

International Regulatory Update

11 – 15 January 2016

IN THIS WEEK'S NEWS

- EBA revises final draft technical standards on methodology and disclosure for global systemically important institutions
- EU Commission consults on reporting of non-financial information by companies
- Basel Committee issues revised framework for market risk capital requirements
- PRA consults on buy-outs of variable remuneration
- Competition and Markets Authority and FCA sign memorandum of understanding on use of concurrent consumer protection powers
- Recovery and resolution: French government proposes to amend insolvency hierarchy among creditors of credit institutions
- Regulation on financing of deposit guarantee schemes in Germany published in Federal Gazette
- BaFin consults on interpretation guidance on Act on Ring Fencing and Recovery and Resolution Planning for Credit Institutions
- BaFin consults on draft regulation on knowledge and ability requirements for staff dealing in credit agreements for consumers relating to residential real estate
- HCMC extends temporary prohibition on short selling
- Polish Ministry of Finance prepares bill on changes to supervision of financial market
- CBRC consults on online P2P lending platform regulation
- SFC issues circular to applicants for SFC-authorized mandatory provident fund products related to default investment strategy
- HKMA announces countercyclical capital buffer for Hong Kong
- Recent Clifford Chance briefings: Indemnity against administrative fines in the Netherlands. Follow this link to the briefings section. [Follow this link to the briefings section.](#)

Clifford Chance's International Regulatory Update is a weekly digest of significant regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.

If you would like to continue to receive International Regulatory Update or would like to request a subscription for a colleague, please [click here](#).

To request a subscription to our Alerter: Finance Industry service, please email [Online Services](#).

If you would like to know more about the subjects covered in this publication or our services, please contact:

International Regulatory Group Contacts

[Chris Bates](#) +44 (0)20 7006 1041

[Nick O'Neill](#) +1 212 878 3119

[Marc Benzler](#) +49 69 7199 3304

[Steven Gatti](#) +1 202 912 5095

[Mark Shipman](#) + 852 2826 8992

[Donna Wacker](#) +852 2826 3478

International Regulatory Update Editor

[Joachim Richter](#) +44 (0)20 7006 2503

To email one of the above, please use firstname.lastname@cliffordchance.com

Clifford Chance LLP, 10 Upper Bank Street, London, E14 5JJ, UK
www.cliffordchance.com

EBA revises final draft technical standards on methodology and disclosure for global systemically important institutions

The European Banking Authority (EBA) has [published](#) revised final draft technical standards and guidelines on the further specification of the indicators of global systemic importance and their disclosure. The Basel Committee on Banking Supervision introduced a new data template and some minor changes on the identification of global systemically important banks (G-SIBs) in January 2016, prompting the EBA's revision. The full data template with the detailed specification of the indicator values will now only be incorporated in the EBA guidelines and will be updated annually.

The list of EU G-SIBs identified by the Basel Committee and the global systemically important institutions (G-SIIs) identified by Member States is identical. The revised guidelines state that other large institutions with an overall exposure of more than EUR 200 million and which are potentially systemically relevant will be subject to the same disclosure requirements as G-SIIs.

The draft technical standards will be submitted to the EU Commission for endorsement, following which the regulatory technical standards will be subject to scrutiny by the EU Parliament and the EU Council before being published in the Official Journal.

The guidelines will be translated and published on the EBA website. Competent authorities will have two months following the publication of the translations to report whether they comply with the guidelines.

EU Commission consults on reporting of non-financial information by companies

The EU Commission has published a [consultation paper](#) seeking views on how large public interest entities, such as listed companies and banks, could disclose social and environmental information. The consultation is intended to inform the Commission's work on drafting a set of non-binding guidelines for reporting of non-financial information by companies. The guidelines will be designed to assist companies in the reporting process, providing them with a methodology that will facilitate the disclosure of relevant, useful and comparable non-financial information.

Comments to the consultation close on 15 April 2016.

Basel Committee issues revised framework for market risk capital requirements

The Basel Committee on Banking Supervision has issued the revised [minimum capital requirements for market risk](#) as agreed by its oversight body, the Group of Governors and Heads of Supervision (GHOS).

The purpose of the revised market risk framework is to ensure that the standardised and internal model approaches to market risk deliver credible capital outcomes and promote consistent implementation of the standards across jurisdictions. The final standard incorporates changes that have been made following two consultative documents published in October 2013 and December 2014 and several quantitative impact studies.

The key features of the revised framework include:

- a revised boundary between the trading book and banking book;
- a revised internal models approach for market risk;
- a revised standardised approach for market risk;
- a shift from value-at-risk to an expected shortfall measure of risk under stress; and
- incorporation of the risk of market illiquidity.

The revised market risk framework will come into effect on 1 January 2019.

The GHOS has also [agreed](#) that the Committee will complete its work to address the problem of excessive variability in risk-weighted assets by the end of 2016. This programme will include consultation on:

- the removal of internal model approaches for certain risks (such as the removal of the Advanced Measurement Approach for operational risk); and
- setting additional constraints on the use of internal model approaches for credit risk, in particular through the use of floors.

The GHOS will review the Committee's proposals on the risk-weighted framework and the design and calibration of capital floors at or around the end of 2016.

The GHOS also discussed the final design and calibration of the leverage ratio. Members agreed that the leverage ratio should be based on a Tier 1 definition of capital and should comprise a minimum level of 3%, and they discussed additional requirements for global systemically important banks. The GHOS will finalise the calibration in 2016 to allow sufficient time for the leverage ratio to be implemented as a Pillar 1 measure by 1 January 2018.

PRA consults on buy-outs of variable remuneration

The Prudential Regulatory Authority (PRA) has launched a consultation ([CP2/16](#)) on its proposed new rule on buy-outs of variable remuneration, where firms recruiting staff 'buy-out' deferred bonus awards that have been cancelled by their previous employer.

The changes affect the Remuneration part of the PRA Handbook and will apply to all material risk takers (MRTs) at PRA-regulated banks, building societies and designated investment firms, subject to the PRA's proportionality framework.

The PRA is concerned that, by moving employers and having their cancelled bonuses 'bought-out', individuals are effectively able to insulate themselves against an ex-post risk adjustment of their past awards as risks crystallise or the consequences of poor risk management emerge at their old employer. The proposed rule is intended to address this gap and ensure that the practice of buy-outs does not blunt the beneficial incentive efforts of the existing rules on malus and clawback or allow employees to avoid the proper consequences of their actions.

Comments to the consultation close 13 April 2016.

Competition and Markets Authority and FCA sign memorandum of understanding on use of concurrent consumer protection powers

The Competition and Markets Authority (CMA) and the Financial Conduct Authority (FCA) have signed a [memorandum of understanding](#) (MoU) on the use of their consumer protection powers.

The MoU sets out working arrangements between the CMA and FCA in relation to their concurrent powers to enforce the following consumer protection legislation in the financial sector in the UK:

- the Consumer Rights Act 2015 and the Unfair Terms in Consumer Contracts Regulations 1999; and
- legislation enforceable under Part 8 of the Enterprise Act 2002, including the Consumer Protection from Unfair Trading Regulations 2008.

Recovery and resolution: French government proposes to amend insolvency hierarchy among creditors of credit institutions

Following the recent implementation into French law of the Bank Recovery and Resolution Directive (BRRD), and in order to facilitate the implementation of bail-in measures, the French government has [announced](#) its intention to

amend the insolvency hierarchy among creditors of credit institutions, which would apply both in case of liquidation and resolution of such credit institutions (but without retrospective effect, as the new hierarchy is intended to apply only with respect to liquidation/resolution procedures opened after the potential entry into force of the contemplated new provision).

The [proposal](#) consists of amending article L. 613-30-3 of the French code monétaire et financier (Financial Code) in order to give a general preference to senior unsecured creditors by introducing a new category of non-preferred senior debts. The latter would rank below senior unsecured creditors and above subordinated debts. Credit institutions would be allowed to issue debt instruments in that new category by expressly stating, in the issuance document, that the notes rank as non-preferred senior debts referred to in article L. 613-30-3-I 4° of the Financial Code. However, in order to be eligible for this category, the notes would have to meet the following requirements:

- they must have an initial maturity of at least one year; and
- they must qualify as being 'non-structured' instruments (the criteria for determining whether an instrument qualifies as such are to be specified later, by way of decree).

The government communication states that this reform will be inserted in a legislative text after the relevant consultations have been undertaken, and will then be submitted to the French Parliament as soon as possible.

Regulation on financing of deposit guarantee schemes in Germany published in Federal Gazette

The regulation on the financing of deposit guarantee schemes (DGS) in Germany has been [published in the Federal Gazette](#). The regulation specifies the calculation of the fees which have to be paid by institutions to the DGS. CRR-credit institutions organised under private law are obliged to pay annual fees of at least EUR 20,000. In addition, the respective DGS may request additional payments of up to EUR 12,500 to cover its administrative expenses and other costs.

The regulation became effective on 12 January 2016.

BaFin consults on interpretation guidance on Act on Ring Fencing and Recovery and Resolution Planning for Credit Institutions

The German Federal Financial Supervisory Authority (BaFin) has launched a [consultation](#) on interpretation

guidance on the Act on Ring Fencing and Recovery and Resolution Planning for Credit Institutions of 2013 (Gesetz zur Abschirmung von Risiken und zur Planung der Sanierung und Abwicklung von Kreditinstituten und Finanzgruppen) (Federal Gazette Part I of 7 August 2013, p. 3090). Amongst other things, the interpretation guidance covers the applicability of the Act, the determination of the trigger and the exceptions from the prohibitions of acting as well as the regulatory provisions for the financial trading institution. Some clarification is given regarding the applicability of the prohibitions also for cross-border activities and certain investment funds that have been opened before the entry into force of the German Capital Investment Act (Kapitalanlagegesetzbuch).

The consultation period ends on 29 January 2016.

BaFin consults on draft regulation on knowledge and ability requirements for staff dealing in credit agreements for consumers relating to residential real estate

BaFin has launched a [consultation](#) on a draft Regulation on the knowledge and ability requirements for members of staff dealing in credit agreements for consumers relating to residential real estate. The draft follows the EU Directive (2014/17/EU) on credit agreements for consumers relating to residential immovable property that is expected to be implemented into German law by 21 March 2016. It implements certain minimum requirements in terms of knowledge and abilities of members of staff dealing in credit agreements for consumers relating to residential real estate. The regulation covers the range of theoretical and practical knowledge in detail, such as the legal requirements of consumer credit, the processes of credit rating, the range of respective credit products, the legal and procedural background of the acquisition of real estate and the assessment of security interests.

The consultation period ends on 27 January 2016.

HCMC extends temporary prohibition on short selling

The Hellenic Capital Market Commission (HCMC) has [decided](#) to extend the emergency prohibition on short sales in any shares of Attica Bank S.A. admitted to trading on the Athens Exchange, irrespective of the venue where the transaction is executed, until 24:00:00 (CET) on 25 January 2016.

The prohibition, under Article 20 of the Short Selling Regulation (SSR), will include sales that are covered by subsequent intraday purchases, depository receipts and

warrants. An exemption will be in place for certain market making activities.

The European Securities and Markets Authority (ESMA) had issued a negative [opinion](#) on extending the prohibition, noting that adverse developments that had constituted a serious threat to market confidence in the Greek market have eased and therefore the prolongation of the ban was not appropriate or proportionate. The HCMC reached its decision to extend the ban in light of the re-capitalisation process of Attica Bank S.A. which is currently in progress. In particular, the HCMC noted that the delivery of the new shares to the beneficiaries has not yet been completed and that the date for the admission to trading of the new shares has not been announced. In this context and taking into account the fact that the short selling ban has been applied for all credit institutions during their re-capitalisation process and was also in place for the first few trading days of their new shares, the HCMC has extended the temporary ban for the shares of Attica Bank S.A. to ensure equal treatment with the banks that have already undertaken and concluded the re-capitalisation process.

Polish Ministry of Finance prepares bill on changes to supervision of financial market

The Polish Ministry of Finance has [prepared a bill](#) amending the Act – Banking Law and the Act on Cooperative Savings and Loan Societies. The bill is primarily aimed at making supervision of the financial market more efficient. Among other things, under the proposed amendments:

- the Polish Financial Supervision Authority (PFSA) is granted authority to order a re-examination of the valuation of security for receivables with regard to all entities conducting deposit and credit activities; and
- origination of the risk of a bank ceasing to pay its liabilities and a gross or persistent violation of law by a bank in the conduct of its activity have been added to the list of reasons for the PFSA to appoint an administration board in a bank.

Furthermore, the bill provides for amendments to simplify and shorten administrative proceedings concerning the appointment of an administration board.

The bill has been made available for public consultation.

CBRC consults on online P2P lending platform regulation

The China Banking Regulatory Commission (CBRC) has released [draft administrative rules](#) on online P2P lending

platforms for public comments. The draft rules are intended to set out the online P2P lending regulation regime. Among others, the key aspects of the draft rules include the following:

- P2P lending refers to direct peer-to-peer lending and borrowing through online platforms. Peer refers to an individual, legal entity or other organisation. Online P2P lending platform refers to a financial information intermediary enterprise specialising in online lending information intermediary business;
- the CBRC, as the central and leading regulator, will work with the Ministry of Industry and Information Technology, the Ministry of Public Security and National Internet Information Office for co-ordinated regulations. The local financial regulator, under the guidance of the CBRC, will take regional regulatory responsibility. Platforms shall register with the local financial regulator;
- platforms are forbidden, among other things, to finance for the platform operator itself or its affiliates through the platform, directly or indirectly accept or assemble funds from lenders, provide security or promise principal or interest return for lenders, extend loans, issue financial products, or provide intermediary services to the financing for stock market investment; and
- platforms shall take measures to protect lenders, including warning of lending risks, conducting due diligence and assessing risk assumption capability against lenders, setting a flexible lending quota, personal data protection, and choosing a qualified banking financial institution as a custodian.

The consultation period will end on 27 January 2016.

SFC issues circular to applicants for SFC-authorized mandatory provident fund products related to default investment strategy

The Securities and Futures Commission (SFC) has issued a [circular](#) to applicants for authorisation of SFC-authorized mandatory provident fund (MPF) products related to default investment strategy (DIS). The circular has been issued as a supplement to the SFC's [circular dated 9 October 2015](#) on application lapse policy. The latest circular is intended to provide guidance to applicants seeking the SFC's authorisation of new constituent funds (CFs) of MPF

schemes and pooled investment funds (PIFs) related to DIS (DIS-related applications) that are subject to the six-month application lapse policy and the concurrent review by the Mandatory Provident Fund Schemes Authority (MPFA) and the SFC with reference to the October 2015 circular.

The application process for new DIS related CFs and PIFs is expected to be launched by the end of 2016.

HKMA announces countercyclical capital buffer for Hong Kong

The Hong Kong Monetary Authority (HKMA) has [announced](#) that the countercyclical capital buffer (CCyB) for banks in Hong Kong will increase to 1.25% from the current 0.625%, making it consistent with the Basel III phase-in arrangements for the CCyB. The revised CCyB is applicable from 1 January 2017.

The Basel III regulatory framework provides for the CCyB to be phased in over a period of three years (from 2016 to 2018). It will become fully effective on 1 January 2019. Under the phase-in arrangement, the maximum CCyB under Basel III will begin at 0.625% of banks' risk-weighted assets on 1 January 2016 and increase each subsequent year by an additional 0.625% to reach its final maximum of 2.5% on 1 January 2019. This means that for 2017 the maximum CCyB under the Basel III phase-in arrangement is 1.25%.

RECENT CLIFFORD CHANCE BRIEFINGS

Indemnity against administrative fines – Is it effective?

It is possible to effectively indemnify for administratively imposed fines because of breaches of law. This follows from a recent prejudicial decision of the Supreme Court of the Netherlands in an action for recovery of an administrative fine between a contractor and subcontractor. Including indemnification clauses in agreements may therefore be a worthwhile protection against consequences of enforcement measures.

This briefing discusses the considerations and conditions of indemnity for administrative fines.

http://www.cliffordchance.com/briefings/2016/01/indemnity_againstadministrativefines.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.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2016

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Jakarta* ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Linda Widyati & Partners in association with Clifford Chance.