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Briefing note

International Regulatory Update

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- Recent Clifford Chance Briefings: UK implementation of the EU Bank Recovery and Resolution Directive; China's Industry Catalogue for Foreign Investment; and more. Follow this link to the briefings section.

Latvia commences EU Council Presidency

Latvia has taken over the EU Council's six-month rotating Presidency.

The Latvian Presidency has published its programme setting out priorities for each of the Council configurations. For Economic and Financial Affairs, the Presidency's main objectives include:

- stronger economic governance within the Economic and Monetary Union (EMU) in the euro area;
- taking forward measures set out by the EU Commission that promote economic growth in the EU;
- continuing work on financial regulation; and
- tackling tax fraud and evasion.

On 1 July 2014, the EU Council published its Trio Programme setting out its high-level work programme for the period from 1 July 2014 to 31 December 2015 and containing objectives for the Italian, Latvian and Luxembourg Presidencies. With respect to the Trio Programme, the Latvian Presidency will focus on three overarching strategic frameworks that relate to:

- entrepreneurship and competition;
- digital Europe; and
- international engagement.

Lithuania adopts the euro

Lithuania has become the 19th EU Member State to adopt the euro as its currency. From 1 January 2015, Lietuvos Bankas, the Lithuanian Central Bank, began exchanging unlimited amounts of the Lithuanian Lita for the euro at the official conversion rate of EUR 1 = LTL 3.45280. The exchange period will apply for an unlimited time and be free of charge. Commercial banks will provide unlimited cash exchange services free of charge until 30 June 2015 and post offices will change up to EUR 1000 worth of Litas per transaction free of charge until 1 March 2015.

In August 2014 the 'Memorandum on Good Business Practice upon the introduction of the euro' was launched, which is monitored by the State Consumer Rights Protection Authority. The Memorandum, which was available to retailers and financial institutions to sign, requires a commitment for the adoption of the euro not to be used as a pretext for increasing prices of goods and services, ensure application of the official conversion rate and indicate prices in euro and Litas clearly. Prices have been displayed in both Litas and euros since 23 August 2014 and the State Consumer Rights Protection Authority may impose fines on any organisation that does not observe the Memorandum.

A dual circulation period is in place for the first two weeks of January 2015 in order to facilitate a staged withdrawal of Litas. Change from cash transactions will be provided in euros and ATMs will dispense the euro.

Rating agencies: RTS on disclosure requirements for structured finance instruments published in Official Journal

The regulatory technical standard (RTS) made under Article 8b of the Credit Rating Agencies Regulation (Regulation 462/2013) on disclosure requirements for structured finance instruments (SFIs) has been published in the Official Journal.

The RTS enters into force on 26 January 2015, but the reporting obligations will apply from 1 January 2017. SFIs issued prior to 26 January 2015 or which cease to be outstanding prior to 1 January 2017 will not be subject to the reporting requirements.

Any SFI issued on or after 26 January 2015 and still outstanding on 1 January 2017 will be subject to the reporting requirements, though no backlog of information relating to the period between those two dates will need to be published. SFIs must, however, fit within one of the classes of SFI for which there is a reporting template and at least one of the issuer, originator or sponsor must be established in the EU. SFIs 'of a private or bilateral nature' are also out of scope and subject to a 'phase-in approach'.

Reporting templates currently exist for residential mortgages, commercial mortgages, loans to SMEs, auto loans, loans to consumers, credit card loans and leases to individuals or businesses. All other asset classes are subject to the 'phase-in approach' and further reporting templates may be published in future. It is not clear what grandfathering will be available for asset classes subject to the phase-in approach.

Reporting will take place on a website to be established by the European Securities and Markets Association (ESMA) and the information will be accessible to the general public. Technical instructions on how to report on the website are required to be published by ESMA no later than 1 July 2016.

RTS on the periodic reporting on fees charged by credit rating agencies (CRAs) and on the presentation of information CRAs make available to ESMA were also published in the Official Journal and will both apply from 26 January 2014.

ECON Committee publishes draft reports on bank structural reform and securities financing transactions

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has published its draft reports, both dated 22 December 2014, on the EU Commission's proposal for a regulation on structural measures improving the resilience of EU credit institutions and on the proposed regulation on reporting and transparency of securities financing transactions (SFTs).

The report on the bank structural reform proposal sets out an assessment that the biggest challenge facing the EU financial sector is ensuring banks are able to finance commercial investments in order to promote economic growth and that making it possible for banks to provide liquidity and creating conditions for a well-functioning Capital Markets Union should be the primary task for any further legislation for the single financial market. The report highlights that underinvestment in the EU may threaten financial stability.

The report argues that increased dependence on specialised banks, rather than universal banks, would not strengthen financial stability and may put liquidity making at risk. The report notes that universal banks may have a greater ability to distribute risks, new channels for financing will take time to emerge if less reliance is placed on universal banks, which may have an impact on investment, and regulatory legislation introduced within the EU has introduced rules, supervision and market responsibility that has changed the EU landscape for banking. As such, the report argues that systemic risks should be met by a risk-based approach, which does not assess one particular business structure to be systemically risky or presume trading to be riskier than lending. The report suggests that a risk-based approach that addresses systemic risks rather than structures and activities would enhance financial stability and lay the foundations for the Capital Markets Union, which is intended to provide increased liquidity in order to enhance investment and growth.

The report on the securities financing transactions proposal argues that the reporting obligations should cover all financial and non-financial counterparties, with the exception of central banks and their counterparties, and that the Commission should have the power to extend the list of SFTs and of SFTs' counterparties to be included in the scope of the regulation. The report notes that using SFTs is not risk free, and that any investment funds should disclose all relevant details on these activities in their public report and investor documents. The report suggests amendments to Article 15 of the regulation concerning the development of a framework for haircuts that would assist in making the EU compliant with recommendations from the Financial Stability Board (FSB).

EMIR: ESMA publishes peer review of CCP colleges

The European Securities and Markets Authority (ESMA) has published a peer review report on its participation in the supervisory colleges established under the European Markets Infrastructure Regulation (EMIR). EMIR requires ESMA to fulfil a coordination role between competent authorities and across colleges in order to ensure consistent supervisory practices. ESMA is a member in every college with the intention to consistently apply EMIR.

The review has been published in accordance with Regulation (EU) No. 1095/2010 (the ESMA Regulation), which requires ESMA to publish, at least annually, a peer review analysis of the supervisory activities of all competent authorities in relation to the authorisation and supervision of central counterparties (CCPs). However, the usual peer review methodology has not been applied for this report, which is based instead on the experience of ESMA during the initial establishment phase of the colleges, their review of CCP applications for authorisation under EMIR and competent authorities' risk assessments, and the colleges' adoption of the joint opinions on CCP authorisations.

The report includes:

- an overview of ESMA's contribution to the work of the colleges;
- ESMA's view on the degree of convergence reached by national competent authorities (NCAs) in the authorisation of CCPs; and
- some examples of best practice developed by NCAs.

The review does not consider NCAs' work in relation to on-going supervision of CCPs or the effects of differing resources available to different CCPs and competition issues that may arise from this. Such issues will be reviewed by ESMA once all CCPs have undergone the authorisation process.

BRRD: Implementing SIs published

The Bank Recovery and Resolution Order 2014 (SI 2014/3329) and the Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (SI 2014/3486) have been published. The two Orders are part of a number of SIs that implement the Bank Recovery and Resolution Directive (BRRD) in the UK.

The Bank Recovery and Resolution Order 2014 makes necessary amendments to the Banking Act 2009 and the Financial Services and Markets Act (FSMA) 2000, and to secondary legislation made under those Acts, in order to:

- ensure that the Special Resolution Regime set out in the Banking Act 2009 complies with the BRRD;
- extend the powers of the Bank of England to intervene before it becomes necessary to resolve a failing financial institution;
- amend FSMA 2000 to ensure that the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) are able to comply with requirements on competent authorities under the BRRD; and
- amend the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 and the Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009 to ensure that existing safeguards in relation to partial property transfers are consistent with the BRRD.

The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 makes amendments to the existing law on preferential debts, including changes to the Insolvency Act 1986, to implement Article 108 of the BRRD and amends the Building Societies Act 1986 to change the priority given to building society depositors on insolvency.

Both Orders were published online on 5 January 2015 and came into force on 1 January 2015.

CSSF issues new circular on implementation of EBA guidelines on significant credit risk transfer

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a new circular 15/600, dated 7 January 2015, on the implementation of the European Banking Authority's (EBA's) guidelines on significant credit risk transfer for traditional and synthetic securitisation transactions relating to Articles 243 and 244 of the Capital Requirements Regulation (CRR). The purpose of the guidelines is to provide clarifications on the assessment of the significant risk transfer (SRT) in accordance with Articles 243 and 244 of the CRR and to ensure harmonised assessment and treatment of SRT across all EU Member States.

The new circular applies to credit institutions and investment firms which are originators of traditional or synthetic securitisations within the meaning of the CRR and requires such originator institutions to apply (i) the general requirements of the guidelines for all transactions claiming SRT under Article 243 or 244 of the CRR and (ii) the specific requirements of the guidelines to achieve SRT to third parties in accordance with Article 243(4) or 244(4) of the CRR.

Originator institutions have to provide the CSSF or the European Central Bank – depending on the division of competencies between both authorities under Regulation (EU) No 1024/2013 – with all information requested to enable them to assess the SRT to third parties as specified in Titles I to III of the guidelines. For such purposes, originator institutions have to submit to the competent authority promptly after the initiation of the securitisation transaction an excel sheet named 'Reporting template for originator institutions on significant risk transfer' annexed to the new circular.

In addition, originator institutions have to notify the relevant competent authority of any securitisation in relation to which they intend to demonstrate SRT that is not similar in structure and portfolio composition to previous transactions notified by the institution.

The new circular entered into force on 7 January 2015.

SAFE issues implementing rules for banks conducting FX settlement and sale business

The State Administration of Foreign Exchange (SAFE) has issued the 'Implementing Rules on Administrative Measures for Banks Conducting Foreign Exchange Settlement and Sale Business', which are intended to facilitate banks' foreign exchange (FX) settlement and sale business.

Amongst other things, under the Implementing Rules:

- market entry rules for FX settlement and sale on a spot basis as well as RMB/FX derivatives are streamlined;
- for banks' positions arising from FX settlement and sale business, SAFE is going to carry out monitoring on a weekly basis (instead of the current daily check), and such positions are no longer linked to FX deposit-to-loan ratio;

- the review and approval authorities relating to currency conversion of banks' capital funds (operational funds) are delegated to local SAFE offices;
- banks no longer need SAFE approval for carrying out FX settlement and sale on behalf of debtors; and
- banks are required to abide by the principles of 'know your client, know your client's business and due diligence' when carrying out FX settlement and sale business.

The Implementing Rules took effect on 1 January 2015.

CSRC consults on draft rules to allow foreign investors and brokers to access domestic futures market

The China Securities Regulatory Commission (CSRC) has issued a consultation draft of the 'Interim Measures on the Trading of Designated Domestic Futures Products by Foreign Traders and Brokerage Firms'. According to a relevant explanatory note issued by the CSRC, the draft measures are intended to introduce foreign traders and foreign brokerage firms (foreign participants) to the domestic futures market to bring the market in line with international practice and improve its price discovery function with more liquidity.

The CSRC will designate the specific futures products available for foreign participants on a step-by-step basis by taking into consideration the pace of opening up RMB capital account, market participation, risk control and other factors. As the CSRC approved crude oil futures trading on the Shanghai International Energy Exchange (a subsidiary of the Shanghai Futures Exchange incorporated in the China (Shanghai) Pilot Free Trade Zone) on 12 December 2014, crude oil futures will be designated as the first futures product available for foreign participants.

The consultation draft proposes multiple channels for foreign participants to access China's futures market:

- a foreign trader may either appoint a domestic futures company or a foreign brokerage firm to trade designated futures products, or directly trade on a domestic futures exchange subject to a qualification approval by the relevant exchange;
- upon entrustment of foreign traders, a foreign brokerage firm may either appoint a domestic futures company to trade the designated futures products in the domestic futures company's name or, subject to a qualification approval by the relevant exchange, directly trade on a domestic futures exchange in its own name; and
- subject to approval from the CSRC, a qualified foreign brokerage firm may set up a wholly-owned or JV (with controlling stake) futures company in a free trade zone to trade designated futures products solely for foreign participants.

The consultation draft provides operational rules in relation to account opening, settlement, margin, reporting, mandatory close-outs, dispute mediation and also outlines measures to deal with illegal trades and cross-border law enforcement.

The public consultation period will end on 31 January 2015.

AMAC publishes administrative measures for record filing of asset backed specific plans

The Asset Management Association of China (AMAC) has published the 'Administrative Measures for Record Filing of Asset Backed Specific Plans'. This follows the 'Administrative Provisions on Asset Securitisation Business of Securities Companies and Subsidiaries of Fund Management Companies' promulgated by the China Securities Regulatory Commission, according to which AMAC will take charge of record filing.

Amongst other things, under the administrative measures:

- managers should appoint specialised personnel to file with AMAC within 5 days after completing the establishment of specific plans (at the time of finishing launching asset backed securities (ABS));
- in addition to general filing requirements, managers should submit the approval documents of stock exchanges, if ABS are listed and transferred on the relevant stock exchanges;
- managers who carry out asset securitisation business for the first time should file the qualification documents with AMAC;
- managers should report not only the material matters within 2 days after the matters happened, but also the measures and result of disposals within 5 days after dealing with these matters; and
- as for the review process, AMAC will focus on the managers' commitment that the underlying assets are not included in the 'Guidance on the Negative List for the Underlying Assets of Asset Securitisation Business' and the suitability of the sale of ABS.

The Administrative Measures are effective from the date of promulgation.

AMAC issues guidance on risk control of asset securitisation business

The AMAC has issued its 'Guidance on the Risk Control of Asset Securitisation Business', setting out how managers should identify, evaluate and manage relevant risks when conducting securitisation business and formulate corresponding risk control measures. Amongst other things, the guidance states that:

- managers should take risk control measures relating to prediction, pass-through, account supervision and commingling risk of the cash flow of underlying assets;
- the precipitated cash flow can be re-invested in agreed scope except for equity products;
- if the underlying assets are immovable properties, managers can borrow money from financial institutions for investment and operation and the amount should not exceed 30% of the underlying assets in the recent assessment, and over 90% of the distributable balance should be distributed in the current period;
- constituting assets of the specific plan by using cash flow produced from the underlying assets to revolvingly purchase the same assets, managers should set up reasonable entry criteria of the assets pool and carry out pre-review and execution confirmation for the subsequent assets;
- managers should disclose the affiliated relationship or material business relationship with original interest owners as well as the affiliated transactions under the transaction structure; and
- managers should reserve relevant materials for filing and inquiry during the period of the existence of the specific plan and the above materials should be reserved for at least ten years after terminating the specific plan.

The guidance is effective from the date of promulgation.

AMAC publishes negative list for underlying assets of asset securitisation business

The AMAC has issued its 'Guidance on the Negative List for the Underlying Assets of Asset Securitisation Business'. AMAC will update the Negative List at least every six months. The Negative List includes the following assets:

- where the direct or indirect debtor of the underlying assets is a local government, except for the fiscal subsidies which should be paid or assumed by the local government under the Public-Private Partnership Model;
- where the debtor of the underlying assets is a local financing platform company;
- assets with uncertain capacity to produce cash flow, such as the receivables of mining mineral resources and the receivables of transferring lands;
- underlying assets relating to immovable properties: (i) the receivables of the rent on immovable properties which cannot produce a stable cash flow; (ii) immovable properties or receivables of relevant immovable properties with more than 10% to be developed or under construction;
- underlying assets cannot directly produce cash flow other than disposing of those assets, such as bills of landing, warehouse receipts and certificates of title;
- assets violating relevant laws, regulations or policies;
- constituents of asset portfolios belonging to different types and lacking relevance in accordance with legal definition and business forms; and
- the beneficial right of trust plans which use the above assets as final investment subjects.

HKMA revises requirements regarding reporting of liquidity position and certificate of compliance with Banking Ordinance

The Hong Kong Monetary Authority (HKMA) has issued a circular to authorised institutions informing them of the finalised changes to the 'return of liquidity position of an authorised institution' (Form MA(BS)1E) (and accompanying completion instructions) for the reporting of the liquidity coverage ratio (LCR) and liquidity maintenance ratio (LMR).

The HKMA has also modified the 'certificate of compliance with the Banking Ordinance' (Form MA(BS)1F(a) and Form MA(BS)1F(b)) (and accompanying completion instructions) to be reported respectively by authorised institutions incorporated in Hong Kong and authorised institutions incorporated outside Hong Kong to reflect the new liquidity standards (i.e. LCR and LMR) under the Banking (Liquidity) Rules.

The revised returns (and accompanying completion instructions) are enclosed with the circular. Authorised institutions are required to submit the revised returns starting from the position of 31 January 2015. The HKMA will inform authorised institutions when the electronic files of the revised returns are available for download from the HKMA's supervisory communication website.

HKMA issues circular regarding implementation guidance on Banking (Capital) Rules and Banking (Disclosure) Rules

Further to the guidance material issued in May 2007 and September 2013 on a number of areas in the Banking (Capital) Rules (BCR), the HKMA has issued a circular regarding implementation guidance on the BCR and Banking (Disclosure) Rules (BDR).

The circular has been issued in response to a recent Basel Committee assessment of Hong Kong's compliance with the Basel 2/2.5/3 standards under the Regulatory Consistency Assessment Programme. The assessment report recommended that additional supervisory guidance, including in the form of questions and answers (Q&As), might be beneficial in securing consistent implementation of certain requirements under the BCR and the BDR. Further, the HKMA believes that some existing Q&As require updating to reflect the passage of time and the implementation of revised or new Basel capital standards. Accordingly, the HKMA has revised the Q&As relating to the BCR as well as the BDR covering:

- revisions or updates to the Q&As issued in May 2007 on capital calculation approaches (set out in Annex 1). The major changes relate to:
  - the internal ratings-based (IRB) capital floor requirements, reflecting the amendments set out in the HKMA's circular letter of 20 December 2013;
  - the treatment of default within a connected group, to elaborate on the application of relevant provisions under the IRB approach;
  - the IRB top-down approach to calculate the risk-weighted amount for default risk of purchased receivables, to provide further guidance on the use of this approach;
  - the factors for considering whether a foreign exchange position of an authorised institution would qualify as a 'structural position' for the purposes of market risk calculation;
- a new Q&A to be included in the set of frequently asked questions (FAQs) issued in September 2013 to provide guidance on the calculation of the delta-adjusted notional amount of an eligible instrument for hedging credit valuation adjustment (CVA) risk (i.e. in the form of an option on a credit default swap) as requested by the industry during the consultation on the Banking (Capital) (Amendment) Rules 2013 (set out in Annex 2); and
- some new Q&As in respect of the calculation of credit risk for non-securitisation exposures under the Standardised Approach, and the general disclosures for credit risk to facilitate the consistent understanding of certain provisions of the BCR and the BDR (set out in Annex 2).

HKMA issues circular on selling of investment products

The HKMA has issued a circular to authorised institutions (AIs) to reiterate certain regulatory standards which are generally applicable to the selling of investment products. The circular reminds AIs to exercise adequate management supervision and take positive steps to monitor their frontline staff to ensure that proper selling practices and controls are adopted.

As part of the product due diligence process, AIs are advised to conduct a detailed assessment of product risks and features, and to satisfy themselves of the fairness of products. Regarding the selling process, AIs should ensure the suitability of their recommendations and/or solicitation, and make adequate disclosure of product features and risks to customers in their selling process, so that customers understand the associated risks and costs before investing in products. Regarding marketing materials, AIs are advised to follow the Securities and Futures Commission's (SFC's) requirements on marketing materials of investment products as set out in the HKMA's circular of 30 July 2014.

Further, the HKMA advises AIs to take prompt action to provide adequate training to their staff on relevant developments and changes in policy, procedures and practices, and ensure that information in marketing and product documents is accurate and up-to-date for proper disclosure to customers.

FSS revises manual for authorisation of financial investment services business

The Korean Financial Supervisory Service (FSS) has announced a complete revision of the manual for licensing requirements and procedures for financial investment services business, which was first published in March 2009. The revised manual provides detailed licensing criteria for regulatory approval that the FSS hopes will contribute to the transparency of the licensing procedure. Specifically, the new manual provides explanations on:

- requirements to be satisfied by an applicant for a business license such as a sound business plan;

- the availability of business assets including human resources and physical facilities; and
- arrangements for the prevention of conflicts of interest.

The new manual also provides various application forms that must be filed as part of the licensing process.

FSC approves revisions to regulation on supervision of banking business

The Korean Financial Services Commission (FSC) has approved revisions to the Regulation on Supervision of Banking Business. The revisions include:

- the introduction of a liquidity coverage ratio (LCR) – the LCR rules will be implemented starting from 1 January 2015. The minimum ratio for commercial banks will begin at 80%, which is higher than the Basel III requirement of 60%, given the current liquidity ratio of domestic banks. The ratio will be raised by 5% per year over the next four years to meet 100% in 2019; and
- revisions to the calculation of the Korean-won denominated loans-to-deposits (LTD) ratio – policy loans will be exempted from the total amount of loans in calculating LTD ratio in order to enhance banks' capacity to lend and allow greater flexibility in banks' asset management. Covered bonds with a 5-year maturity or longer will be included in the total amount of deposits in order to encourage the issuance of covered bonds and structural soundness of household debt. The revised LTD rule is effective immediately.

KRX publishes list of major institutional changes intended for securities and derivatives markets in 2015

The Korea Exchange (KRX) has published a list of major institutional changes intended for the securities and derivatives markets in 2015. The changes include:

- the expansion of the daily price limit in the stock market in the first half of 2015;
- the introduction of a market making system in the KOSPI and KOSDAQ markets for low liquidity issues in the first half of 2015;
- an improvement in the price range of quotes for treasury stocks in the KOSPI/KOSDAQ/KONEX market in the first half of 2015;
- the provision of more market data for the KOSPI/KOSDAQ/KONEX market in the first half of 2015;
- the opening of a new derivatives market to strengthen capital market dynamics in 2015;
- the provision of risk management tools for the capital market in 2015;
- the reinforcement of investor protection in the derivatives market;
- an improvement in price stability in the derivatives market in the first half of 2015;
- a change in quotation unit in the derivatives market in the first half of 2015;
- an exemption from the securities transaction tax for derivatives market makers in the first half of 2015;
- the reprioritisation of financial resources for resolving settlement failure (after law amendments); and
- the launch of the Carbon Emission Rights (CERs) market on 12 January 2015.

MAS issues further amendments to Notice 637 on risk based capital adequacy requirements for banks incorporated in Singapore

The Monetary Authority of Singapore (MAS) has issued further amendments to MAS Notice 637 on Risk Based Capital Adequacy Requirements for Banks Incorporated in Singapore, dated 14 September 2012 and last revised on 14 October 2014.

The revisions set out in MAS Notice 637 (Amendment No. 2) 2014 are intended to better align the MAS' capital requirements to the Basel capital framework and to enhance the clarity of the capital rules. The Notice takes effect on 1 July 2015, save for some revisions that will take effect later, on 31 December 2015 and 1 January 2017.

MAS consults on proposed revisions to MAS Notices 610 and 1003

The MAS has launched a public consultation on its proposal to revise the data collected under MAS Notice to Banks 610 and MAS Notice to Merchant Banks 1003, following an earlier consultation with a select group of respondents in January 2014.

Based on the general feedback received during the earlier consultation, the MAS is making the following key proposals (amongst others):

- implementation timeline – 18 months following the issuance of the Notices to be provided for banks and merchant banks to implement the changes. The MAS expects banks and merchant banks to provide two six-monthly updates of implementation status before the final implementation expected at the end of the 18-month period;

- reporting deadline – to require reporting of more granular information on a quarterly, half-yearly or yearly basis; and
- bank to bank transactions – banks' nostro accounts and interbank lendings are to be reported under 'cash and balances' while their vostro accounts and interbank takings are to be reported under 'deposits and balances'.

The proposed revisions to MAS Notice 610 and MAS Notice 1003 are set out in the Draft Notices at Appendix 3 and 4 of the consultation document respectively.

Comments on proposed revisions are due by 5 February 2015.

RECENT CLIFFORD CHANCE BRIEFINGS

Spotlight on Trustees – Adapting to 'streamlined' documentation provisions

In the current economic climate, and partly as a response to the global financial crisis, originators, arranging banks and issuers of structured finance transactions have sought to make transactions more readily 'fit for purpose' so as to meet the expectations of investors and other market participants, whilst still fulfilling their economic needs.

The desire to move away from repeat transactions and so-called 'cookiecutter' documentation has necessarily meant that there have been more tailored transactions brought to market, but also that those structuring these transactions have had to look carefully at the way they mandate their advisers and service providers so as to maximise value and efficiency throughout the life of the transaction.

With renewed focus on efficiencies and difficult market conditions compounded by limited liquidity and often tight secondary market trading, trustees have had to adapt to stay competitive ahead of other rivals and service providers. As an independent entity with an active part to play in transactions post-closing, the role of the trustee has evolved in recent years.

This briefing focuses on some of the prominent changes in approach and consequent effect for trustees in agreeing to amendments, waivers and consents and the changing landscape in which trustees operate in the capital markets.

http://www.cliffordchance.com/briefings/2015/01/spotlight_on_trusteesadaptingtostreamlined.html

UK implementation of the EU Bank Recovery and Resolution Directive – What you need to know

The New Year marked a major implementation deadline for the EU Bank Recovery and Resolution Directive. A key component of European efforts to improve and harmonise rules for resolving failing financial institutions, the Directive will also have significant impact for firms during their normal life.

This briefing provides an overview of the Directive's key requirements. The briefing also looks at the recently published UK implementation measures and considers the impact of the UK's new bail-in regime on netting, set-off and collateral.

http://www.cliffordchance.com/briefings/2015/01/uk_implementationoftheeubankrecoveryan.html

Revised Dutch legislative framework for registered covered bonds

On 1 January 2015 a revised legislative framework relating to registered covered bonds came into force in the Netherlands (2015 CB Legislation). The 2015 CB Legislation contains newly introduced cover asset quantity and quality, liquidity buffer and audit requirements and reporting undertakings for issuing banks for the benefit of investors. It also takes into account the best practices identified by the European Banking Authority (EBA) in its report 'EBA Report on EU Covered Bond Frameworks and Capital Treatment' of 1 July 2014. Clifford Chance was involved in the consultation process of the 2015 CB Legislation.

This briefing discusses the key requirements of the 2015 CB Legislation.

http://www.cliffordchance.com/briefings/2015/01/revised_dutch_legislativeframeworkfo.html

An overview of the latest changes to China's 2014 Industry Catalogue for Foreign Investment

On 4 November 2014, the National Development and Reform Commission and the Ministry of Commerce jointly issued the Catalogue for the Guidance of Foreign Investment Industries. The consultation period ended on 3 December 2014. If the 2014 Consultation Draft were to be eventually promulgated without further amendment, it will be the primary source of guidance for a foreign investor to ascertain whether its potential investment in an industry in China is possible, and if so, what level of government approval is required and whether any restriction applies,

such as limitation on the percentage of foreign shareholding. Similar to the past versions of the Catalogue, the 2014 Consultation Draft lists a number of industries and classifies them according to whether foreign investment is encouraged, restricted or prohibited. An industry which is not expressly listed is deemed to be one in which foreign investment is permitted.

This briefing discusses the Consultation Draft.

http://www.cliffordchance.com/briefings/2014/12/an_overview_of_thelatestchangestochinas201.html

Report issued by the Advisory Panel regarding the investigation procedures of the JFTC under Japan's Anti-Monopoly Act

In December 2013 Japan enacted a partially revised Anti-Monopoly Act. Similar to the US Sherman and Clayton Acts, the Japanese Anti-Monopoly Act generally prohibits activities that impede competition. The Anti-Monopoly Act also gives investigative authority to the Japan Fair Trade Commission, including the ability to conduct compulsory on-the-spot inspections akin to dawn-raids conducted by the European Commission or search warrant raids carried out by the US Federal Bureau of Investigation. In relation to the investigative procedures of the JFTC, the revised Anti-Monopoly Act stipulated that the Japanese government would consider implementing procedures to ensure that the targets of investigations can sufficiently defend themselves.

To that end, in the beginning of 2014, the Japanese Minister of State appointed an Advisory Panel on Administrative Investigation Procedures Under the Anti-Monopoly Act to provide expert advice on the procedures that the JFTC should follow. After a series of fourteen meetings, on 24 December 2014, the Advisory Panel issued its report on the recommended investigative procedures of the JFTC. While the Advisory Panel's report is not binding, companies with operations in Japan should be cognizant of its findings, as these may soon become binding on the JFTC.

This briefing discusses the report.

http://www.cliffordchance.com/briefings/2014/12/_knock_knock_it_sthejftcreportissuedb.html

Rollback of swap 'push-out' rule – expansion of permissible swap activities for banks

After much-publicized legislative debates, the scope of the so-called swap 'push-out' rule was significantly reduced in the appropriations bill signed into law on 16 December 2014. Under the new law, US banks (and US branches of non-US banks) will be permitted to deal in all swaps except certain structured finance swaps. This legislation is the first substantive amendment to the statutory language of the Dodd-Frank Act since its 2010 enactment.

This briefing discusses the new legislation.

http://www.cliffordchance.com/briefings/2015/01/rollback_of_swappush-outruleexpansiono.html