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Briefing note

International Regulatory Update

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- Recent Clifford Chance briefings: Fintech; Digital Single Market; Restructuring in the UK; and more. Follow this link to the briefings section.

MiFID2: EU Commission adopts draft RTS 13, 14 and 16

The EU Commission has adopted three sets of draft regulatory technical standards (RTS) under MiFID2 and MiFIR. In particular, the draft RTS relate to:

- the authorisation, organisational requirements and publication of transactions for data reporting services providers (DSRPs) under MiFID2 (these RTS are based on the final draft RTS 13 in ESMA's September 2015 final report);
- requirements under MiFIR on the specification of the offering of pre-and post-trade data and the level of disaggregation of data (RTS 14); and
- non-discriminatory access for central counterparties (CCPs) and trading venues to licences of and information relating to benchmarks which are used to determine the value of some financial instruments for trading and clearing purposes (RTS 16).

The three sets of RTS will enter into force on the twentieth day following that of their publication in the Official Journal.

Capital Markets Union: EU Commission consults on cross-border distribution of investment funds

The EU Commission has launched a consultation on the main barriers to the cross-border distribution of investment funds, including alternative investment funds (AIFs) and undertakings for collective investment in transferable securities (UCITS) funds, across the EU. The consultation is part of the Commission's work on the Capital Markets Union (CMU) project, building on responses to its CMU consultation and call for evidence on the EU regulatory framework for financial services.

The Commission is seeking tangible examples and where possible, quantitative and financial evidence on the financial impact of the barriers in the areas of:

- marketing restrictions;
- distribution costs and regulatory fees;
- administrative arrangements;
- distribution networks;
- notification processes; and
- taxation.

Comments to the consultation close on 2 October 2016.

EU Commission adopts proposal to incorporate ESAs into EEA Agreement

The EU Commission has adopted a proposal for an EU Council decision on the position to be taken by the EU in the EEA Joint Committee concerning, among other things, the incorporation of the European Supervisory Authority (ESAs) Regulations, which comprise the European Banking Authority (EBA) Regulation, European Insurance and Occupational Pensions Authority (EIOPA) Regulation and European Securities and Markets Authority (ESMA) Regulation.

After adoption of the proposal by the Council, the EU could take a formal position on the nine draft-decisions of the EEA Joint Committee, covering in total 31 EU legal acts, which include a number of Regulations and Directives related to financial services to be incorporated in the EEA Agreement. The EU Commission views the incorporation of the ESAs Regulations and related Regulations and Directives as necessary to ensure a coordinated approach to financial supervision across the EEA.

CRR: EU Council adopts proposal on exemptions for commodity dealers

The EU Council has adopted the proposed regulation regarding exemptions for commodity dealers under the Capital Requirements Regulation (CRR).

Articles of the CRR exempting commodity dealers from large exposures requirements and own funds requirements are scheduled to expire on 31 December 2017. The deadline was set in order to allow regulators to determine a prudential regulation adapted to the risk profile of commodity dealers, although it now appears unlikely that any resulting legislation from a review by the EU Commission, which is not expected to be completed before the end of the year, will be drafted and adopted before the exemption expires. The proposed regulation therefore extends the existing exemptions in the CRR to 31 December 2020 to take into account the amount of time that will be necessary to conclude the review and to prepare, adopt and apply any legislation that may result from it.

The proposal will enter into force twenty days following its publication in the Official Journal.

BRRD: Commission Delegated Regulation on exclusion from bail-in published in Official Journal

Commission Delegated Regulation (EU) 2016/860 specifying further the circumstances where exclusion from the application of write-down or conversion powers is necessary under Article 44(3) of the Bank Recovery and Resolution Directive (BRRD) has been published in the Official Journal. The Commission Delegated Regulation is intended to provide clarification on the exceptional circumstances provided for in Article 44(3) when it is possible to exclude liabilities from bail-in for resolution authorities in Member States, the Single Resolution Board as resolution authority in the Banking Union or the EU Commission when prohibiting or requesting amendments to proposed exclusions by a national resolution authority, which must notify the EU Commission before exercising the discretion.

The Delegated Regulation will enter into force on 21 June 2016.

MiFID2: ESMA publishes opinion on EU Commission's request for amendments to RTS 20

The European Securities and Markets Authority (ESMA) has published an opinion in response to the EU Commission's requested amendments to the draft RTS on criteria to establish when a non-financial firm's commodity derivatives trading activity is considered to be ancillary to its main business (draft RTS 20) under MiFID2.

On 14 March 2016, the Commission requested draft RTS 20 be amended to include a capital-based test for groups that have undertaken significant capital investments in the creation of infrastructure, transportation or production facilities or groups that undertake activities or investments which cannot be hedged in financial markets. ESMA's opinion emphasises that it still considers the main business test proposed in its draft RTS in September 2015 to be in line with the objectives pursued by the exemption contained in MiFID2. Nonetheless, ESMA has identified certain metrics for a numerator and denominator that could be used by the Commission to construct a capital test as an alternative to the main business test already designed by ESMA should the Commission deem it necessary.

ESMA has annexed a revised version of its draft RTS to its opinion to clarify some of the perceived ambiguities on its application that could have undermined the effectiveness of the RTS.

ESMA consults on distributed ledger technology in securities markets

ESMA has published a consultation paper on distributed ledger technology (DLT) in securities markets. The consultation focuses on the impact of DLT on post-trading activities, highlighting the European Market Infrastructure Regulation (EMIR), the Securities Finality Directive (SFD), and the Central Securities Depositories Regulation (CSDR) as the key EU regulations which would be applicable to DLT.

The consultation assesses the opportunities and challenges posed by DLT from a regulatory standpoint to determine whether a specific regulatory response to the use of this technology in securities markets is needed. The consultation sets out potential benefits of DLT including higher security, greater efficiency in clearing and settlement and reduced costs. However, it also discusses challenges of DLT relating to the governance framework, privacy, regulatory issues and the technology itself, such as scalability and interoperability with existing systems.

Comments are due by 2 September 2016.

CSDR: ESMA consults on participant default rules guidelines

ESMA has published a consultation paper on proposed guidelines on participant default rules and procedures under the CSDR. The guidelines specify the steps a central securities depository CSD should set up in its rules and follow in case insolvency proceedings are opened with respect to one or more of its participants. The proposed guidelines are based on the 2012 International Organization of Securities Commissions and Committee on Payments and Market Infrastructures (CPMI-IOSCO) Principles for Financial Market Infrastructures (PFMIs).

Comments are due by 30 June 2016.

ESMA publishes statement on selling bail-in securities

ESMA, in cooperation with the EBA, has published a statement on firms' responsibilities when selling financial instruments subject to the BRRD resolution regime.

In particular, the statement sets out ESMA's concerns that investors may be unaware of the risks associated with buying potentially loss-bearing instruments and reminds firms that they must comply with their obligations under MiFID and issues in relation to:

- providing investors with up-to-date complete information;
- managing potential conflicts of interest; and
- ensuring that products are suitable and appropriate for the investor.

MAR: ESMA publishes Q&A

ESMA has published a questions and answers (Q&A) document on the implementation of the Market Abuse Regulation (MAR). The Q&A is aimed at competent authorities to ensure converging supervisory activities but it should also help investors and other market participants by providing clarity on MAR requirements. In the first issue of the Q&A, ESMA has provided one answer with respect to the prevention and detection of market abuse.

ESMA publishes updated Q&A on EuSEF and EuVECA Regulations

ESMA has published an updated Q&A document on the application of the European Social Entrepreneurship Funds (EuSEF) and the European Venture Capital Funds (EuVECA) Regulations. The purpose of the Q&A document is to promote common supervisory approaches and practices in the application of the EuSEF and EuVECA Regulations. The updated Q&A includes a new Q&A on the use of the designations of EuSEF and EuVECA funds when marketed only in their home Member State.

SEPA: EPC consults on updated mobile payments white paper

The European Payments Council (EPC) has launched a consultation on an updated version of its white paper on mobile payments. The white paper was previously published in 2010 and updated in 2012.

The revised version being consulted on includes an extended scope to include new types of mobile proximity payments while addressing new stakeholders and technologies that have emerged in recent years, including Host Card Emulation (HCE) technology and tokenisation. The paper is intended to contribute to the evolution of an integrated market for mobile payments across the Single Euro Payments Area (SEPA) and has been written in a non-technical style to inform all stakeholders, including payment service providers (PSPs), their customers and others involved in the payments value chain.

Comments on the consultation are due by 1 September 2016. The EPC intends to publish the final update in December 2016.

Basel Committee issues statement on capital arbitrage transactions

The Basel Committee on Banking Supervision has published a statement on capital arbitrage transactions. The statement notes that Basel Committee members are frequently asked to review or approve transactions that seek to alter items that are subject to regulatory adjustments (as set out in paragraphs 66 to 90 of the Basel III standard), including proposals for structured transactions that result in deferred tax assets being reclassified as a way of seeking to avoid their deduction from the calculation of regulatory capital.

The Basel Committee is concerned that these transactions can pose legal risks and may result in the overestimation of eligible capital or the reduction of capital requirements, without adequate mitigation of the risk in the financial system, thus undermining the calibration of minimum regulatory capital requirements. The Committee therefore recommends that banks refrain from engaging in such transactions and advises that the transactions will be subject to careful supervisory scrutiny.

Crowdfunding: Treasury Committee chairman calls on regulators to examine risks and opportunities

The House of Commons Treasury Committee chairman Andrew Tyrie MP has written to Acting Chief Executive of the Financial Conduct Authority (FCA) Tracey McDermott and Deputy Governor for Prudential Regulation at the Bank of England Andrew Bailey to request that they examine the risks and opportunities in the growth of crowdfunding, peer-to-peer (P2P) lending, and related sectors.

My. Tyrie is concerned that while poorly informed consumers may be left with a false sense of security about the balance of any risks versus returns made on investments in the P2P market, greater regulation may not be the answer.

In his letter to Ms McDermott, Mr. Tyrie asks the FCA to examine risks specific to conduct, including where the responsibility for informing investors lies, what impact the growth of crowdfunding has had on the financial sector, and how platforms assess the creditworthiness of borrowers and firms seeking investment.

In his letter to Mr. Bailey, Mr. Tyrie asks the Prudential Regulatory Authority to examine the prudential impact of the financial sector's increased exposure to unsecured loans through crowdfunding platforms and to assess the sector's resilience to potential economic shocks.

Transparency Directive: CONSOB publishes resolution on implementation

The Commissione Nazionale per le Società e la Borsa (CONSOB) has published a resolution (No. 19614) implementing the Transparency Directive 2004/109/EC as amended by Directive 2013/50/EU.

Among other things, the resolution, amending CONSOB Regulation No. 11971 (the Issuers Regulation), clarifies that the first relevant threshold for the disclosure of relevant holdings is set at 3%, consistently with primary law (namely, Article 120 of the Italian Financial Act, which has already been amended to implement the 3% threshold in accordance with Directive 2013/50/EU). Moreover, pursuant to the resolution a notification shall be made to CONSOB and the relevant issuer by no later than 31 August 2016, by (i) persons holding a previously undisclosed shareholding in excess of the (new) applicable thresholds as of 1 July 2016 and (ii) persons who have previously notified a disclosable shareholding, if such shareholding has fallen below the (new) applicable thresholds.

DNB consults on operation of bail-in tool

The Dutch Central Bank (DNB) has issued a consultation paper on the application of the bail-in tool. The bail-in tool provides the DNB with the powers to write down debts and other eligible liabilities and can be applied to banks and certain other financial institutions that are failing or likely to fail (so as to ensure the continuity of their critical functions such as deposit taking and lending while limiting the impact of an institution's failure on the economy and financial system).

As the national resolution authority (NRA) in the Netherlands, pursuant to the transposition of the BRRD into Dutch law, the DNB will participate in the resolution related decision-making in respect of the aforementioned institutions, including the application of the bail-in tool.

In its consultation paper, the DNB outlines its approach to the operation of the bail-in tool on the basis of a hypothetical and simplified case. It describes the steps the NRA intends to take in case of application of the bail-in tool. The DNB wishes to consult the financial sector and other stakeholders on the mechanism foreseen and to that effect has included a number of questions. The consultation paper does not deal with other issues related to the bail-in tool such as the valuation methodology, the possible exclusion of liabilities from bail-in, the conditions for access to the Single Resolution Fund and available legal protection in the context of a resolution decision. The focus of the paper is predominantly on the way the mechanism for application of the bail-in tool is expected to function.

Stakeholders are invited to comment on the consultation paper by 29 July 2016.

DNB reports on its assessment of systematic integrity risk analyses of financial institutions

The DNB has reported on its recent follow up assessment of systematic integrity risk analyses (SIRA) of 50 institutions, selected proportionally from five sectors – banks, payment institutions, pension funds, insurers and trust offices. The assessment, which followed a more extensive examination in 2015, found that some of the assessed firms have not implemented an adequate SIRA. The DNB has expressed its disappointment at this finding, particularly given its extensive information campaign from 2015, in which the DNB issued a brochure entitled 'Integrity risk analysis. More where necessary, less where possible' and hosted multiple seminars.

The DNB will feed back its findings to all financial institutions examined, and consider which supervisory measures must be imposed on those institutions whose SIRAs are not sufficient. The DNB has also announced that it will conduct further examinations into the effectiveness of SIRAs later this year. The DNB will then examine the management of integrity risks and will, amongst other things, look at the effectiveness of financial institutions' SIRAs, viewing the findings in the light of each institution's risk appetite, and assessing whether the procedures and measures implemented are in line with the risks identified.

DNB announces thematic examination into activities shifting between sectors

The DNB has announced that it is to launch a thematic examination into activities shifting across sectors in the financial system.

The examination will aim to chart shifts in activities between sectors, so that the DNB can assess their impact on the risk profiles of financial institutions and the stability of the entire financial system. The DNB will look at inherent risks, such as accumulation of risks in certain financial institutions, but will also look at the benefits of such shifts.

To explain the background of its examination, the DNB has stated that activities of financial institutions are not necessarily limited by the boundaries of sector-specific laws and regulations. For instance, the DNB points to Dutch

insurers and pension funds, which have already secured a combined share of nearly 50% of newly contracted mortgage loans in a market until recently dominated by banks. According to the DNB, causes of such shifts may include regulatory arbitrage, but also low interest rates and the rise of fintech.

The DNB will use its findings to draft an agenda listing specific actions and recommendations to further enhance its supervision and policies, enabling it to address newly emerging risks at an early stage and take initiatives to improve laws and regulations.

DNB issues guidance on integrity screening of directors

The DNB has published a number of good practices to help incumbent and prospective managing and supervisory directors prepare for their integrity screening by the DNB. In particular, the DNB has posted practical examples on the 'Open Book on Supervision' section of its website, as well as templates that will help directors to provide the information the DNB needs and ensure proper preparation for their screening.

The DNB has also published a brochure entitled 'You're going to be screened'.

The DNB will organise an information session about director screening on 9 June 2016. Registrations can be made through the DNB's website.

AFM report provides case analysis of critiques of high-frequency trading

The Netherlands Authority for the Financial Markets (AFM) has published a report entitled 'A case analysis of critiques of high-frequency trading'.

In its 2010 report on high-frequency trading (HFT), the AFM stated that HFT did not constitute a separate trading strategy. Instead, it argued that HFT implements existing trading strategies, such as market making or arbitrage, in a technologically sophisticated manner.

In its new report, which follows its recent assessment of HFT strategies, the AFM presents its findings regarding two frequently expressed critiques, namely that:

- HFT is providing ghost liquidity; and
- HFT strategies can make riskless profits at the expense of investors, in particular of those that want to execute large orders.

As regards ghost liquidity, the AFM believes that fleeting orders by market-makers should not be qualified as (a form of) ghost liquidity but rather that the underlying trading patterns are a logical consequence of the application of market making strategies in a fragmented marketplace.

As regards the charge that HF traders execute a liquidity detection strategy (by responding to partial executions of an investor's order and then snatching liquidity away on other trading venues), the AFM's view is that liquidity detection does not occur systematically, and relevant trading patterns may indicate different trading intentions for the HF traders involved, e.g. arbitrage strategies.

Bank of Spain issues circular on calculation method to ensure institutions' contributions to Deposit Guarantee Fund are proportional to their risk profiles

Bank of Spain Circular 5/2016 on the calculation method to ensure that the contributions made by institutions to the Deposit Guarantee Fund are proportional to their risk profiles has been published in the Spanish Official Gazette. The calculation method regulated by Circular 5/2016 is based on the guidelines published by the EBA on specific methods for contributions to deposit guarantee schemes (EBA/GL/2015/10).

The calculation method draws on the determination of certain risk indicators, classified in five categories: capital, liquidity and financing, quality of assets, business model and management model and potential losses for the Deposit Guarantee Fund. Once these risk indicators are identified, a rating is given to each of them according to their relevant level of risk. Finally, an aggregate risk indicator is obtained for each institution subject to the Deposit Guarantee Fund based on the weighting and aggregation of the ratings of each risk indicator.

Circular 5/2016 also includes rules through which the contributions made by institutions to the Deposit Guarantee Fund are subject to adjustment on the basis of the phase of the economic cycle and the impact of the pro-cyclical contributions.

Circular 5/2016 came into force on 2 June 2016.

Decree and Ministerial Order reforming negotiable debt securities market published

Decree No. 2016-707 and a Ministerial Order, both dated 30 May 2016, reforming the legal framework of the French commercial paper and medium term notes (titres de créance négociables) market have been published. The

main changes introduced to the French Code monétaire et financier by this reform are the following:

- merger of the legal terminology and regime relating to French commercial paper with maturities of up to one year, formerly divided into certificates of deposit issued by credit institutions (certificats de dépôt) and commercial paper issued by non-financial corporations (billets de trésorerie), into a single new category entitled 'titres négociables à court terme' for both categories of issuers;
- alignment of the legal terminology relating to French medium term notes with maturities of more than one year, formerly entitled 'bons à moyen terme négociables', which are now entitled 'titres négociables à moyen terme'; and
- deletion of the requirement to provide a French summary, when the information memorandum is drafted in a language commonly used in financial matters, other than French, e.g. in English, provided that the information memorandum includes a warning in French inviting investors to have the documentation translated into French, if they so wish.

Both texts entered into force on 1 June 2016. The Banque de France has indicated that it will grant a longer period for issuers to provide it with their updated information memorandum in the context of their annual update following the annual general meeting of shareholders. Programmes which have been updated prior to the entry into force of this reform do not need to be immediately updated. Changes will need to be taken into account for the next update of such programmes.

PBoC Shanghai Head Office issues implementing rules for foreign institutional investors in China Interbank Bond Market

The Announcement No. 3 issued by the People's Bank of China (PBoC) on 24 February 2016 opened up the China Interbank Bond Market (CIBM) to a wider group of foreign institutional investors. The PBoC Shanghai Head Office has now issued the long-awaited Implementing Rules relating to the Announcement with immediate effect. Among other things, the following aspects clarified under the Implementing Rules are worth noting:

- for the eligibility assessment of 'medium- and long-term' institutional investors under the Announcement, discretion is delegated to onshore settlement agents, who are required to apply the general principles of 'Know Your Client', 'Know Your Business' and due diligence to onboard a client as an eligible investor for trading in the CIBM;
- the Implementing Rules attach two sets of filing forms, one for 'Incorporated Entities' and the other for 'Unincorporated Entities', suggesting that an investment product (such as a fund or a managed account) managed by an asset manager may access the CIBM as an eligible investor, as indicated in the Announcement; and
- while there is no investment quota restriction, each investor has to file its anticipated investment size and term with PBoC Shanghai Head Office. If an investor fails to remit investment principal matching at least 50% of its anticipated investment size within nine months after filing with PBoC Shanghai Head Office, the investor will need to make an updated filing through its settlement agent.

SAFE issues FX rules to support foreign institutional investor access to China Interbank Bond Market

The State Administration of Foreign Exchange (SAFE) has issued the 'Circular on Issues of Foreign Exchange Administration on Investment in the China Interbank Bond Market by Foreign Institutional Investors' to clarify foreign exchange (FX) issues relating to qualified foreign institutional investors investing in the China Interbank Bond Market (CIBM).

Among other things, the following requirements in the circular are worth noting:

- a foreign investor's settlement agent should register with SAFE through the Capital Account Information System on behalf of the foreign investor within the effective period of the filing notification letter issued by the PBoC Shanghai Head Office, and open special FX accounts for the foreign investor;
- investors may remit investment principal in RMB or foreign currency into China for investing in the CIBM. According to the circular, where an investor repatriates funds out of China, it may choose the remittance currency provided that the ratio of RMB to foreign currency should generally match the original currency ratio when the investment principal was remitted into China, with a maximum permissible deviation of 10%. For the initial repatriation, the aforesaid currency ratio requirement can be waived provided that the foreign currency or RMB to be repatriated may not exceed 110% of the foreign currency or RMB remitted into China in aggregate; and

- all Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors should comply with the existing rules for their investment in the CIBM.

The circular took immediate effect.

RECENT CLIFFORD CHANCE BRIEFINGS

Digital Single Market – Proposals on E-commerce

On 25 May 2016, the European Commission tabled a three-pronged plan aimed at boosting e-commerce in the EU. This is part of the Commission's wider strategy to create a 'Single Digital Market' in the EU. If the plan is implemented, businesses can expect enhanced regulatory oversight over cross-border online trading both at national and EU level.

This briefing discusses the proposals.

http://www.cliffordchance.com/briefings/2016/05/digital_single_marketproposalsone-commerce.html

Fintech – Disruptors Disrupted?

Financial technology – fintech – is shaking up traditional financial services. From payments to wealth management, from peer-to-peer lending to crowd funding, a new generation of startups is competing head to head with banks for a share of their business. These disruptors aim to be faster, cheaper and more efficient than the market leaders. But financial institutions are fighting back and investing heavily in their own technology to take on the fintech companies at their own game.

To explore the challenges and opportunities for both fintech companies and established financial services players, Clifford Chance hosted a lively panel discussion with Martin Cook, General Counsel of Funding Circle, a peer-to-peer lending company for small businesses; George Osborne, Innovation Director at Barclays; Erez Mathan, Chief Operating Officer at GoCardless which focuses on simplifying direct debits; Martin Prescott, Executive Director of Capita; Izabella Kaminska, fintech reporter at FT Alphaville and Clifford Chance Partner André Duminy. Bas Boris Visser, Clifford Chance's Global Head of Innovation, moderated the session.

This briefing summarises the panel's discussion on whether financial institutions should compete, concede or collaborate with fintech companies and the role of the regulatory environment.

https://www.cliffordchance.com/briefings/2016/05/fintech_disruptorsdisrupted.html

Extension of the Senior Managers and Certification Regime – Impact on Asset Managers

On 4 May 2016, the Bank of England and Financial Services Act received Royal Assent. The Act will extend the Senior Managers and Certification Regime (SMCR) – which already applies to banks and insurers – to all financial services firms. Around 60,000 additional firms will be brought into scope of the regime when it comes into force (expected to be early 2018).

Detailed regulations from the PRA/FCA are expected later this year, but experience drawn from the banking sector suggests that the changes required by the regime are extensive and will take a substantial amount of time to implement, and that early engagement by firms with affected individuals is vital.

This briefing discusses the impact on asset managers.

http://www.cliffordchance.com/briefings/2016/05/extension_of_theseniormanagersan.html

Restructuring in the UK – proposals for reform

On 25 May 2016, the Rt Hon Sajid Javid, Secretary of State for the Department for Business, Innovation and Skills, announced his ambition 'to make Britain the best place in the world to start and grow a business.' Part of his ambition includes looking at ways to improve the insolvency regime so that it allows entrepreneurs to restructure when times are tough. To this end a consultation has been launched seeking views on how to make such improvements.

This briefing discusses the consultation proposals.

https://www.cliffordchance.com/briefings/2016/06/restructuring_intheukproposalsforreform.html

Reform of Polish Insolvency Law

On 1 January 2016 the new Restructuring Law of 15 May 2015 came into force. It implements a significant reform of Polish insolvency law, comprising:

- the introduction of new restructuring procedures, allowing the restructuring of a debtor's undertaking and preventing its bankruptcy; and
- major amendments to the Bankruptcy and Recovery Law of 28 February 2003 in order to streamline 'classic' bankruptcy proceedings, reduce unnecessary formalities and expedite liquidation and to implement substantive changes (such as redefining bankruptcy tests, removing priority of tax and social insurance claims, implementing procedures facilitating pre-packs,

extending hardening periods and improving protection against fraudulent conveyances, etc.).

This briefing discusses the Restructuring Law. The law provides important, large-scale changes to the Polish insolvency regime, hence, naturally, only selected aspects of the reform are addressed in this briefing.

https://www.cliffordchance.com/briefings/2016/06/reform_of_polishinsolvencylaw.html

New pre-action protocol for the resolution of disputes in the Russian Federation

On 1 June 2016, the Federal Law 'On the Incorporation of Amendments to the Arbitrazh Procedure Code of the Russian Federation' enters into force, establishing, among other things, a compulsory pre-action protocol for the resolution of civil disputes.

This briefing discusses the new pre-action protocol.

https://www.cliffordchance.com/briefings/2016/06/new_pre-action_protocolfortheresolutiono0.html

Indonesia's New Negative List – A noticeable step forward

Following a press release in February 2016 on the Government's proposal to amend the negative investment list as part of President Jokowi's Economic Stimulus Package, on 18 May 2016, the Government issued the highly anticipated Presidential Regulation No. 44 of 2016 containing the new negative investment list (the 2016 Negative List). The 2016 Negative List revokes and replaces the Negative List issued in 2014 and is effective from 18 May 2016.

The issuance of the 2016 Negative List is hoped to boost foreign direct investment (FDI) into Indonesia, which has recently declined, and to make Indonesia more competitive within the ASEAN Economic Community and the global investment community. The 2016 Negative List now also provides for higher foreign shareholding thresholds for FDI made by ASEAN investors.

This briefing discusses the 2016 Negative List.

http://www.cliffordchance.com/briefings/2016/05/indonesia_s_new_negativelistanoticeableste.html

UAE Ministry of Economy issues guidance on application of the Commercial Companies Law to LLCs

Article 104 of the UAE Commercial Companies Law (Federal Law No. 2 of 2015) (CCL) states that provisions relating to joint stock companies (JSCs) apply to limited liability companies (LLCs), unless the law states otherwise. This provision has been the cause of ambiguity when looking to interpret the full application of the CCL's provisions to LLCs. The Ministry of Economy has now issued some much welcomed guidance on the application of Article 104 by issuing Ministerial Resolution No. 272 of 201.

This briefing explores the Resolution's impact on the application of the CCL to LLCs.

https://www.cliffordchance.com/briefings/2016/06/uae_ministry_of_economyissuesguidanceo.html