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Briefing note

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- Recent Clifford Chance briefings: Enhanced prudential standards for US operations of non-US banks; Introduction of class actions in France; and more. Follow this link to the briefings section.

MiFIR/MiFID 2: EU Council confirms agreement with EU Parliament

The Permanent Representatives Committee has approved, on behalf of the EU Council, a compromise agreed with the EU Parliament on the proposals for a directive on markets in financial instruments repealing Directive 2004/39/EC (MiFID 2) and a regulation on markets in financial instruments and amending the regulation on OTC derivatives, central counterparties and trade repositories (MiFIR). The compromise was reached on 14 January 2014 between the EU Council Presidency and EU Parliament negotiators and will enable adoption of the legislation in first reading.

The regulation and the directive will now have to be approved by the Parliament, so as to allow final adoption by the Council once the texts have been finalised in all languages.

ECOFIN Council confirms agreement with EU Parliament on revised Deposit Guarantee Schemes Directive

The Economic and Financial Affairs (ECOFIN) Council has approved a political agreement reached with the EU Parliament on the revised Deposit Guarantee Schemes (DGS) Directive.

The new Directive preserves the harmonised coverage level of EUR 100,000 per depositor and per bank. The guarantee will continue to be offered in the form of repayment in case of a bank's liquidation where deposits would become unavailable.

Repayment deadlines will be gradually reduced from currently 20 working days to 7 working days. This reduction will be made in three phases:

- 15 working days as from 1 January 2019;
- 10 working days as from 1 January 2021; and eventually
- 7 working days as from 1 January 2024.

While DGS will remain responsible for all banks authorised in their jurisdictions, they will also act as a 'single point of contact' and manage, on behalf of the home DGS, the claims of depositors of local branches of banks opened in other EU Member States.

Under the new Directive, the target level for ex ante funds of DGS is 0.8% of covered deposits to be paid by member banks (in case of highly concentrated banking sectors, the EU Commission may authorise a Member State to set a lower target level for its DGS, but not lower than 0.5% of covered deposits). A maximum of 30% of the funding can be made up of payment commitments. The target fund level must be reached within a 10-year period (which can be extended by 4 years if there is a substantial disbursement of DGS funds during the phasing-in period). In case of insufficient ex ante funds, DGS will collect immediate ex post contributions from the banking sector, and, as a last resort, they will have access to alternative funding arrangements such as loans from public or private third parties. There will also be a voluntary mechanism of mutual borrowing between DGS from different EU countries. Banks will contribute to the funds according to their risk profiles, with those exercising activities deemed to be riskier contributing more.

The Council is expected to adopt its position on the Directive at first reading in early March 2014 without further discussion, once the text has been finalised in all EU languages. The EU Parliament is expected to acknowledge the Council's position in March and to adopt the Directive at second reading at its plenary session in April 2014.

The directive will enter into force once it has been signed by both institutions and published in the Official Journal in the weeks following the April EU Parliament plenary session. The Member States will have one year after entry into force to transpose it into national law.

Banking union: ECOFIN Council reviews state of play of negotiations on single resolution mechanism

The ECOFIN Council has discussed possible adjustments to the Council's general approach reached in December 2013 on the single resolution mechanism.

The discussion was held with a view to giving more flexibility to the Council Presidency in the forthcoming trilogue negotiations with the EU Parliament on the establishment of the single resolution mechanism. The ECOFIN Council recognised the need to give the Presidency some flexibility to explore various ideas in order to identify possible options that might lead to an agreement.

The Presidency summarised the scope of such ideas as follows:

- the framing of the role of the plenary session of the single resolution board (SRB);
- a review of the thresholds for the involvement of the plenary, and of voting arrangements, especially during the initial transitional phase of the single resolution fund (SRF), to create a balanced solution for the use of the SRF;
- a possible better framing of the Council's role in order to limit its discretion and the grounds on which it can raise objections to the SRB's decisions, as well as a simplification and, if possible, shortening of the decision-making process;
- a more closely regulated oversight of the SRB over national resolution authorities;
- a central role for the European Central Bank in determining whether a banking institution is failing or likely to fail, while the SRB should ultimately maintain a possibility to effectively influence that decision too; and
- agreement that bail-in and not bail-out is the main guiding principle for bank resolution.

The Council has indicated that it remains committed to reaching an agreement acceptable to all parties within the deadline set by the European Council, enabling the Parliament to vote on it before the end of its current legislature in April 2014.

SEPA: ECOFIN Council adopts regulation extending deadline for migration

The ECOFIN Council has adopted a regulation postponing to 1 August 2014 the end-date in the euro area for the migration of domestic and intra-European credit transfers and direct debits in euros to the new SEPA-standard-based credit transfers and direct debits. The regulation amends Regulation 260/2012, which had set a migration deadline of 1 February 2014.

The postponement of the end-date was proposed by the EU Commission on 9 January 2014 for reasons of legal certainty, and in order to avoid any discontinuity to the application of Regulation 260/2012. On 4 February 2014, the EU Parliament approved the proposal at first reading without proposing any amendments, as agreed with the Council. The regulation adopted by the Council contains no substantive amendments to the Commission's proposal. It will apply with retroactive effect from 31 January 2014.

EU Parliament Committees vote on proposed new Anti-Money Laundering Directive

The EU Parliament's Committees on Economic and Monetary Affairs (ECON) and Civil Liberties, Justice and Home Affairs (LIBE) have voted on the proposed directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (AMLD).

Under the AMLD, as amended by MEPs, public central registers would list information on the ultimate beneficial owners of companies, foundations and trusts. EU Member States would have to make registers publicly available following prior identification of the person wishing to access the information through basic online registration.

The proposed rules would apply to banks and financial institutions, and also to auditors, lawyers, accountants, notaries, tax advisors, asset managers, trusts and real estate agents. If done intentionally, activities such as converting property, or disguising its true nature, source and ownership, whether in a Member State or in a third country, would be treated as money laundering. The same would apply to taking part in or facilitating these activities.

Where there is a little risk of wrongdoing, due to the limited nature of a financial activity and its low threshold, Member States could exclude some activities and people from the scope of the draft law. However, they may also extend its scope to cover cases where there is a high risk of money laundering.

The Committees' amendments are to be put to a vote by the Parliament's plenary in March 2014. The new Parliament to be elected in May 2014 will begin negotiating the legislation with the EU Commission and the Council in the second half of 2014.

Payment Services: ECON Committee votes on PSD 2 and proposed regulation on interchange fees for card-based payment transactions

The ECON Committee has voted on the EU Commission's proposals for a new Payment Services Directive (PSD 2) and a regulation on interchange fees for card-based payment transactions. The Committee's votes consolidate the Parliament's position on these proposals, which will be put to the vote during one of the upcoming plenary sessions.

ESMA and EBA publish results of their joint review of Euribor-EBF

The European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) have published the results of their joint review of the Euribor-EBF. The review found that Euribor-EBF has made significant progress in implementing the ESMA-EBA recommendations of 11 January 2013 addressing weaknesses and shortcomings in its governance and technical framework. In particular, the review found that Euribor-EBF has undertaken reform measures across all affected areas, with four recommendations fully implemented and a further six recommendations partially implemented. This progress provides the basis for improved transparency of the benchmark-setting process, enhanced governance of the benchmark, and improved quality of the resulting index.

ESMA publishes draft ITS on notifications regarding European venture capital and social entrepreneurship funds

ESMA has published its draft implementing technical standards with regard to the format of the notifications under the Regulation on European social entrepreneurship funds and the Regulation on European venture capital funds.

Credit rating agencies: ESMA sets out supervision focus for 2014

ESMA has published its Annual Report 2013 on credit rating agencies (CRAs) in the EU. The report also outlines ESMA's supervisory work plan for 2014.

ESMA has found that CRAs continue to progress in how they comply with the CRA Regulation, including improved internal transparency and disclosure to the market on credit rating activities as well as empowerment of the compliance function. However, ESMA considers that improvements are still necessary, notably in the following areas:

- validation of rating methodologies, to ensure that a credit rating assessment is a comprehensive risk assessment leading to high quality ratings;
- internal governance, ensuring the full independence of the internal review function and thereby reducing the risk of potential conflict of interest; and
- robust IT systems to support the rating process, including information security controls and protection of confidential rating information.

These issues form the basis for much of ESMA's supervision activities as outlined in its 2014 work plan. This includes the completion of the two on-going supervisory reviews into CRAs' monitoring of structured finance ratings and into small and medium-sized CRAs. A new thematic investigation on how CRAs review and validate their rating methodologies will also be launched, as well as dedicated work on CRAs' IT systems and controls. Following the entry into force of the amended CRA Regulation in June 2013, ESMA will also complete a specific assessment on CRAs' compliance with the new regulatory requirements.

EMIR: ESMA requests clarification of derivative definition

ESMA has sent a letter to the EU Commission asking it to clarify the definition of a derivative or derivative contracts under the European Market Infrastructure Regulation (EMIR).

ESMA's letter says that currently this definition is not harmonised across the EU, which could have a detrimental effect on the consistent application of EMIR. The EMIR definition of derivatives cross-refers to the list of financial instruments mentioned in the current Markets in Financial Instruments Directive (MiFID). The different transpositions of MiFID across Member States mean that there is no single, commonly adopted definition of derivative or derivative contract in the EU, thus preventing the convergent application of EMIR. ESMA stresses that this is particularly the case for foreign exchange (FX) forwards and physically settled commodity forwards.

ESMA's letter invites the Commission to adopt as a matter of urgency an implementing act under Article 4(2) of MiFID, or any other measure that the Commission considers appropriate, to clarify the above mentioned definitions.

ESMA notes that, until the Commission provides clarification, and to the extent permitted under national law, national competent authorities will not implement the relevant provisions of EMIR for contracts that are not clearly identified as derivatives contracts across the EU, in particular FX forwards with a settlement date up to 7 days, FX forwards concluded for commercial purposes, and physically settled commodity forwards.

CRR/CRD 4: EBA publishes final draft technical standards on classes of instruments used for variable remuneration

The European Banking Authority (EBA) has published its final draft Regulatory Technical Standards (RTS) on classes of instruments that can be used for the purposes of variable remuneration under Article 94(2) of the Capital Requirements Directive (CRD 4).

The aim of the draft RTS is to ensure that instruments for variable remuneration reflect the credit quality of an institution and incentivise prudent risk-taking, hence making them appropriate for this purpose. They prescribe that the institutions' long-term interests be reflected in the classes of instruments used for variable remuneration, including additional Tier 1, Tier 2 and other instruments. In particular, the draft RTS specify the classes of instruments that can be used for variable remuneration and introduce specific requirements for additional Tier 1, Tier 2 and other instruments. They define the write-down, write-up and conversion mechanisms for Tier 2 and other instruments.

The draft RTS have been sent to the EU Commission for their adoption and will enter into force after their publication in the Official Journal.

EBA launches discussion on impact on volatility of own funds of revised IAS 19 and deduction of defined pension assets from own funds

The EBA has published a discussion paper on the impact on the volatility of own funds of the revised International Accounting Standard for employee benefits (IAS 19) and the deduction of defined benefit pension assets from own funds in accordance with the Capital Requirements Regulation (CRR).

The discussion paper sets out the EBA's preliminary views based on:

- a qualitative analysis of the accounting and prudential changes and their impact on the volatility of own funds;
- a quantitative analysis of this impact for a sample of EU institutions; and
- a qualitative analysis of the factors that may impact the volatility of own funds in the future.

The input gathered from the discussion paper will assist the EBA in the preparation of its report to the EU Commission on this topic. The consultation runs until 14 April 2014. Following the outcome of the consultation, the EBA will deliver its report to the Commission by 30 June 2014.

House of Lords Committee reports on EU proposals for rescuing failing banks

The House of Lords EU Sub-Committee on Economic and Financial Affairs has published a report looking at EU proposals for rescuing failing banks, describing them as inadequately funded, overly complicated and politically unrealistic.

The report also calls on the UK government to get strongly involved in the plans, noting that as the eurozone moves towards closer integration, the UK will need to work hard to influence the debate.

Other findings of the report include that:

- banking union is vital to the success of the EU plans, but the proposed resolution mechanism for dealing with failing banks is not fit for purpose;
- financial stability can only be achieved through a common deposit guarantee scheme, but there is no prospect of progress towards such a mechanism in the foreseeable future;
- without a workable banking union, the vicious circle linking bank debt and sovereign debt will not be broken; and
- although politically remote, the eurozone's safety could require both debt mutualisation and a system of financial transfers.

The Committee also welcomes the action taken by the European Central Bank (ECB) to tackle the eurozone crisis, but warns that its credibility as bank supervisor must not be jeopardised as it undertakes its comprehensive assessment of the banking system.

EMIR: BaFin publishes interpretation decision on delegation of reporting by insurance companies

The European Market Infrastructure Regulation (EMIR) requires counterparties to a derivative to report details of the derivative to eligible trade repositories and allows counterparties to delegate reporting to third parties. The German Federal Financial Regulatory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht) (BaFin) has taken the following interpretation decision on whether such delegation constitutes outsourcing for German insurance companies:

- delegation to the counterparty of the derivative does not constitute outsourcing; but
- whether the delegation to a party which is not a counterparty to the relevant derivative constitutes outsourcing is subject to a case-by-case analysis.

Outsourcing of functions or services is subject to certain regulatory requirements under the German Insurance Supervisory Act (Versicherungsaufsichtsgesetz).

CSSF issues press release with respect to virtual currencies

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a new press release on virtual currencies to provide answers to the most frequently asked questions of a general nature regarding this topic.

Acknowledging the 'monetary nature' character of virtual currencies, the CSSF explains that virtual currencies qualify as scriptural money and may hence be electronic money, but not necessarily within the meaning of Directive 2009/110 of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions. The CSSF explains that the issuing of virtual currencies is not regulated from a monetary point of view, since, amongst other things, a virtual currency is not legal tender.

On the other hand, the CSSF highlights that nobody may be established in Luxembourg to carry out an activity of the financial sector without being duly licensed and prudentially supervised by the CSSF. Therefore, any interested persons who, e.g., would like to establish themselves in Luxembourg in order to issue means of payments in the form of virtual currencies, the provision of payment services using virtual currencies, or the creation of a market (platform) to trade virtual currencies, should define their business purpose and their activity in a sufficiently concrete and precise manner to allow the CSSF to determine the applicable licensing requirements.

CSSF issues guidance on prudential approval process for holders of key functions in credit institutions and investment firms

The CSSF has issued new guidance on the prudential approval process for holders of key functions in credit institutions and investment firms in relation to CSSF circular 12/552 on central administration, internal governance and risk management.

The new guidance describes and explains the requirements and procedures for applications for approval and notifications of resignation as well as dismissals of key functions holders, in accordance with the relevant provisions of circular 12/552.

The new guidance also provides an outlook as to the implementation of the Capital Requirement Directive (CRD 4), which will also innovate certain aspects of Luxembourg law notably as regards limitations on the number and nature of mandates which may be exercised by certain key function holders.

CSSF issues circular on entry into force of CRR

The CSSF has issued a new circular 14/583 on the entry into force of the Capital Requirements Regulation (CRR).

The circular reminds institutions of the entry into force of the CRD 4 package (including most notably the CRR) which, as of 1 January 2014, constitutes the basis for the prudential regulation of all Luxembourg law governed credit institutions, all Luxembourg law governed investment firms within the meaning of the CRR as well as branches of non-EU/EEA credit institutions and investments firms. The circular clarifies that, in case of conflicts between Luxembourg law provisions and CRR provisions, the latter will take precedence. The CRR provides for certain national discretions, and these have been implemented in Luxembourg by way of the CSSF Regulation 14-01. The circular also provides details as to the different features and specific regulations contained in the CRR, as well as the CRD 4 package in general.

SAFE consults on provisions for foreign exchange control over cross-border security

The State Administration of Foreign Exchange (SAFE) has published a consultation draft of the 'Provisions for Foreign Exchange Control over Cross-border Security', which are intended to lower the applicable threshold of certain cross-border security and streamline the administrative procedures by removing all prior approval requirements. The reformed policies would cover outbound security (Nei Bao Wai Dai), inbound security (Wai Bao Nei Dai) and other cross-border security interest.

In particular, as regards outbound security:

- financial institutions would not be required to obtain annual quotas for their financing security business, to the extent that the balance amount of the outbound security does not exceed 50% of audited net assets as at the end of the preceding year;
- non-financial institutions would not need to seek prior approval or quota from SAFE for provisions of outbound security;
- certain eligibility requirements (e.g., debt-to-assets ratio and affiliated relationship) would be removed;
- for performing the outbound security, non-financial institutions can request financial institutions to handle the funds transfer directly, and no case-by-case approval from SAFE would be required; and
- individuals can provide outbound security by following the same rules as non-financial institutions.

In relation to inbound security:

- the secured debts must be RMB or foreign currency facilities or credits extended by a PRC financial institution to a PRC non-financial institution;
- the PRC financial institutions can directly receive the payment under the inbound security and, if any currency conversion is necessary, prior approval from SAFE should be sought; and
- the performed inbound security would not be subject to the limit of foreign debts that can be borrowed by a non-financial institution, provided that the outstanding principal amount does not exceed its net assets.

The draft provisions also specify the administration rules for the provision of cross-border security in other forms.

Comments are due by 10 March 2014.

Offshore non-deliverable forwards to use new rupiah reference rate

The Association of Banks in Singapore (ABS) and the Singapore Foreign Exchange Market Committee (SFEMC) have announced that the non-deliverable forwards (NDF) market will use a benchmark rate set by Bank Indonesia (BI), that is, the Jakarta Interbank Spot Dollar Rate (JISDOR), to settle NDF contracts starting from 28 March 2014.

The adoption of JISDOR by ABS and SFEMC will end the divergence between onshore and offshore exchange rates, and will enable traders to use this onshore exchange rate rather than look to the volatile NDF market for direction.

Clifford Chance is currently assisting the International Swaps and Derivatives Association and SFEMC to administer the benchmark transition.

FSC announces financial policy direction for 2014

The Financial Services Commission (FSC) has announced its financial policy direction for the year 2014. The FSC has set three broad policy goals, which include establishing market discipline in financial markets, securing stability in the financial system, and strengthening the financial industry's competitiveness. In particular, the FSC aims to:

- establish a specialised information technology (IT) security agency for the financial sector – details of the agency will be finalised by the end of June 2014 with the aim of launching it in 2015;
- abolish financial regulations that hinder sound competition in financial markets – the FSC will be holding a task force meeting on a monthly basis, as part of joint efforts by both the public and private sector for regulatory reform;
- establish a special agency to provide guarantee for the shipping industry – the agency will be established as a subsidiary of policy banks with capital jointly raised by policy banks and private investors;
- stimulate the private equity fund (PEF) industry – the FSC will ease or revise regulations that restrict PEF operations to provide PEFs with more flexibility in investment and operation;
- establish a technology credit bureau – the FSC plans to complete the establishment of the bureau by the first half of 2014;
- conduct annual surveys on public awareness of financial policy – the FSC will survey financial consumers, financial company employees and experts in either November or December every year on their awareness and satisfaction regarding financial policy; and
- reform the microfinance system – the FSC will integrate various microfinance programs such as the Credit Recovery Program, Smile Microcredit and Happiness Fund into a single microfinance

organisation in order to provide a more effective microfinance service.

KRX signs business agreement with settlement banks on OTC financial products

The Korea Exchange (KRX) has entered into a business agreement with four over-the-counter (OTC) financial product settlement banks, namely Busan, Shinhan, Woori and Korea Exchange Bank. The KRX received authorisation on OTC derivatives clearing business from the Financial Services Commission (FSC) in September 2013 and is looking forward to launching a KRW-dominated interest rate swaps (IRSs) clearing service on 3 March 2014.

Following the G20 summit statement to clear OTC derivatives through central counterparties, the KRX intends to make an effort to improve general market risk management efficiency.

CFTC and EU Commission issue statement concerning progress of Common Path Forward on Derivatives

United States Commodity Futures Trading Commission (CFTC) Acting Chairman Mark Wetjen and EU Commissioner Michel Barnier have issued a release announcing that staff of the CFTC and staff of the EU Commission have made significant progress towards harmonising a regulatory framework for CFTC-regulated swap execution facilities (SEFs) and EU-regulated multilateral trading facilities (MTFs), as contemplated under the Path Forward statement issued in July 2013. In particular, the release discusses the issuance by CFTC staff of a Conditional No-Action Letter which provides no-action relief for qualifying MTFs from the SEF registration requirement under section 5h(a)(1) of the Commodity Exchange Act (CEA); parties executing swap transactions on qualifying MTFs from the trade execution mandate under CEA section 2(h)(8); and swap dealers and major swap participants executing swap transactions on qualifying MTFs from certain requirements under the CFTC's business conduct rules and for which these registrants otherwise would receive or be subject to similar regulatory treatment if executing swap transactions on SEFs. CFTC staff have separately issued a Short-Term No-Action Letter to provide limited relief for all registered MTFs until 24 March 2014, in order to provide sufficient time for MTFs to identify themselves to the CFTC as a condition to the relief and comply with certain other conditions for obtaining relief pursuant to the Conditional No-Action Letter.

RECENT CLIFFORD CHANCE BRIEFINGS

Light at the end of the tunnel – UK prosecutors publish guidance on deferred prosecution agreements

On 14 February 2014, in readiness for the addition of deferred prosecution agreements (DPAs) to their prosecutorial toolkits from 24 February, the Serious Fraud Office (SFO) and Crown Prosecution Service (CPS) published the finalised version of their joint code of practice (the Joint Code). The Joint Code gives guidance on when they will entertain the idea of settling criminal investigations concerning corporate organisations by way of a DPA, how negotiations will work in practice and the types of terms which they may include. It is estimated that, once they become available, DPAs will be used (principally by the SFO) up to ten times per year.

The Directors of the SFO and CPS (the Prosecutors) have made clear that prosecution remains their 'preferred option' and that the use of DPAs as an alternative will only be deemed appropriate in a minority of cases where relatively stringent evidential and public interest tests (set out in the Joint Code and other guidance) are satisfied.

This briefing considers some of the questions of most concern to corporate organisations and the extent to which the Joint Guidance has clarified matters for them.

http://www.cliffordchance.com/publicationviews/publications/2014/02/light_at_the_endofthetunnelukprosecutor.html

Introduction of class actions in France

The French Parliament has just approved a new bill introducing class actions in France. Subject to the review of the constitutionality of the bill and its approval by the Constitutional council, the new legislation should soon be enacted.

This briefing discusses the new bill.

http://www.cliffordchance.com/publicationviews/publications/2014/02/introduction_of_classactionsinfrance.html

Are MOFCOM's new simple merger review rules really simple?

On 12 February 2014, China's Ministry of Commerce (MOFCOM) officially published the merger control regulations on simple mergers, entitled 'Interim Regulations on Standards Employed for Simple Cases of Concentrations of Undertakings' (Simple Mergers Regulations) which came into force with immediate effect.

This briefing discusses the new regulations.

http://www.cliffordchance.com/publicationviews/publications/2014/02/are_mofcom_s_newsimplemergerreviewrule.html

Two recent pro-arbitration cases from Indian courts continue the judicial trend towards recognition of arbitral independence

In two pro-arbitration decisions issued only days apart, the Bombay High Court in HSBC PI Holdings (Mauritius) Ltd v Avitel Post Studioz Ltd and others and the Supreme Court of India in World Sport Group (Mauritius) Ltd v MSM Satellite (Singapore) Ltd, both held that issues of fraud should properly be dealt with by the arbitral tribunal in accordance with the arbitration agreements entered into between the parties, and not by the courts, departing from an earlier controversial line of authority from India which had held otherwise.

This briefing discusses the two decisions. Following the groundwork laid by the Supreme Court of India in cases such as Bharat Aluminum Co Ltd v Kaiser Aluminum and Shri Lal Mahal v Progetto Grano Spa, the two cases discussed in this briefing show a developing judicial maturity on the part of the Indian courts not to interfere with the international arbitral process and to be willing to uphold valid international arbitration agreements between parties.

http://www.cliffordchance.com/publicationviews/publications/2014/02/two_recent_pro-arbitrationcasesfromindia.html

Indonesian Government confirms ban on export of raw minerals

At midnight on 12 January 2014, the long-foreshadowed Indonesian Government ban on the export of raw mineral ores from Indonesia took effect. Following continued international pressure from mining companies, the Government also announced transitional measures allowing producers to continue to export certain ore concentrates that meet a minimum metal content, subject to the payment of export duties. However, in order to benefit from this transitional arrangement, the Government announced that companies must demonstrate a serious intent to build refining capacity in Indonesia.

This briefing discusses the new regulations.

http://www.cliffordchance.com/publicationviews/publications/2014/02/indonesian_governmentconfirmsbanonexporto.html

Federal Reserve Board Adopts Final Rule Implementing Enhanced Prudential Standards for US Operations of Non-US Banks

On 18 February 2014, the Federal Reserve Board approved the publication of a final rule implementing certain of the enhanced prudential standards required for large US bank holding companies and non-US banks (foreign banking organizations or FBOs) under Section 165 of the Dodd-Frank Act. The final rule establishes a US intermediate holding company (IHC) requirement for FBOs with USD 50 billion or more in US non-branch assets and imposes enhanced risk-based and leverage capital requirements and enhanced liquidity risk management, stress test and buffer requirements on all FBOs with consolidated worldwide assets of USD 50 billion or more. In addition, the final rule establishes capital stress test requirements for FBOs with consolidated worldwide assets of USD 10 billion or more and US risk committee requirements for FBOs meeting the USD 10 billion threshold that are publicly traded. Foreign banking organizations will be subject to the requirements of the final rule beginning on 1 July 2016.

This briefing discusses the final rule and its implications.

http://www.cliffordchance.com/publicationviews/publications/2014/02/federal_reserve_boardadoptsfinalrul.html

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