44 EC as regards acquisitions and increase of holdings in the financial sector.

The Directive was adopted in 2007 and lays down uniform rules and evaluation criteria for national supervisors to prudentially assess mergers and acquisitions in the financial sector. Under Article 6 of the Directive, the Commission has to review the application of the Directive and submit a report to the European Parliament and the Council, together with any appropriate proposals to review the Directive. The Commission is seeking evidence on how the Directive was applied in the EU Member States to assist it in the preparation of this report.

Comments are due by 10 February 2012.

ESMA's Securities and Markets Stakeholder Group publishes advice on UCITS exchange-traded funds

ESMA's Securities And Markets Stakeholder Group has published its [advice](#) on ESMA's July 2011 [discussion paper](#) on policy orientations for guidelines for UCITS exchange-traded funds and structured UCITS.

The group generally supports the recommendations made by ESMA, and agrees that, amongst other things:

- UCITS ETFs should use an identifier in their titles, fund rules, Key Investor Document, prospectus and marketing material;
- investors should be provided with sufficient details to understand the index tracking policy used;
- there is a need for greater disclosures regarding synthetic ETFs, notably in relation to underlying exposure, counterparties and the portfolio fund, as well as for stricter requirements regarding the quality of the collateral;
- securities lending should be made more transparent to investors, should be forbidden with regard to the collateral received in exchange for the swap in the case of synthetic ETFs, and the lending agent must be required to indemnify the UCITS when a counterparty defaults for all types of ETFs (synthetic and physical); and
- actively-managed UCITS ETFs should be subject to greater disclosure requirements.

UK regulated covered bonds: FSA issues policy statement on changes to regulatory framework

The FSA has published a [Policy Statement \(PS 11/16\)](#) which reports on the main issues arising from its joint [Consultation Paper](#), published jointly with HM Treasury, on proposals for the review of the UK's regulatory framework for covered bonds. The FSA has indicated that the changes are designed to increase transparency for investors and make features of the UK regime readily comparable to those from other countries.

The following changes to the FSA's RCB Sourcebook are being made: (1) introduction of consistent standards of investor reporting; (2) clarification of the role of 'Asset Pool Monitor'; and (3) refining of regulatory reporting.

These changes will come into force on 1 January 2013.

LSE consults on proposed rule amendments regarding liquidity provision on order book for retail bonds

The London Stock Exchange (LSE) has issued a [Notice \(N25/11\)](#) outlining a number of rule amendments intended to support the development of liquidity on the order book for retail bonds. In particular, the LSE is planning to introduce a bid-only liquidity provision facility through a new category of participant in the order book for retail bonds – ORB Liquidity Providers (OLPs). The obligations on OLPs will be restricted to those bond issues which, in the LSE's judgement, are deemed to be sufficiently small in size to facilitate bid-only liquidity provision. All such bonds issues will continue to be UKLA listed.

The [attachment to N25/11](#) outlines the proposed obligations under the LSE's rules for OLPs registering as such with the LSE. OLPs will be required to offer continuous bid prices via limit orders in at least the Exchange Market Size for the relevant security during the mandatory period. OLPs will be required to maintain bid-only prices during continuous trading for each security in which they are registered for at least 90% of the mandatory period. OLPs may choose to offer two way prices via limit orders when they are able to, however the maintenance of an offer price will not be mandated under the rules.

Comments are due by 11 January 2012.

FSA sets out its expectations of non-executive directors in managing risks to retail customers

The FSA has published [proposed guidance](#) on the role of non-executive directors in ensuring customers are treated fairly within their firms. The FSA has noted that it expects non-executive directors to ensure that the firm is meeting its responsibilities to retail customers.

The guidance recommends that non-executive directors should consider whether: (1) business proposals are aligned with the firm's conduct risk strategy and within its stated conduct risk appetite; (2) the firm's culture is such that it delivers good behaviours and outcomes, both prudentially and for customers; (3) they have the right information to enable them to make robust decisions; (4) risks to customers have been identified; (5) appropriate actions are in place to mitigate and monitor such risks; (6) the Board supports the identification and escalation of issues when they go wrong and ensures appropriate resolution; and (7) the business learns from identified issues and draws out the wider implications.

Comments are due by 18 January 2012.

HM Treasury consults on draft legislation for Finance Bill 2012

HM Treasury has published for consultation [draft legislation](#) for the Finance Bill 2012. Amongst other things, the draft legislation covers: (1) the reform of controlled foreign companies (CFC) rules; (2) improvements to the real estate investment trust regime; (3) tax transparent investment funds; (4) the bank levy rate and amendments; and (5) Solvency II and the taxation of insurance companies.

The majority of these measures were announced in Budget 2011, with views sought on policy during the summer. The draft legislation reflects the outcomes of these consultations and the government has also published response documents.

Comments are due by 10 February 2012.

[Overview of draft legislation for Finance Bill 2012](#)

FSA issues Quarterly Consultation No. 31

The FSA has published its [Quarterly Consultation \(No. 31\) \(CP11/27\)](#), in which it invites comments on miscellaneous amendments to the Handbook. Amongst other things, the consultation paper proposes amendments to: (1) clarify the liquidity rules by confirming the policy intention of the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) rules, to change the realisation requirements for non-liquid asset buffer assets to operational testing through the use of the central bank facilities and to provide details of management actions on the occurrence of certain events; (2) improve the clarity of the reporting requirements and to facilitate better data quality; (3) allow a non-UCITS retail scheme that is subject to investment powers and borrowing limits to act as a feeder fund and to incorporate consequential changes to the rules applying to UCITS feeder funds; and (4) the qualification standards that advisers have to meet as part of the Retail Distribution Review (RDR).

Comments are due by 6 February 2012.

Interim Financial Policy Committee issues policy recommendations

The Bank of England (BoE) has published the [record](#) of the interim Financial Policy Committee (FPC) meeting held on 23 November 2011.

At the meeting, the FPC recommended that, if earnings are insufficient to build capital levels further, banks should limit distributions and give serious consideration to raising external capital in the coming months. The Committee also recommended that the FSA encourage banks to disclose their leverage ratios, as defined in the Basel III agreement, as part of their regular reporting not later than the beginning of 2013.

The FPC will hold its next meeting on 16 March 2012.

HM Treasury consults on bank executive remuneration disclosure

HM Treasury has published a [consultation paper](#) on a proposed mandatory requirement, from 2012, for the largest banks operating within the UK to publish the pay details of their eight highest-paid executives with responsibility for managing risk. The disclosures will not include executives on the main board of a UK bank, as their remuneration agreements must already be disclosed.

Although banks will not be required to publish the name or title of the recipient, disclosure must include the pay of each individual, split up into fixed, variable, deferred variable, long term incentive scheme vestings, pension accruals, joining benefits and severance benefits. The first disclosures will be due in 2012, covering the 2011 year. The proposals would apply to banks with assets in excess of GBP 50 billion.

In February 2011, the government announced an accord with major UK banks under Project Merlin. As part of this, the government indicated that it would consult on a mandatory requirement, from 2012, for large banks to publish the pay of their eight highest paid senior executive officers. The consultation paper also builds on a commitment by the four major UK banks to make detailed remuneration disclosures with respect to the five highest paid non-board executives within their organisations.

Comments are due by 14 February 2012.

FSA consults on proposed update to distributor-influenced funds factsheets

The FSA has published a [proposed update](#) to its guidance on distributor-influenced funds. In 2008, the FSA published factsheets intended to help firms active in the distributor-influenced funds market or thinking of entering it. It is now consulting on an update to these factsheets to take account of coming changes to the rules as a result of the Retail Distribution Review (RDR).

The FSA expects the RDR to have a significant impact on the use of distributor-influenced funds. In particular, the FSA has indicated that: (1) firms advising on distributor-influenced funds should no longer receive a share of the annual management charge for their role on a distributor-influenced fund governance committee; (2) adviser charges for recommending a distributor-influenced fund should not vary inappropriately compared with substitutable or competing retail investment products; and (3) it will be difficult for firms to recommend distributor-influenced funds and meet the RDR standard for independent advice.

Comments are due by 30 January 2012.

Financial transaction tax: House of Lords EU Committee voices concerns

The House of Lords European Union Sub-Committee on Economic and Financial Affairs has published a [letter](#), dated 29 November 2011, to Mark Hoban, the Financial Secretary to HM Treasury, on the European Commission's proposal for a directive on a common system of financial transaction tax (FTT) in the EU.

The Committee is currently conducting an inquiry into what the impact of an FTT would be. The letter is intended to highlight the Committee's concerns at an early stage, while the inquiry is still on-going and negotiations on the FTT progress.

FSTB consults on simplified reporting by private companies under Companies Bill

The Financial Services and the Treasury Bureau (FSTB) has issued a [consultation paper](#) on the qualifying criteria for private companies to prepare simplified financial and directors' reports under the Companies Bill.

The Companies Bill was introduced into the Legislative Council in January 2011. One of the proposals in the Bill was to allow private companies and holding companies of groups of private companies meeting certain size criteria to be automatically qualified for the preparation of simplified financial and directors' reports. At the suggestion of some members, the Legislative Council Bills Committee requested that the FSTB conduct a consultation on the proposal to relax the criteria further. In response to that request, the FSTB is now seeking public views on whether further flexibility should be incorporated into the Companies Bill to allow larger private companies or groups of private companies exceeding the size criteria to adopt simplified reporting with their members' approval.

Comments are due by 16 January 2012.

RECENT CLIFFORD CHANCE BRIEFINGS

Back to the future – new State aid rules for the sovereign debt crisis

The European Commission has again extended and updated its rules on State aid for banks, this time to take into account the sovereign debt crisis. The changes accord favourable treatment to banks whose need for State support is essentially linked to the sovereign debt crisis, and modify the premiums payable by banks for State guarantees, so that they reflect the creditworthiness of the guarantor State. They will also allow EU governments more flexibility to carry out recapitalisations by way of ordinary shares, provided they do so at a discount determined in accordance with the Commission's guidelines.

This briefing discusses the updated rules.

http://www.cliffordchance.com/publicationviews/publications/2011/12/back_to_the_futurenewstateaidrulesforth.html

MiFID II – assessing the impact on private equity firms

The Markets in Financial Instruments Directive (MiFID) is undergoing a fundamental review by the European Commission. MiFID is one of the main pieces of EU financial services legislation and the Commission is proposing significant reforms.

This briefing considers the extent to which these reforms will have an impact on private equity firms.

http://www.cliffordchance.com/publicationviews/publications/2011/12/mifid_ii_assessingtheimpactonprivateequity.html

Bank Executive Remuneration Disclosure – December 2011

The government has launched a consultation on new requirements for large banks operating in the UK to disclose the remuneration of their eight highest paid senior executives. The new disclosure regime is expected to operate from 2012. The consultation is open until 14 February 2012.

This briefing discusses the proposals.

http://www.cliffordchance.com/publicationviews/publications/2011/12/bank_executive_remunerationdisclosure-decembe.html

Contentious Commentary – a review for litigators

'Contentious Commentary' provides a summary of recent developments in litigation. The newsletter is produced by lawyers in the litigation and dispute resolution practice at Clifford Chance.

http://www.cliffordchance.com/publicationviews/publications/2011/12/contentious_commentary-a-review-for-litigator.html

One Step Closer to UK REIT Reforms

On Budget Day 2011, the UK government announced that it wanted comments on possible changes to the UK REIT rules, with the aim of encouraging new investment via REITs by relaxing certain of the conditions. The consultation was well received by the real estate sector, and HM Treasury received a significant number of responses from interested parties, including from representative bodies to which Clifford Chance contributed. Draft legislation to effect the proposed changes was published on 6 December 2011. The intention is that this will be enacted in the Finance Act 2012.

This briefing considers the key changes to the REIT rules set out in this draft legislation.

http://www.cliffordchance.com/publicationviews/publications/2011/12/one_step_closer_toukreitreforms.html

Belgian Federal Budget 2012 – Final proposed tax measures

Last week an agreement was finally reached on the 2012 Belgian Federal Budget. A number of important new tax measures were proposed during the negotiations. The final list of measures adopted last week has been narrowed down considerably and has now been confirmed by the government in formation. However, please note that some important details of the new tax measures still need to be worked out and agreed on.

This briefing highlights the most important amendments affecting companies and individuals as well as some other diverse measures.

http://www.cliffordchance.com/publicationviews/publications/2011/11/belgian_federal_budget2012finalproposedtaxmeasures.html

New Merger Control Rules in Slovakia

In November 2011, a long expected amendment to the Slovak merger control rules was approved under Act No. 387/2011 Coll. and Decree No. 402/2011. The amendment results from the efforts of the Slovak Antimonopoly Office to reform its stringent merger control rules. The major changes brought about by the amendment are as follows: (1) new turnover thresholds; (2) shorter clearance deadlines; (3) introduction of the SIEC test for the substantive assessment; and (4) new definition of affected markets.

The amendment will become effective on 1 January 2012. Although it does not apply to notifiable transactions signed before 31 December 2011 and any merger control proceedings commenced before that date, the Slovak Antimonopoly Office will stop any merger clearance proceedings where the new merger control thresholds will not be met.

This briefing discusses the amendment.

http://www.cliffordchance.com/publicationviews/publications/2011/12/new_merger_controlrulesinslovakia.html

Tianjin launched pilot programme for foreign-invested private equity investment

Following Shanghai and Beijing, Tianjin has become the third municipality promulgating local legislation to launch its own pilot programme to promote private equity investments. Qualified foreign-invested private equity funds and foreign-invested equity management institutions will enjoy an exemption from foreign exchange control over equity investment. A foreign-invested fund invested by qualified foreign limited partners (QFLPs) will be able to convert foreign currency into RMB for private equity investments subject to a specified quota.

This briefing provides an overview of the Tianjin pilot programme, illustrating the criteria for attaining the status of a QFLP, pilot enterprise and approved manager as well as discusses the existing foreign exchange settlement restrictions. The briefing also provides a helpful comparison of these Tianjin rules with those under similar pilot programmes in Shanghai and Beijing.

English version

http://www.cliffordchance.com/publicationviews/publications/2011/12/tianjin_launchedpilotprogrammefo0.html

Chinese version

http://www.cliffordchance.com/publicationviews/publications/2011/12/tianjin_launchedpilotprogrammefo.html

BRIC by BRIC – Brazil accedes to Cape Town

On 30 November 2011, Brazil signed its instruments of accession to the Cape Town Convention and Aircraft Protocol. This is a significant step in the treaty's development; Brazil is the 50th state and the final 'BRIC' economy to sign up.

This briefing discusses Brazil's accession.

<http://inform.cliffordchance.com/ve/ZZ7191LBaB312692u99X>

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