

# International Regulatory Update

19 - 30 December 2016

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### EU Commission adopts package of proposals on combating financing of terrorism

The EU Commission has adopted a package of measures on combating the financing of terrorism (CFT). The proposals follow publication of the Commission's Action Plan against terrorist financing in February 2016, which identified major areas of work relating to tracing terrorists through financial movements, preventing terrorists moving funds and disrupting sources of funding. The package of legislative proposals is intended to complete and reinforce the EU's legal framework on CFT and help establish an efficient and sustainable EU Security Union.

The package comprises proposals for:

- [a Directive to criminalise money laundering](#), which would establish minimum rules concerning the definition of criminal offences and sanctions related to money laundering, removal of obstacles to cross-border judicial and police cooperation and bring EU rules into line with international obligations;
- [a Regulation on mutual recognition of criminal asset freezing](#) and confiscation orders, which would simplify the legal framework and create a single legal instrument for the recognition of both freezing and confiscating orders in Member States and widen the scope of current rules on cross-border recognition; and

- [a Regulation on cash controls](#), which would repeal Regulation (EC) No 1889/2005 and is intended to tighten cash controls on individuals entering or leaving the EU with EUR 10,000 or more in cash, provide authorities with powers to act on amounts lower than the customs declaration threshold where there are suspicions of criminal activity and extend customs checks to cash sent in parcels, precious commodities and prepaid payment cards.

Alongside the proposals, the Commission has also published its [third progress report](#) on the Security Union, which sets out a further proposal for a legislative initiative to reinforce the powers of customs authorities to address terrorist financing through trade in goods, which the EU Commission intends to bring forward in 2017.

The proposals will be transmitted to the EU Parliament and Council for adoption, in line with the ordinary legislative procedure.

### Anti-Money Laundering: EU Council agrees negotiating stance

The EU Council has agreed its negotiating stance on the [proposed Directive](#) amending the fourth Anti-Money Laundering Directive (AMLD 4). The Permanent Representatives Committee (COREPER) has, on behalf of the Council, asked the incoming Presidency to begin negotiations with the EU Parliament.

The proposed Directive, which amends Directive 2015/849, aims to prevent the financial system being used for the funding of criminal activities and strengthen transparency rules to prevent the large-scale concealment of funds.

The main changes to Directive 2015/849 involve:

- addressing risks linked to prepaid cards and virtual currencies;
- improving cooperation between the Member States' financial intelligence units;
- improved checks on risky third countries; and
- enhanced access to beneficial ownership registers, so as to improve transparency about the ownership of companies and trusts.

The final text will be negotiated with the EU Parliament.

### Capital Markets Union: EU Council approves agreement with Parliament on Prospectus Regulation

The Permanent Representatives Committee (COREPER) has, on behalf of the EU Council, [approved an agreement](#) with the EU Parliament on prospectuses for the issuing and

offering of securities as part of the Capital Markets Union initiative. This regulation, replacing Directive 2003/71/EC (the Prospectus Directive), will aim to help companies gain access to European capital markets by reducing some of the administrative formalities.

Under the agreement reached with the EU Parliament, the following issues have been addressed:

- no prospectus will be required for capital raisings and crowdfunding projects up to EUR 1 million;
- the threshold beyond which a prospectus is mandatory is increased from EUR 5 million to EUR 8 million in capital raised. Below that threshold, issuers can raise capital in accordance with rules set for local growth markets;
- the EU growth prospectus, a new type of prospectus, will be available for SMEs, non-SMEs (small mid-caps) admitted to an SME growth market or small issuances by unlisted companies with up to 499 employees;
- a new corporate bond prospectus, previously only for debt issued in denominations of at least EUR 100,000, will be available for admission to wholesale debt markets;
- a frequent issuer regime will be available for frequent participants in capital markets, reducing approval times from 10 days to five;
- for secondary issuances, issuers already admitted to stock markets and SME growth markets will benefit from a lighter prospectus for follow-up issuances;
- prospectus summaries will be shorter and the language used clearer;
- paper prospectuses will no longer be required, unless a potential investor requests one; and
- a European online prospectus database will be operated free of charge by the European Securities and Markets Authority (ESMA).

Provisional agreement with the Parliament was reached on 7 December 2016. Once approved by the Parliament's plenary session, the text will be submitted to the Council for formal adoption.

#### **CRR: Commission Implementing Decision on third country equivalence regarding treatment of exposures published in Official Journal**

[Commission Implementing Decision \(EU\) 2016/2358](#), which amends the third country equivalence Implementing Decision (2014/908/EU) regarding the treatment of

exposures under the Capital Requirements Regulation (CRR), has been published in the Official Journal.

The Implementing Decision extends third country equivalence to Turkey, New Zealand, Faroe Islands and Greenland, which the EU Commission has determined have in place supervisory and regulatory arrangements which comply with a series of operational, organisational and supervisory standards reflecting the essential elements of the EU's supervisory and regulatory arrangements applicable to credit institutions.

The EU Commission, with the assistance of the European Banking Authority (EBA), intends to continue monitoring the evolution of the supervisory and regulatory arrangements of third countries in order to update the lists where appropriate.

The Decision will enter into force on 10 January 2017.

#### **EMIR: EU Commission extends derivatives exemption for pension scheme arrangements**

The EU Commission [has extended](#) the transitional relief for pension scheme arrangements (PSAs) from central clearing for their OTC derivative transactions.

The Commission notes that PSAs do not hold significant amounts of cash or highly liquid assets, so imposing central clearing requirements on them would require substantial changes to their business model which could affect pensioners' income. The extension takes the form of a delegated act under the European Market Infrastructure Regulation (EMIR), extending the existing exemption until 16 August 2018.

The Commission expects that the EMIR review will provide an in-depth opportunity to assess the issue.

#### **ESMA consults on supervision fees for trade repositories under SFT Regulation and EMIR**

The European Securities and Markets Authority (ESMA) has published a [consultation paper](#) on draft technical advice to the EU Commission on ESMA's fees for trade repositories (TRs) under the Securities Financing Transactions Regulation (SFT Regulation), and to ensure fairness, changes to the way ESMA's fees for TRs under EMIR are calculated.

In January 2016, the Commission asked ESMA to provide technical advice to assist the formulation of an EU Regulation on fees for TRs under SFTR by delegated act. ESMA proposes a mixed system of levying fees on specific administrative actions such as registration, extension of registration or recognition, and an annual fee for on-going

supervision which is proportionate to the level of turnover of the TRs.

Comments to the consultation close 31 January 2017. ESMA intends to submit a final report of the technical advice to the Commission for endorsement by end of Q1/beginning of Q2 2017.

#### **EMIR: ESMA publishes peer review on supervision by NCAs of margin and collateral compliance by CCPs**

ESMA has published the [results](#) of a peer review into how national competent authorities (NCAs) ensure central counterparties (CCPs) comply with margin and collateral requirements under EMIR.

ESMA identified areas where divergences emerged in NCAs' supervisory approaches, including the frequency and depth of the supervision of CCPs of similar size and systemic importance, and differing supervisory approaches to the frequency and proactivity of assessments and reviews relating to margin requirements.

ESMA has set out areas for improvement to enhance supervisory convergence, including:

- identifying new services requiring an extension of the CCP's authorisation as specified by ESMA's opinion establishing a common supervisory approach for CCPs' service extensions and change of risk models in November 2016;
- determining significant changes to CCP's risk models as specified by ESMA's November 2016 opinion;
- coordination of the focus of NCA's supervisory activities, including desk-based reviews and/or on-site inspections; and
- further converging NCAs' supervisory approaches towards portfolio margining, including the conditions considered to allow margin reduction between instruments and the application of the 80% threshold.

ESMA plans to use the findings of the peer review to enhance supervisory convergence between NCAs.

#### **EBA to carry out next EU-wide stress test in 2018**

The European Banking Authority (EBA) [has decided](#) to carry out its next EU-wide stress test in 2018, in line with its previous decision to aim for a biennial exercise.

The EBA intends to start immediately to prepare the methodology for the 2018 stress test exercise, which will also include an assessment of the impact of IFRS 9, which will be implemented on 1 January 2018. The EBA has

communicated its decision to the EU Parliament, EU Council and EU Commission.

The EBA will continue monitoring the risks and vulnerabilities in the EU banking sector along with the Competent Authorities as part of their regular assessment of banks.

#### **CRD 4: EBA reports on cyclical capital requirements**

The EBA has published a [report](#) on whether risk-sensitive capital requirements under the Capital Requirements Directive and Regulation (CRD 4) create unintended procyclical effects by reinforcing the endogenous relationships between the financial system and the real economy, thereby amplifying the real economic cycle. The EU Commission requested the EBA report on possible cyclical capital requirements and whether any remedial measures are justified under Article 502 of the CRR and the EBA drafted it in close cooperation with the European Systemic Risk Board (ESRB) and European Central Bank (ECB).

Overall the report identifies weak evidence of pro-cyclical effects due to the CRD 4 framework and recommends that the EU retains its current risk-sensitive framework for bank regulatory capital. If pro-cyclical risks were to become more material, the EU financial regulatory framework has various tools at its disposal which could in principle be used.

#### **CRR: EBA publishes LCR impact assessment report**

The EBA has published an [impact assessment report](#) for the liquidity coverage ratio (LCR) along with a review of its phasing-in period.

The EBA's report is the first publication after the implementation of the minimum binding standards in 2015 and accounts for the provisions of the Commission's Delegated Regulation on the LCR.

At the reporting date of 31 December 2015, EU banks' average LCR was above the 100% minimum requirement which must be fully implemented by January 2018. The report finds no strong evidence for the EBA recommending an extension to the phasing in period for the LCR.

#### **EBA reports on harmonised covered bond framework**

The EBA has published a [report](#) including recommendations on how to harmonise the covered bond framework in the EU. The report suggests a three step approach to help strengthen covered bonds across the EU and seeks to ensure that only those financial instruments

that comply with the harmonised structural, credit risk and prudential standards can be branded as ‘covered bonds’ and have access to special regulatory and capital treatment as provided in the current EU financial regulation.

The recommendations include that:

- a new covered bond Directive should be developed to provide a definition of the covered bond and specify structural quality requirements for all regulated covered bonds in the EU;
- the CRR should be amended to strengthen conditions for those covered bonds that seek preferential capital treatment; and
- convergence of national frameworks should be encouraged on a voluntary basis in some specific cases by means of non-binding instruments.

The report follows the previous EBA report of July 2014 on covered bonds, which identified a series of best practices with a view to ensuring robust and consistent covered bond frameworks in the EU, and will contribute to the EU Commission’s development of the Capital Markets Union project.

#### **EBA consults on supervision of significant branches**

The EBA has launched a [consultation](#) on its draft guidelines on the supervision of the largest systemically important (‘significant-plus’) bank branches. The proposed guidelines set out frameworks for identifying and supervising these ‘significant-plus’ branches, and outline a set of principles that competent authorities should comply with when:

- performing risk assessments;
- exchanging supervisory intelligence and information;
- planning supervisory activities;
- carrying out on-the-spot checks and inspections;
- applying supervisory and precautionary measures; and
- allocating tasks between authorities.

Comments are due by 20 March 2017.

#### **EBA launches data collection exercise for commodity derivatives firms**

The EBA [has launched](#) a data collection exercise addressed to commodity derivative firms, following up on the consultation it launched on 4 November 2016 on the review of the prudential framework for investment firms. The consultation relates to an EU Commission call for advice on a new categorisation of investment firms and a specific prudential regime for ‘non-systemic’ and ‘non-interconnected’ investment firms to consider and provide

technical advice to the Commission on the extent to which the new regime would also be suitable or adaptable for specialised commodity derivative firms.

The data collection comprises five parts and the EBA intends for the templates to take into account the specificities of commodity derivatives firms, including the fact that some of them are not currently prudentially regulated.

The EBA invites firms to submit the completed templates to their respective competent authority or, for non-prudentially regulated firms, directly to the EBA by 20 February 2017.

#### **European Supervisory Authorities report on reliance on credit ratings**

The Joint Committee of the European Supervisory Authorities (ESAs), which comprises the EBA, ESMA and the European Insurance and Occupational Pensions Authority (EIOPA), has published a [report](#) on good supervisory practices for reducing sole and mechanistic reliance on credit ratings. The report aims to assist the nationally appointed Sectoral Competent Authorities (SCAs) for financial institutions, such as credit institutions, investment firms, asset management companies and insurance undertakings achieve consistency in the implementation of elements of the Credit Rating Agencies (CRA) Regulation regarding overreliance on credit ratings. The report recommends a common framework of non-binding good supervisory practices for SCAs.

#### **European Supervisory Authorities revise guidelines on qualifying holdings in financial sector**

The Joint Committee of the ESAs has published [revised guidelines](#) on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector.

A previous set of non-binding guidelines was adopted in 2008 by the ESA’s predecessor Level-3 Committees (CEBS, CESR and CEIOPS), but the ESAs have reviewed the guidelines in order to:

- reach a common understanding of the five assessment criteria laid down by the Directive on procedural rules and evaluation criteria for the prudential assessment of acquisitions and increases in qualifying holdings in the financial sector (Directive 2007/44/EC); and
- establish a harmonised list of information that proposed acquirers should include in their notifications to national competent authorities (NCAs).

In particular, the revised guidelines are intended to clarify:

- certain key concepts, including indirect holdings, persons acting in concert and decision to acquire;
- when an NCA should provide an acknowledgement of receipt of a notification regarding the acquisition of a qualifying holding in a financial institution; and
- certain matters relevant to the assessment of an acquisition, including suspicions of money laundering or terrorist financing.

The revised guidelines also set out relevant tests for assessing if a qualifying holding is acquired indirectly and the size of such holding.

The guidelines will be translated into all of the official languages of the EU, after which competent authorities will have two months to report whether they comply with the guidelines. The guidelines will apply from 1 October 2017.

#### **European Supervisory Authorities consult on big data**

The Joint Committee of the ESAs has launched a [consultation](#) on the potential benefits and risks of big data for consumers, the financial industry and regulators. The discussion paper sets out a preliminary assessment of the potential benefits and risks associated with big data and requests feedback on the views expressed, including on whether the existing regulatory framework is sufficiently flexible to cover big data, whether it has gaps which need to be filled and how the framework impacts the use of big data technologies.

Comments are due by 17 March 2017.

#### **European Supervisory Authorities report on automation in financial advice**

The Joint Committee of the ESAs has published a [report](#) presenting the conclusions of its assessment on automation in financial advice (also referred to as 'robo advice').

This follows a discussion paper on automation in financial advice published by the three ESAs on 4 December 2015. The report concludes that the proliferation of automated advice is still at an early stage and the phenomenon is not equally present across the insurance, banking and investment sectors, currently having a greater prominence in the investment sector. The ESAs also note that financial advice in general is already addressed in various ways through a number of EU Directives.

The ESAs recognise the potential for growth of automation in financial advice and intend to continue monitoring the evolution of the market, but have decided not to take any

cross-sectoral regulatory or supervisory actions at this stage.

#### **IOSCO consults on order routing incentives**

The International Organization of Securities Commissions (IOSCO) has published for consultation a [report](#) on order routing incentives. The report examines the regulatory conduct requirements for brokers or firms to manage conflicts of interest associated with routing orders and obtaining best execution, how these requirements interact with market practices in different jurisdictions to shape order routing incentives and how these incentives influence the behaviour of intermediaries towards their clients.

Among various monetary and non-monetary order routing incentives, the report focuses on three primary types of incentive arrangements or commercial practices:

- monetary incentives paid or received by brokers to or from third parties;
- internalisation and use of affiliated venues for commercial benefits of a broker; and
- provision of goods and services bundled with execution by brokers, such as research.

Given the forthcoming changes and existing differences in regulatory frameworks and national markets, IOSCO at this stage does not propose next steps beyond this report. However, it welcomes stakeholder views on its findings and on whether it should undertake any further work in this area. Comments are due by 21 February 2017.

#### **IOSCO publishes updated report on automated advice tools**

IOSCO has published an [updated report](#) on its automated advice tools survey.

This follows a second survey conducted by IOSCO of its members in 2016 to update its earlier findings on automated advice tools from a survey conducted in 2014. The report finds that the market for automated investment advice has developed rapidly since 2014, and that the continued development of automated investment advice tools requires ongoing monitoring to help regulators understand its impact on the provision of investment advice to retail clients.

The updated report includes a summary of responses to the survey questions and an overview of the regulatory measures and guidance adopted by some survey respondents, including responses on the growth, use, regulation, and supervision of automated advice tools, as

well as the regulatory challenges posed by cybercrime, inappropriate advice, and changing demographics.

### **IOSCO reports on risks related to sale of OTC leveraged products to retail investors**

IOSCO has published a [report](#) identifying issues and concerns regarding the marketing and sale of certain OTC leveraged products, mostly by specialised firms, to retail investors in IOSCO member jurisdictions.

Concerns raised by respondents include:

- that retail investors may not be able to assess the risks associated with OTC leveraged products or the losses they may incur;
- difficulties related to the withdrawal of client funds; and
- the cross-border business of firms in countries that ban the sale of these products to domestic investors but take no regulatory action if the investors are foreign.

IOSCO plans to continue to take an interest in the marketing and sale of leveraged OTC products and will consider possible future courses of action with a view to enhancing investor protection.

### **Bank Recovery and Resolution Order 2016 comes into force**

The Bank Recovery and Resolution Order 2016 ([SI 2016/1239](#)) has been made. The Order amends the special resolution regime for banks and investment firms to strengthen and clarify the UK's transposition of the Bank Recovery and Resolution Directive (BRRD). Among other things, the Order makes changes by:

- amending section 48Z of the Banking Act 2009 to ensure that certain instruments can take effect in accordance with their terms, to the extent specified by the resolution authority, to support the stabilisation of the firm;
- introducing stand-alone powers for the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) to require the removal and replacement of directors and senior managers;
- providing the Bank of England (BoE) with back-stop powers independently to resolve the UK branch of a third country institution in certain circumstances; and
- granting the BoE powers to convert a failing building society into a company, enabling the shares of the company to be transferred to a bridge bank.

The Order came into force on 16 December 2016.

### **House of Commons Treasury Committee launches inquiry on recovery and resolution**

The House of Commons Treasury Committee [has launched](#) an inquiry on the capital held by banks and progress made towards ending too-big-to-fail. As a first stage of the capital inquiry, the Committee has published the terms of reference to examine recovery and resolution and scrutinise whether the failure of a large bank can be managed in an orderly way, without relying on public support.

The Committee has issued an invitation for written evidence from interested parties, including on questions relating to:

- institutions' recovery and resolution plans and ring-fencing arrangements;
- progress made by major foreign economies in developing resolution and recovery plans;
- the possible impact of Brexit on the effectiveness of the UK recovery and resolution regime;
- what assumptions the Bank of England Financial Policy Committee (FPC) has made on the efficacy and feasibility of resolution plans;
- whether there are contagion risks around the solvency of banks associated with falls in prices of certain bail-inable securities; and
- whether it would be desirable to have more transparency about the recovery and resolution plans of major UK banks and the regulators' assessments of them.

Written submissions are due by 5 March 2017.

### **BaFin issues interpretation guideline to German bank ring-fencing restrictions**

The German Federal Financial Supervisory Authority (BaFin) has issued an [interpretation guideline](#) to the German ring-fencing law which requires German banks, when their trading activities exceed a certain threshold over the relevant time period, either to limit and discontinue such activities or to transfer such activities to a separately licensed financial trading institution with the purpose of ring-fencing such business from the other activities of the bank.

Certain proprietary trading and loans or guarantees to (German) hedge funds or umbrella hedge funds as well as to EU-AIFs or non-EU AIFs which use leverage on a substantial basis qualify as trading activities subject to the ring-fencing requirement. The interpretation guideline clarifies the scope of application of the requirement and also addresses specific requirements banks would need to

observe before entering into a loan or guarantee agreement. The guidance also covers ongoing monitoring requirements.

### **German Federal Ministry of Finance publishes draft law to implement PSD2 in Germany**

The German Federal Ministry of Finance has published a [draft law](#) to implement the revised Payment Services Directive (EU) 2015/2366 (PSD2) in Germany.

Amongst other things, under the draft law:

- payment initiation service providers need to apply for a payment service licence with the German Federal Supervisory Authority (BaFin);
- account servicing payment service providers have to grant access to a customer's payment account for a payment initiation service provider;
- payment transactions by a provider of electronic communications networks do not trigger a licence requirement, if (i) the value of a single payment transaction does not exceed EUR 50 and (ii) the cumulative value of payment transactions for an individual subscriber does not exceed EUR 300 per month; and
- strong customer authentication is required where the payer (i) accesses its payment account online; (ii) initiates an electronic payment transaction; or (iii) carries out any action through a remote channel which may imply a risk of payment fraud or other abuses.

The law is intended to enter into force on 12 January 2018, subject to changes made by the German Parliament.

### **CNMV intends to comply with ESMA guidelines on persons receiving market soundings and on delay in disclosure of inside information**

The Spanish Securities Market Commission (CNMV) [has informed](#) ESMA that it intends to comply with ESMA's guidelines on:

- persons receiving market soundings; and
- delay in the disclosure of inside information.

These ESMA guidelines will be taken into account by the CNMV in its supervisory activities.

### **AMF applies ESMA's guidelines on sound remuneration policies under UCITS Directive and AIFMD**

The French Autorité des marchés financiers (AMF) applies [ESMA's guidelines](#) on sound remuneration policies

applicable to investment companies and management companies under the Directive on undertakings for collective investment in transferable securities (UCITS Directive) (ESMA/2016/575) and to managers under the Alternative Investment Fund Managers Directive (AIFMD) (ESMA/2013/232 and ESMA/2016/579).

Accordingly, the AMF has published a position paper on remuneration policies under the UCITS Directive ([DOC-2016-14](#)) and updated its 2013 position paper on remuneration policies under the AIFMD ([DOC-2013-11](#)).

The AMF positions apply from 1 January 2017.

### **FINMA publishes circulars on credit risks and disclosure requirements for banks**

The Swiss Financial Market Supervisory Authority (FINMA) [has published](#) new Circular 2017/7 'Credit risks – banks' and revised Circular 2016/1 'Disclosure – banks'. FINMA has incorporated most of the amendments suggested during the consultations.

FINMA has issued Circular 2017/7 'Credit risks – banks' to implement the revisions of regulations on credit risk capital requirements for derivatives, fund investments and securitisations for banks under Basel III, following the Federal Council's amendment of the Capital Adequacy Ordinance (CAO). The circular comes into force on 1 January 2017 with a transitional period of one year.

Circular 2016/1 'Disclosure – banks' has been revised in accordance with the 'too big to fail' regulations set out in the CAO which came into force on 1 July 2016. The revised circular comes into force on 1 January 2017. The revised disclosure requirements will be applied to data reported as of 31 December 2016.

### **RQFII program expanded to Ireland**

The People's Bank of China (PBOC) [has announced](#) that the State Council has approved the expansion of the RMB qualified foreign institutional investors program (RQFII Program) to Ireland, with an initial quota of RMB 50 billion.

So far the RQFII Program has been expanded to 18 jurisdictions with a total quota of RMB 1.51 trillion. The covered jurisdictions are Hong Kong, Singapore, UK, France, Germany, South Korea, Australia, Luxembourg, Switzerland, Hungary, Canada, Qatar, Chile, Malaysia, UAE, Thailand, US and Ireland.



### HKMA issues circular on implementation of cybersecurity fortification initiative

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) to authorised institutions to inform them of the implementation details of the Cybersecurity Fortification Initiative (CFI). The CFI, announced by the HKMA in May 2016, consists of three pillars, namely the Cyber Resilience Assessment Framework (C-RAF), the Professional Development Programme (PDP), and the Cyber Intelligence Sharing Platform (CISP).

The C-RAF is an assessment tool to help authorised institutions evaluate their cyber resilience. The assessment comprises three stages – inherent risk assessment, maturity assessment, and intelligence-led cyber attack simulation testing (iCAST). Taking into account the industry's comments received during the consultation and having regard to overseas experience, the HKMA will adopt a phased approach to the implementation of the C-RAF as follows:

- the first phase will cover around 30 authorised institutions including all major retail banks, selected global banks and a few smaller authorised institutions – the HKMA will inform these authorised institutions individually;
- the expected timeline for completing the C-RAF assessment under the first phase is end-September 2017 for inherent risk assessment and maturity assessment, and end-June 2018 for iCAST (if applicable); and
- depending on industry feedback and the experience gathered from the first phase, the second phase will cover all the remaining authorised institutions. They will be expected to complete the inherent risk assessment and the maturity assessment by the end of 2018. The HKMA will take into account the assessment results of the second phase in determining a timeframe for the remaining authorised institutions to complete the iCAST. Although authorised institutions covered in the second phase are given a longer timeframe for implementation, they should familiarise themselves with the C-RAF and take steps to strengthen their cyber resilience at an early stage where necessary.

The PDP, rolled out in December 2016, seeks to provide a local certification scheme and training programme for cybersecurity professionals. At the request of the industry, the HKMA has adopted a list of professional qualifications, recommended by an expert panel, which are considered to

be equivalent to the certification provided under the PDP. A person holding a PDP certification or an equivalent professional qualification may perform the assessments and tests in relation to the different roles defined under the C-RAF as set out in the Annex of the circular.

Finally, the CISP, the third pillar of the CFI, is ready for access by banks with effect from December 2016.

## RECENT CLIFFORD CHANCE BRIEFINGS

### Bank defeats swaps misselling and LIBOR claims

In the first case involving allegations about the rigging of LIBOR to reach judgment on the facts in England, the High Court has rejected wide-ranging claims that a bank missold interest rate hedging products. The Court concluded that the contractual terms and nature of the relationship blocked the claims based on the effect of the swaps and, while there was an implied obligation regarding the setting of LIBOR, it was narrow in scope, had not been relied on, and had not been broken.

This briefing paper discusses the decision.

[https://www.cliffordchance.com/briefings/2016/12/bank\\_defeats\\_swapsmissellingandliborclaims.html](https://www.cliffordchance.com/briefings/2016/12/bank_defeats_swapsmissellingandliborclaims.html)

### Your 2017 AGM and beyond

Against a background of political and economic uncertainties, this year has seen continued focus on corporate governance, executive pay and transparency for shareholders. Following the high profile failures of BHS and Sports Direct, the Government has put corporate governance firmly back on the agenda with the recent publication of a Green Paper. While there are a number of regulatory changes on the horizon in relation to narrative reporting (including regarding gender pay gap and payment practices), there is relatively little regulatory change for this reporting season.

2016 has been a year of firsts with the first viability statements and Modern Slavery Act statements being published and the first ever electronic AGM being held in the UK – not to mention Brexit. In addition, executive pay is likely to be a feature of the 2017 AGM season and remuneration committees will be busy as many will have to prepare a new remuneration policy to put to shareholders. As this is an area increasingly subject to scrutiny, we expect some lively AGMs.

Clifford Chance's annual AGM update examines the developments and changes affecting this season's AGMs

and annual reports and looks ahead to other changes on the horizon.

[https://www.cliffordchance.com/briefings/2016/12/your\\_2017\\_agm\\_andbeyond.html](https://www.cliffordchance.com/briefings/2016/12/your_2017_agm_andbeyond.html)

#### **First measure by Disciplinary Commission for Dutch banks – what lies ahead?**

The world's first disciplinary board for bankers rooted in law has now issued its first disciplinary measure. In its decision published on 15 December 2016, the Disciplinary Commission of the Dutch Foundation for Banking Ethics Enforcement has imposed a 6 month disqualification from the profession for violation of the banker's oath and related code of conduct. This decision right at the end of 2016 provides a preview of what lies ahead for the banking sector in 2017, both in the Netherlands and beyond.

This briefing paper discusses the decision.

[https://www.cliffordchance.com/briefings/2016/12/first\\_measure\\_bydisciplinarycommissionfo.html](https://www.cliffordchance.com/briefings/2016/12/first_measure_bydisciplinarycommissionfo.html)

#### **SFC introduces manager-in-charge regime to heighten senior management accountability**

On 16 December 2016, the Securities and Futures Commission (SFC) announced it was taking steps to enhance the senior management regime of licensed corporations. These requirements seek to promote senior individuals' awareness of their regulatory obligations and accountability for misconduct that falls within their area of responsibility.

This briefing paper discusses the requirements.

[https://www.cliffordchance.com/briefings/2016/12/sfc\\_introduces\\_manager-in-chargeregimet.html](https://www.cliffordchance.com/briefings/2016/12/sfc_introduces_manager-in-chargeregimet.html)

#### **Lost in translation – Japan urged to do more to combat foreign official bribery**

The handful of foreign official bribery prosecutions that have taken place in Japan has not satisfied the

Organisation for Economic Co-operation and Development (OECD) which in June renewed its pleas for the country to step up its battle against international bribery.

This briefing paper examines Japan's responses to the OECD's demands, the latest developments in Japan's foreign official bribery laws, and the implications for Japanese multinational corporations and foreign companies who face potential exposure to Japan's Unfair Competition Prevention Act.

[https://www.cliffordchance.com/briefings/2016/12/lost\\_in\\_translationjapanurgedtodomore.html](https://www.cliffordchance.com/briefings/2016/12/lost_in_translationjapanurgedtodomore.html)

#### **US Releases National Action Plan on Responsible Business Conduct**

On 16 December 2016, the United States Government published its first National Action Plan (US NAP) on Responsible Business Conduct. In doing so, the US joins other countries that have published national policy strategy statements as part of their commitment to implement the UN Guiding Principles on Business and Human Rights. The US NAP confirms that it is based on international standards such as the Guiding Principles, but takes a broader approach than some, by setting out a general strategy on responsible business conduct. The US NAP is the result of the work of numerous federal agencies and involved four national consultations with businesses, NGOs, and other stakeholders, along with continuing dialogue via comment solicitation.

This briefing paper discusses the plan.

[https://www.cliffordchance.com/briefings/2016/12/us\\_releases\\_nationalactionplanonresponsibl.html](https://www.cliffordchance.com/briefings/2016/12/us_releases_nationalactionplanonresponsibl.html)

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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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