

International Regulatory Update

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Securities financing transactions: EU Parliament adopts proposed Regulation

The EU Parliament [has voted to adopt](#) the proposed Regulation on reporting and transparency of securities financing transactions (SFTs).

The Regulation aims to enhance transparency by:

- introducing reporting of all SFTs to trade repositories. Depending on their category, firms should start reporting at different stages from 12 to 21 months after entry into force of the relevant regulatory technical standards (RTS);
- requiring investment funds to disclose information on the use of SFTs and total return swaps to investors in their regular reports and in their pre-contractual documents from the entry into force of the Regulation, while the existing funds will have 18 months to amend them; and
- introducing some minimum transparency conditions that should be met on the reuse of collateral. These will apply six months after the Regulation enters into force.

The Regulation will now be formally adopted by the EU Council of Ministers and then published in the Official Journal.

EU Commission publishes 2016 work programme

The EU Commission has published its [work programme for 2016](#), setting out the list of actions it will take in the coming twelve months.

The new initiatives the Commission intends to deliver in 2016 include:

- initiatives on better migration management and proposals on border management;
- implementation of the Digital Single Market, follow-up to the Single Market Strategy, a Space Strategy for Europe, and a European Defence Action Plan;
- a circular economy, next steps for a sustainable European future, and legislation to implement the Energy Union;
- a new skills agenda for Europe, a new start for working parents, and a pillar of social rights as part of a deepening of Economic and Monetary Union; and
- a corporate tax package and an action plan on VAT.

As part of its work on deepening Economic and Monetary Union, the Commission intends to present a European bank deposit scheme based on a reinsurance mechanism and

set out measures intended to further reduce risk and ensure a level playing field in the banking sector by the end of 2015.

CRR: EU Commission adopts Delegated Regulation on prudent valuation under Article 105

The EU Commission has adopted a [Delegated Regulation](#) with regard to regulatory technical standards (RTS) for prudent valuation under Article 105 (14) of the Capital Requirements Regulation (CRR).

Article 105 (14) requires the development of draft RTS specifying the conditions according to which the requirements of Article 105 shall be applied, in particular Article 105 (10) which describes a number of categories of valuation adjustments that should be considered in the context of prudent valuation.

The Delegated Act specifies how additional valuation adjustments (AVAs) should be applied to fair-valued positions in order to determine a prudent value that achieves an appropriate degree of certainty having regard to the dynamic nature of trading book positions, the demands of prudential soundness and the mode of operation and purpose of capital requirements in respect of trading book positions.

BRRD: EBA consults on disclosure of summary or collective information

The European Banking Authority (EBA) has published [draft guidelines](#) on disclosing information in summary and collective form under the Bank Recovery and Resolution Directive (BRRD) for consultation. The guidelines specify how relevant information should be disclosed in order that individual institutions or entities cannot be identified.

The draft guidelines introduce three principles that should be considered when disclosing summary or collective information:

- confidential information should relate to a minimum number of three institutions or entities;
- no references should be made to specific, distinctive pieces of information; and
- disclosure of confidential information should be avoided under specific circumstances which pose a risk that individual institutions or entities may be identifiable.

Comments on the consultation are due by 27 January 2016.

EBA signs memorandum of cooperation with six South-Eastern European jurisdictions

The EBA [has signed a memorandum of cooperation](#) with six South-Eastern European (SEE) jurisdictions to establish a framework for cooperation and information exchange between the EBA and the Banking Agency of the Federation of Bosnia and Herzegovina, the Banking Agency of the Republic of Srpska, the National Bank of the Republic of Macedonia, the Central Bank of Montenegro, the National Bank of Serbia and the Bank of Albania.

The non-binding agreement has been reached under the Vienna Initiative, a public private network established to safeguard the financial stability of emerging Europe, and is intended to strengthen banking regulation and the supervision of cross-border banking groups operating in both the EU and SEE countries. The EBA has agreed to notify the specified authorities on developments relating to the single rulebook and on convergence of supervisory practices in the EU. The signatory authorities have agreed to work towards bringing the regulatory and supervisory standards in their jurisdictions into line with those in the EU on a timetable appropriate to conditions in each country.

PRA consults on Fees part of Rulebook

The Prudential Regulation Authority (PRA) has published a consultation paper ([CP40/15](#)) on a new Fees part of the PRA Rulebook. The Rulebook part will replace the existing FEES module of the PRA Handbook in line with the PRA's work to replace Handbook material inherited from the Financial Services Authority (FSA) with a standalone PRA Rulebook.

The consultation paper sets out the PRA's proposed approach to divide the existing Handbook material into five topic-based chapters on:

- application and definitions;
- obligation to pay fees;
- periodic fees, with period fees schedule;
- regulatory transaction fees; and
- special project fee for restructuring.

The PRA intends that the new rules will take effect on 1 March 2016 to coincide with the start of the 2016/17 fee year. The consultation does not alter fee rates and the PRA will consult on fees for 2016/17 in Spring 2016.

Comments on the consultation are due by 29 December 2015.

German Federal Government proposes draft law implementing Payment Accounts Directive

The German Federal Government (Bundesregierung) has proposed an [updated draft law](#) on the implementation of the Payment Accounts Directive (Directive 2014/92/EU, PAD) (following the first draft in August 2015). The draft law imposes duties pursuant to the PAD, which includes the duty to offer basic payment accounts for CRR credit institutions, branches of EU credit institutions and third country branches. Only such banks shall be required to offer basic payment accounts that already offer payment accounts to all consumers. The account is open to all persons resident in Germany, including applicants and rejected applicants for asylum and homeless persons. Furthermore, the draft law is intended to make it easier for consumers to change the provider of their payment accounts.

Draft Royal Decree on legal regime of financial credit institutions published

A [draft Royal Decree on the legal regime of financial credit institutions](#) (establecimientos financieros de crédito) has been published. This draft Royal Decree develops Law 5/2015, of 27 April, on the promotion of business financing, by establishing provisions governing authorisation, solvency requirements and supervision of financial credit institutions.

The draft Royal Decree establishes:

- the requirements that a company needs to comply with in order to be authorised as a financial credit institution;
- certain duties in terms of disclosure of significant shareholdings and corporate governance;
- solvency requirements;
- the regime for cross-border business (which will require the prior authorisation of the Bank of Spain); and
- that the Bank of Spain will be the institution in charge of supervising and controlling financial credit institutions.

In addition, the draft Royal Decree modifies certain provisions of the Royal Decree on payment institutions and of the Royal Decree on e-money institutions.

Royal Decree Law approving restated text of Securities Market Law published

The [Royal Decree Law approving the restated text of the Securities Market Law](#) has been approved by the Council of

Ministers and published in the Spanish Official Gazette (BOE).

This legislation aims to unify amendments made to the Law 24/1988, of 28 July, on the Securities Market through different laws in a single text and to introduce into the law additional securities market legislation that is dispersed among other legal texts.

The legislation has provisional status as certain EU legislative measures on financial markets, including MiFID2 and the revised market abuse regime, will need to be transposed into Spanish law by July 2016.

The Royal Decree Law will enter into force on 13 November 2015.

CSSF issues circular on higher ratio notification procedure applicable to remuneration policy pursuant to CRD 4 implementation

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued [circular 15/622](#) dated 21 October 2015 on the higher ratio notification procedure applicable to remuneration policy according to Article 94(1)(g)(ii) of the Capital Requirements Directive 2013/36/EU (CRD 4) following its transposition into Luxembourg law.

The CRD 4 implementing law permits Luxembourg incorporated CRR institutions that do not benefit from a derogation granted by the CSSF by virtue of Article 7 of the Capital Requirements Regulation (EU) No 575/2013 to set the ratio between the fixed remuneration and the variable remuneration for material risk takers of the institution to a maximum of 200%.

This higher ratio needs to be approved (and renewed) annually by the shareholders, owners or members of the relevant institution.

In Luxembourg, any such approval of an increased ratio needs to be notified to the CSSF and exercised in accordance with the two step procedure foreseen in the Luxembourg financial sector law. Once a detailed recommendation has been submitted to the shareholders, the CSSF has to be informed without delay of such recommendation. Once the shareholders have taken the decision, the CSSF has to be informed without delay of such decision. For such purposes, the circular provides notification forms to be completed with the information regarding the higher ratio, before being sent electronically and in a signed paper version to the CSSF.

For significant institutions under the Single Supervisory Mechanism for euro area banks, any approval of a ratio above 100% shall be sent to the European Central Bank Joint Supervisory Team of the relevant institution with a copy to the CSSF, following the same two step process set out above and using the forms attached to the circular.

The circular repeals and replaces CSSF circular 15/601 and entered into force with immediate effect.

CSSF issues circular on reporting requirements of credit institutions

The CSSF has issued [circular 15/621](#) dated 21 October 2015 providing an update of CSSF circular 14/593 on reporting requirements applicable to credit institutions.

The update reflects the latest developments and requirements at EU level for credit institutions in relation to prudential reporting.

Furthermore, the new circular specifies the CSSF's new requirements for financial information reporting (FINREP; ITS) on an individual basis, subject to certain reporting rules that continue to apply for a transitional period.

Following the entry into force of the liquidity coverage requirement in accordance with the Delegated Act of the EU Commission (EU) No 2015/61 of 10 October 2014, the new circular further repeals CSSF circular 07/316 and 07/331 for the part concerning the liquidity ratio reporting table B 1.5 and IML circular 93/104 as of 1 October 2015.

Banking executory document: Polish President signs Amendment to the Banking Law

The President of the Republic of Poland [has signed the Amendment to the Banking Law](#) which repeals the provisions entitling banks to issue banking executory documents. The Act is awaiting publication in the Journal of Laws.

Polish President signs Act amending the Act on Payment Service

The President of the Republic of Poland [has signed the Act amending the Act on Payment Service](#). Under the amended law, until 9 December 2018 a three-party payment card scheme which is considered to be a four-party payment card scheme is exempted from the obligations arising under Chapter II (Interchange Fees) of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions (MIF Regulation), provided that the card-based payment transactions made in Poland

under such a three-party payment card scheme do not exceed, on a yearly basis, 3% of the value of all domestic card-based payment transactions. The Act is awaiting publication in the Journal of Laws.

FSDC releases report on strengthening Hong Kong's ETF regime

The Financial Services Development Council (FSDC) has released a report entitled '[Strengthening Hong Kong as a Capital Formation Centre for Exchange Traded Funds](#)', with a view to bolstering growth in Hong Kong's ETF market.

The report notes that Hong Kong's ETF market has developed successfully over the past 15 years. Hong Kong was the first market in Asia, excluding Japan, to list ETFs in 1999. The report states that, as a regional financial centre, Hong Kong is well positioned to support a thriving ETF market and that the cross-border co-operation between Mainland China and Hong Kong also opens up major opportunities for the ETF industry in the two places.

However, the report also notes that leading overseas markets have recently enhanced their ETF platforms and introduced more innovative products. The FSDC believes that action must be taken to enhance the competitiveness of Hong Kong's ETF platform to regain its leadership position in the region.

The report sets out recommendations to enhance further growth in Hong Kong's ETF market. The key areas include:

- improving ETF education;
- promoting the use of ETFs in the mandatory provident fund (MPF) platform;
- nurturing local expertise and talent to develop Hong Kong into an ETF manufacturing hub; and
- broadening the ETF product range by way of ETF cross-listing.

Banking (Capital) (Amendment) Rules 2015 gazetted in Hong Kong

The Hong Kong Monetary Authority (HKMA) [has issued a circular](#) to all authorised institutions to inform them that the Banking (Capital) (Amendment) Rules 2015 (BCAR) have been gazetted.

The Banking (Capital) (Amendment) Rules 2015 introduce miscellaneous refinements to the Banking (Capital) Rules in order to align more closely with the relevant Basel Committee on Banking Supervision standards. The refinements reflect findings in the report 'Assessment of Basel III risk-based capital regulations – Hong Kong'

released by the Committee in March 2015 under its Regulatory Consistency Assessment Programme.

The BCAR 2015 was tabled before the Legislative Council for negative vetting on 28 October 2015. Subject to the views of the Legislative Council, the subsidiary legislation should come into operation on 1 January 2016.

BKPM issues regulations to streamline Indonesia's investment process

The Chairman of the Indonesia Investment Coordinating Board (BKPM) [has issued a number of regulations](#) as part of BKPM's efforts to implement the recent economic policy packages introduced by the Indonesian Government to accelerate investment and reduce bottlenecks in the investment pipeline.

Among other matters, the new BKPM regulations introduce the following key changes:

- the Government's commitment to issue licences within three hours to investors planning to open factories in Indonesia. To be able to benefit from the fast licensing service, investors must invest at least Rp100 billion and employ at least 1,000 Indonesian workers; and
- BKPM, through the Integrated Services Board (PTSP) or relevant regional Capital Investment and Integrated Services Board (BPMPTSP) takes over, from the local governments, the issuance of certain types of licences in the following sectors (among others): public works and public housing, trade, tourism, mining, environment and industry, health, employment and transportation.

FSC announces plans to improve prudential standards across financial sectors

The FSC [has announced its plan](#) to implement prudential regulations in accordance with global standards, while streamlining prudential standards for each sector to prevent regulatory arbitrage across financial services sectors.

For banks, regulatory regimes for domestic systemically important banks (D-SIBs), capital buffers, and Basel Pillar 2 will be implemented from 2016 and gradually strengthened over time. Detailed plans will be set out to adopt recovery and resolution plans (RRP) from the end of 2017. Leverage ratios and net stable funding ratios (NSFR) are scheduled to be implemented from 2018.

For insurers, consolidated risk-based capital (RBC) and own risk & solvency assessment (ORSA) are scheduled to be implemented in 2016 and 2017 respectively. The FSC

is also considering recapitalisation plans for insurers in preparation for IFRS4 phase 2 and measures to strengthen credit risk management for off-balance-sheet exposures.

For financial groups, the FSC plans to establish a best practice guideline for consolidated supervision over financial groups in 2016 to assess and manage risks by group unit, as it believes the current system is too focused on sector-wide supervision.

The FSC plan also sets out sector-wise prudential standards i.e. for banking, insurers and non-banking.

KRX announces expansion of clearing eligible transactions for KRW interest rate swaps

Following authorisation by the Financial Services Commission (FSC) on 21 October 2015, the Korea Exchange (KRX) [has amended the Over-the-Counter \(OTC\) Derivatives Clearing and Settlement Business Regulation and Enforcement Rules](#) in order to expand the range of clearing eligible transactions for KRW interest rate swaps. The amendment will be enforced from 23 November 2015 after the notice period.

Consequently, financial investment companies must clear KRW interest rate swap trades subject to the extended range of clearing eligible transactions through the KRX in accordance with the Financial Investment Services and Capital Markets Act from 23 November 2015.

RECENT CLIFFORD CHANCE BRIEFINGS

Infrastructure – A new asset class for insurers

Increasing investment in infrastructure continues to dominate the European political agenda. On 30 September 2015, the EU Commission announced new legislation to modify the Solvency II Delegated Regulation in order to, in the Commission's words, 'create better incentives for insurers to invest in infrastructure projects'.

This briefing paper examines the detail of the new rules and whether they will effectively achieve this aim.

<http://www.cliffordchance.com/briefings/2015/10/infrastructure-re-anewassetclassforinsurers.html>

High Court confirms power of Australian courts to grant freezing orders in aid of foreign litigation

The High Court of Australia has confirmed that Australian superior courts have the power to make freezing orders in respect of property in Australia that may be available to meet a foreign judgment which, when delivered, would be registrable under the Foreign Judgments Act 1991 (Cth) (FJA).

In order to obtain a freezing order in these circumstances, it remains necessary to establish that the processes of the Court may be frustrated unless the freezing orders are made, which involves establishing a likelihood that the foreign judgment will be registrable under the FJA.

This briefing paper discusses this decision.

http://www.cliffordchance.com/briefings/2015/10/high_court_confirmspowerofaustraliancourtst.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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