

International Regulatory Update

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UK government sets out plans to split retail and investment banking

The government has published a [White Paper](#) setting out proposals to reform the structure of banking in the UK. The White Paper, which details how the government intends to implement the recommendations of the Independent Commission on Banking (ICB), offers further detail on plans to separate retail and investment banking through a 'ring-fence' and increase competition in the banking sector. It sets out proposals to make banks more resilient, as well as making them simpler to resolve in the event of failure.

Comments are due by 6 September 2012. Draft legislation will follow in Autumn 2012 and the White Paper reconfirms that all legislation will be in place by the end of this Parliament in 2015.

[Mark Hoban's statement](#)

Mansion House speech: George Osborne and Mervyn King announce new 'funding for lending' scheme to encourage bank lending

The Chancellor of the Exchequer, George Osborne, has delivered his annual Mansion House speech. Amongst other things, Mr. Osborne discussed the publication of the White Paper, which details how the government intends to implement the recommendations of the Independent Commission on Banking (ICB). Retail banking will be ring-fenced and there will be a mechanism to bail in creditors when a bank fails. However, Mr. Osborne also emphasised that the government recognises the special position of UK banks with large overseas deposits, and will watch international developments before imposing a fixed leverage ratio.

Mr. Osborne also announced that the government will amend the Financial Services Bill to give the Financial Policy Committee (FPC) a secondary objective to support the economic policy of the government. Mr. Osborne intends to make it a legal requirement for the FPC to report how its actions are compatible with economic growth as well as stability.

Finally, Mr. Osborne discussed the eurozone crisis. He argued that any successful solution will require further integration amongst the eurozone countries and is likely to include: (1) more support from stronger economies to help weaker economies adjust; (2) more pooling of resources, whether through common Eurobonds or some other mechanism; (3) a shared backstop for the banking system

to strengthen banks and protect depositors; and (4) much closer collective oversight of fiscal and financial policy.

Although Mr. Osborne expressed his support for proposals for a banking union in the eurozone, he emphasised that a banking union is not a natural consequence of a single market and that Britain will not take part in this banking union.

Mervyn King, the Governor of the Bank of England, also gave a speech, in which he announced measures on liquidity, funding and capital intended to support the banking sector and provide it with incentives to increase lending to the real economy. In particular, he announced that the Bank and the Treasury are working together on a 'funding for lending' scheme that would provide funding to banks for an extended period of several years, at rates below current market rates and linked to the performance of banks in sustaining or expanding their lending to the UK non-financial sector. Mr. King indicated that this scheme could be in place within a few weeks.

[Chancellor's speech](#)
[Governor's speech](#)

CRD 4: EBA consults on draft regulatory technical standards on concept of gain on sale associated with future margin income in a securitisation context

The EBA has published a [consultation paper](#) on draft regulatory technical standards on the concept of gain on sale associated with future margin income in a securitisation context. The consultation paper relates to the European Commission's legislative proposals for a fourth package of amendments to the Capital Requirements Directive (CRD 4), which were published in July 2011 and set out prudential requirements which are expected to be applicable as of 1 January 2013.

The draft regulatory technical standards are intended to specify further the concept and the treatment of a gain on sale, meaning any increase (or part of the increase) in equity under the applicable accounting standard arising from future margin income in the context of a securitisation transaction.

Comments are due by 12 August 2012.

Market abuse regulation: Danish EU Council Presidency publishes compromise text

The Danish EU Council Presidency has published a new [compromise text](#) for the proposed regulation on insider

dealing and market manipulation, which updates the existing framework provided by the Market Abuse Directive.

IOSCO reports on institutional investors in emerging markets

IOSCO has published a [report](#) which focuses on a range of developmental issues and challenges faced by emerging markets seeking to develop their institutional investor base. These challenges include limited capital market size and liquidity, competition to capital market investment from substitute services, regulatory restrictions, overly dominant distribution channels and constraints on cross-border activities. Additional discussions on related macro-economic and capital market conditions in the emerging markets and analysis of cross-border activities of institutional investors are also included in the report.

The report offers a set of recommendations for policy makers and regulators looking to attract and better regulate institutional investors in their jurisdictions. In addition, the report recommends that regulators periodically review the regulatory framework and coverage, combine deregulation with enhanced supervision and enforcement, and improve coordination with other regulatory bodies to monitor, mitigate and manage systemic risk.

Basel III: Basel Committee reports to G20 leaders on global implementation

The Basel Committee on Banking Supervision has published its [report](#) to the G20 leaders on the implementation of its banking standards across member countries. The report will be considered at the G20 Summit in Los Cabos, Mexico, on 18 and 19 June.

The Basel Committee's implementation review process includes three levels of review:

- Level 1 – ensuring the timely adoption of Basel III;
- Level 2 – ensuring regulatory consistency with Basel III; and
- Level 3 – ensuring the consistency of outcomes initially focusing on risk-weighted assets (RWA).

The preliminary Level 2 assessments of domestic rules in the European Union, Japan and the United States have identified areas of divergence between domestic regulations and the Basel standards.

The Level 3 assessments are analysing consistency of RWAs in the banking book and trading book across banks and jurisdictions. The Basel Committee has indicated that this work is currently exploratory but could eventually lead

to policy recommendations to deal with potential inconsistencies.

The Level 1 progress reports will continue to be published twice yearly. The full results for the first three Level 2 assessments of the EU, Japan and the US are expected to be published by the Committee around the end of September 2012. The two Level 3 assessments of RWAs in the banking book and the trading book will deliver initial findings to the Committee by the end of 2012.

Sharman Panel publishes final report and recommendations

The Financial Reporting Council (FRC) has published the [final report and recommendations](#) of the Sharman Panel of Inquiry. The inquiry, which was led by Lord Sharman, was launched in March 2011 to identify lessons for companies and auditors addressing going concern and liquidity risks.

The Panel's key recommendations are that: (1) the primary purpose of the going concern assessment and reporting should be to reinforce responsible behaviour in the management of going concern risks; and (2) the going concern considerations made by directors and reviewed by auditors should cover both solvency and liquidity and that these should be considered over the cycle, taking an appropriately prudent view of future prospects.

The Panel also looked at whether a special going concern disclosure regime is required for banks and concluded that this should not be necessary. However, the Panel considers it is critical to that conclusion that, in taking forward the recommendation to clarify and harmonise the differing definitions of going concern and related risks, the FRC should clarify that a conclusion that a bank is or would be reliant, in stressed circumstances, on access to liquidity support from central banks that is reasonably assured does not necessarily mean that the bank is not a going concern or that material uncertainty disclosures or an auditor's emphasis of matter paragraph are required.

Dutch Intervention Act published in State Gazette

Following its adoption by the Dutch Parliament on 22 May 2012, the Bill on Special Resolution Measures for Financial Institutions, also known as the Intervention Act, has been published in the Dutch State Gazette. It became effective on 13 June 2012, with retroactive effect from 20 January 2012. The Intervention Act is intended to increase the powers of the Dutch Central Bank and the Ministry of Finance to intervene in unstable financial institutions, notably banks and insurance companies, and amends the

Dutch Financial Supervision Act and the Dutch Bankruptcy Act.

The first category of measures focuses on the timely and orderly settlement of unstable financial institutions. In this respect, the Act allows for mandatory transfers of assets and liabilities of distressed banks and insurance companies (not including assets and liabilities of any parent company of a bank/insurer) to private parties (and possibly, for a shorter term, to a bridge bank established by the Dutch State or the Dutch Central Bank). The transfer would be against consideration (fair value), prepared by the Dutch Central Bank and approved by a Dutch court.

The second category of measures aims to ensure the stability of the financial system as a whole. Relevant measures include the expropriation of capital means of the bank, the insurer or its parent company, and expropriation of securities issued by the bank, the insurer or its parent company. The Minister of Finance may also take special, provisional measures in respect of the bank, insurer or parent company, e.g. appointing a new director, setting aside statutory requirements for certain acts etc. Such special measures have a temporary character and are not intended to be permanent. In order to make effective intervention possible, the Act limits the rights of counterparties of an unstable financial institution to exercise certain contractual rights after a supervisory measure has been issued by one of the regulatory authorities.

[Intervention Act \(Dutch\)](#)

Swiss National Bank publishes factsheet on implementation of countercyclical capital buffer

The Swiss National Bank (SNB) has published a [factsheet](#) describing its role and the approach that it will adopt in activating, adjusting and deactivating the countercyclical capital buffer (CCB), focusing on a sectoral CCB that will be targeted at imbalances developing in the Swiss mortgage and real estate markets.

Specific responsibilities will be assumed by the SNB, Swiss Financial Market Authority (FINMA) and Federal Council in the determination and implementation of the CCB. In particular, the SNB will be responsible for conducting regular assessments of the mortgage and real estate markets to determine whether the sectoral CCB should be activated, adjusted or deactivated.

The level of the CCB will be set proportionally to the degree of imbalances developing within the system (as measured by the key indicators) and will be capped at 2.5% of total

domestic risk weighted assets of a bank. The CCB will only be activated when imbalances appear to be building up. It will supplement existing capital requirements and can be implemented on a broad basis or targeted at specific segments of the credit market. The CCB will apply to Swiss banks and subsidiaries of foreign banks in Switzerland.

The CCB will be introduced in Switzerland in July 2012.

Basel III: CBRC issues Administrative Measures for the Capital of Commercial Banks (Trial Implementation)

The China Banking Regulatory Commission (CBRC) has issued the [‘Administrative Measures for the Capital of Commercial Banks \(Trial Implementation\)’](#) to implement the new capital regulatory standard in compliance with Basel III which was approved in November 2011 and further strengthen the capital restraint mechanism.

The trial measures establish a uniform and comprehensive regulatory system for the capital adequacy ratio (CAR). By reference to Basel III, the CAR regulatory system under the trial measures consists of four elements, including:

- the minimum capital requirements (i.e., 5% for Core Tier 1 Capital; 6% for Tier 1 Capital and 8% for Total Capital);
- the capital conservation buffer (i.e., 2.5% of risk weighted assets) and the countercyclical buffer (i.e., 0-2.5% of risk weighted assets), both to be satisfied by the Core Tier 1 Capital;
- additional capital requirements on domestic systematically important banks (i.e., 1% of risk weighted assets), to be satisfied by the Core Tier 1 Capital; and
- Pillar 2 Capital requirements for some asset portfolios and certain single banks.

Under the trial measures, the CAR of systematically important banks and non-systematically important banks will be 11.5% and 10.5% respectively.

In addition, the trial measures:

- set out a clear definition of capital in alignment with international market practice, which includes Core Tier 1 Capital, Additional Tier 1 Capital and Tier 2 Capital and their respective eligibility standards;
- expand the capital risk coverage, which includes credit risk, market risk and operational;
- divide commercial banks into four levels based on their CAR grading which will be subject to differentiated regulatory requirements; and

- set out a new risk weighted system for various assets. The trial measures will come into effect on 1 January 2013. Commercial banks may take a step-by-step approach during the transitional period but must satisfy all CAR requirements under the trial measures by the end of 2018.

HKMA issues further guidance and clarification on selling of investment products to private banking customers

Following consultation with the Securities and Futures Commission (SFC) and the Hong Kong Association of Banks (HKAB), the Hong Kong Monetary Authority (HKMA) has issued a [circular](#) to authorised institutions relating to the sale of investment products to private banking customers. The circular aims to provide further guidance and clarification to facilitate the private banking industry's compliance with regulatory requirements governing the sale of investment products whilst ensuring an appropriate degree of investor protection. The guidance and clarification have been issued in view of the special nature of the clientele and mode of operations of private banking operations, and taking into account relevant overseas practices.

SEC issues roadmap on phase-in of derivatives regulation

The SEC has published a [notice of statement of general policy](#) with request for public comments on the general order of issuance of rules that the SEC must issue to implement the requirements of Title VII of the Dodd-Frank Act (concerning derivatives regulation). The policy statement seeks to provide a roadmap to market participants on the phase-in of derivatives regulation. It does not estimate when the rules would be put in place, but describes the sequence in which they would take effect. The phased-in approach is intended to avoid the disruption that could occur if all the new rules took effect simultaneously.

Amongst other things, the SEC believes that rules concerning the treatment of cross-border security-based swap transactions and non-US persons acting in capacities regulated under Title VII should be proposed before final rules with cross-border implications are adopted. The SEC has further indicated that it does not expect to require compliance by participants in the US security-based swap market with the final rules arising under the Exchange Act before addressing the cross-border aspects of such rules.

UPCOMING CLIFFORD CHANCE EVENTS

Current developments and trends in corporate finance – Spring/Summer 2012 Webinar Series

From May to July 2012, Clifford Chance is holding a series of webinars, 40 minute live and interactive audio-visual broadcasts which are free to attend and easily accessible from your desktop. The Spring/Summer series of webinars provides commentary on current developments and trends in corporate finance.

We are now midway through our Spring/Summer 2012 Webinar Series. If you have not already registered for the remaining webinars please click on the relevant link below for registration and more detailed information on the topics to be covered.

Partners from Clifford Chance's corporate practice, together with other experts from across the Clifford Chance network will share their perspectives on:

- Navigating M&A deals in the complex world of merger control;
- Managing global risks; and
- Sea of Change for Corporates.

Each webinar contains 25 minutes panel discussion with 15 minutes response to questions submitted by the audience. All sessions qualify for Law Society, Bar Council non-accredited CPD points. Registration queries should be directed to Nikki Moore on +44 20 7006 4509 or nikki.moore@cliffordchance.com.

We have already broadcast the following webinars which are now available 'On-Demand':

- Sector Focus – Real Estate – All change;
- Cross-border M&A in the current economic environment; and
- Corporate borrowers – meeting the challenges of 2012 and new developments in restructuring techniques.

Should you wish to view them, please click on the relevant link below.

Registration page: Navigating M&A deals in the complex world of merger control
<http://mediazone.brighttalk.com/event/CliffordChance/eb2e9dffe5-6039-intro>

Registration page: Managing global risks
<http://mediazone.brighttalk.com/event/CliffordChance/4c9d1fbce4-6040-intro>

Registration page: Sea of Change for Corporates
<http://mediazone.brighttalk.com/event/CliffordChance/58ee2794cc-6041-intro>

On demand: Sector Focus – Real Estate – All change
<http://mediazone.brighttalk.com/event/CliffordChance/e0b60d939b-5941-intro>

On demand: Cross-border M&A in the current economic environment
<http://mediazone.brighttalk.com/event/CliffordChance/838aac83e0-6042-intro>

On demand: Corporate borrowers – meeting the challenges of 2012 and new developments in restructuring techniques
<http://mediazone.brighttalk.com/event/CliffordChance/b0dd033cbe-5942-intro>

The Bribery Act 2010 – one year on

Clifford Chance cordially invites you to attend a breakfast seminar to mark the first anniversary of the implementation of the Bribery Act 2010, which will take place at Clifford Chance's offices in 10 Upper Bank Street, London from 8.00 am to 10.00 am on 5 July 2012.

David Green took over as Director of the Serious Fraud Office in April 2012. What will the new Director's approach be to corporate prosecutions, self-reporting, whistle-blowing and the adequate procedures defence? What impact will the proposed introduction of US-style deferred prosecution agreements have on enforcement and corporate behaviour generally? David Green, along with former US DOJ prosecutor David Raskin, will examine these questions and a cross-sectoral panel of in-house experts from BP, Morgan Stanley and AMEC will also comment on experiences of the past year, and the challenges still ahead.

If you have any queries about this event please contact Victoria Hale at victoria.hale@cliffordchance.com, otherwise, please click on the link below to register.

Registration form
<http://inform.cliffordchance.com/vf/7431k9696V7664Hpg1>

RECENT CLIFFORD CHANCE BRIEFINGS

EMIR – the path to mandatory clearing

The proposed EU Regulation on OTC derivatives, central counterparties and trade repositories (EMIR) aims to implement the G20 commitment to require clearing of standardised OTC derivative contracts by central counterparties by the end of 2012. However, while it is expected that the EU legislation and implementing rules

giving effect to this commitment will be in place by the end of the year, there will still be a number of steps that need to happen before a clearing mandate will apply to market participants.

This short brief outlines these steps and sets out an indicative timeline showing the path to mandatory clearing in the EU.

http://www.cliffordchance.com/publicationviews/publications/2012/06/emir_the_path_tomandatoryclearing.html

European restructuring – triggers, trends and techniques

As tough economic conditions persist, how are restructuring techniques adapting to meet the needs of the market? And how do they differ across Europe? Journalist Brian Thompson reports as a team of Clifford Chance experts from Paris, Frankfurt, Madrid and London discuss the latest developments and look ahead to the future.

http://www.cliffordchance.com/publicationviews/publications/2012/06/european_restructuringtriggerstrendsan.html

Transaction Services Newsletter – June 2012

Transaction Services Newsletter is a bi-monthly publication designed for business and legal professionals working in cash management and securities services.

Amongst other things, this edition includes an article on the decision of the UK Supreme Court in the Lehman Brothers litigation on the 'question of client money'. The problem, in a nutshell, is this: how can I be sure that a financial institution client who gives me cash collateral is giving me 'clean' collateral which is not going to be whisked away if the client defaults?

http://www.cliffordchance.com/publicationviews/publications/2012/06/transaction_servicesnewsletterjune2012.html

Hong Kong enacts competition law

On 14 June 2012 Hong Kong's Legislative Council voted to enact Hong Kong's first cross-sector competition law, the Competition Ordinance. The prohibitions in the law are expected to come into effect when the new Competition Commission and Tribunal have been established, which the Administration estimates may take approximately 12 months. The law contains broadly framed prohibitions against anti-competitive agreements and abuse of market power. It does not introduce a general merger control regime at this stage. However, it does introduce a revised

merger regime for telecoms-related mergers to replace the existing regime.

This briefing discusses the Competition Ordinance.

http://www.cliffordchance.com/publicationviews/publications/2012/06/hong_kong_enactscompetitionlaw.html

Selling of Investment Products to Private Banking Clients

Following consultation with the Securities and Futures Commission (SFC) and the Hong Kong Association of Banks (HKAB), the Hong Kong Monetary Authority (HKMA) issued a circular on 12 June 2012 to provide further guidance and clarification to facilitate the private banking industry's compliance with regulatory requirements governing the sales of investment products. On a positive note, the guidance seeks to recognise a real distinction between private and retail banking.

This briefing discusses the 'private banking customer' definition and highlights the various regulatory requirements that private banks need to comply with when selling investment products to private banking clients.

http://www.cliffordchance.com/publicationviews/publications/2012/06/selling_of_investmentproductstoprivatebankin.html

Amendments to Singapore's International Arbitration Act come into force

The recent amendments to Singapore's International Arbitration Act (IAA) came into force on 1 June 2012. The amendments modify and clarify certain aspects of Singapore's arbitration laws and demonstrate Singapore's commitment to maintaining an arbitration framework in tune

with commercial reality and evolved to meet the needs of end users.

This briefing summarises the four main amendments to the IAA, along with a short explanation of the rationale behind each change.

Please contact Mhairi Appleton by email at mhairi.appleton@cliffordchance.com for a copy of this briefing.

Are You in Compliance with US Commodity Futures Trading Commission Registration Requirements?

As a result of changes made by the 2010 Dodd-Frank Act, sponsors, managers and advisers to private funds may now be required to register with the US Commodity Futures Trading Commission as commodity pool operators (CPOs) and/or commodity trading advisers (CTAs). The CFTC has already repealed two of the most relied-upon exemptions from CPO and CTA registration, with effect from April 2012. Soon, the CFTC's regulatory authority over private funds and their managers will reach even further, once action is taken to include swaps within the category of 'regulated commodity interests', because exposure to more than a de minimis amount of such interests may trigger CPO and CTA registration requirements. Private fund sponsors, managers and advisers should take steps now to reassess their obligations under the new CFTC registration regime.

This briefing discusses who should register as CPO and/or CTA and what such registration entails.

http://www.cliffordchance.com/publicationviews/publications/2012/06/are_you_in_compliancewithuscommodityfuture.html

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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