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Briefing note

International Regulatory Update

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Money Market Funds: EU Parliament approves proposed regulation

The EU Parliament's plenary session has adopted amendments to the proposed regulation on money market funds (MMFs).

The Parliament has proposed the low volatility net asset value MMF (LVNAV MMF), a new category of MMF especially for small firms.

Features of LVNAV MMFs include:

- a diversified portfolio with concentration requirements designed to reduce risk;
- limited use of the amortised accounting method to value assets;
- strict daily and weekly liquidity requirements to fulfil potential redemption requests; and
- improved transparency for investors and supervisors.

Under the adopted text, LVNAV MMFs should only be authorised for a period of five years. The Commission is to assess the rules four years after their entry into force and propose whether these funds should be authorised further or indefinitely.

Capital Markets Union: EU Parliament adopts Prospectus Regulation

The EU Parliament's plenary session has adopted the new Prospectus Regulation, which is intended to reduce burdens, deliver shorter prospectuses and provide better and more concise information for investors and a fast track regime for companies that frequently tap capital markets.

Under the new rules, the information that a prospectus provides must enable investors to make an informed assessment of assets, liabilities, profits, losses and rights attached to investment products. Prospectuses should include an accurate, clear seven-page summary (with an extra one, two or three pages where a given type of a security requires further explanations), providing:

- key information that investors need to understand the risks and make an informed decision;
- information on the issuer, on the securities, on the offer to the public and on admission to trading; and
- a clear warning of the risks involved, such as the risk of losing part or all of the investment.

The Regulation, which is part of the EU Commission's Capital Markets Union initiative, still needs to be formally approved by the EU Council before publication in the Official Journal and will apply from 24 months after its entry into force.

MiFIR: EU Commission consults on extension of ESCB exemption from pre-and post-trade transparency to third-country central banks

The EU Commission has published for consultation a draft Delegated Regulation supplementing the Markets in Financial Instruments Regulation (MiFIR) as regards the exemption of certain third countries' central banks in their performance of monetary, foreign exchange and financial stability policies from pre- and post-trade transparency requirements.

The draft delegated act fulfils the empowerment under Article 1(9) MiFIR to adopt delegated acts in order to extend the exemption from pre- and post-trade transparency requirements where the counterparty is a member of the European System of Central Banks (ESCB) and where that transaction is entered into in performance of monetary, foreign exchange and financial stability policy which that member of the ESCB is legally empowered to pursue and where that member has given prior notification to its counterparty that the transaction is exempt.

The draft delegated act has been drafted based on findings and conclusions of an external study by the Centre for European Policy Studies (CEPS) and the University of Bologna.

Comments on the draft delegated act are due by 4 May 2017.

EU Commission consults on extension to transitional period for own funds requirements for exposures to CCPs

The EU Commission has published for consultation a draft Commission Implementing Regulation on the extension of the transitional periods related to own funds requirements for exposures to central counterparties (CCPs) as set out in the European Market Infrastructure Regulation (EMIR) and the Capital Requirements Regulation (CRR).

Article 497(2) of the CRR established a transitional period during which third-country CCPs with which institutions established in the EU clear transactions may be considered qualifying CCPs by those institutions.

The CRR amended EMIR in respect of certain inputs to the calculation of institutions' own firms requirements for exposures to third-country CCPs, mirroring the transitional period laid down under Article 497(2) of the CRR. Both of the transitional periods, originally set to expire in 2014, were most recently extended to 15 June 2017.

While 22 CCPs have already been recognised by the European Securities Markets Authority (ESMA), a number of remaining third-country CCPs are still awaiting recognition and this process will not be completed by 15 June 2017.

The draft Implementing Regulation proposes extending the existing transitional periods to 15 December 2017.

Comments are due by 28 April 2017.

Recovery and resolution of CCPs: ESMA publishes opinion on legislative proposal

The European Securities and Markets Authority (ESMA) has published an opinion on the proposed regulation on the recovery and resolution of CCPs.

ESMA welcomes the proposal, considering it balanced, proportionate and consistent with existing relevant EU legislation, including EMIR, and international guidance provided by the Committee on Payments and Market Infrastructure and the International Organization of Securities Commissions (COMI-IOSCO) and the Financial Stability Board (FSB) on CCP recovery and resolution.

In the opinion, ESMA sets out its view on the impact of the proposal on ESMA's resources and role, and more generally on some arrangements related to CCP recovery and resolution. The opinion proposes:

- introducing additional requirements regarding NRAs' recovery plans in order to ensure a higher level of convergence, while providing the necessary flexibility to CCPs to select those recovery tools which best fit their business situation;
- considering a more effective mediation mechanism; and
- including a provision for ESMA to draft a report on the budgetary impact of the regulation on ESMA's resources.

MiFID2: ESMA publishes final draft RTS on scope of consolidated tape for non-equity instruments

ESMA has published final draft regulatory technical standards (RTS) on the scope of the consolidated tape for bonds, structured finance products, emission allowances and derivatives under MiFID2.

ESMA submitted its final draft RTS 13 in September 2015, which relate to authorisation, organisational requirements and the publication of transactions for data reporting services providers and specify the scope of the equity tape. RTS 13 were endorsed by the EU Commission in June 2016. ESMA decided to deliver draft RTS specifying the scope of the non-equity tape at a later stage, due to the higher complexity for establishing and operating a non-equity tape and bearing in mind that the provisions on the non-equity tape will only apply from September 2019.

The final draft RTS on the scope of the consolidated tape for non-equity instruments proposes amendments to RTS 13 by adding an Article specifying the scope of the non-equity tape.

The final draft RTS set out:

- the possibility for consolidated tape providers (CTPs) to specialise in one or some asset classes; and
- approved publication arrangements (APAs) and trading venues that should be included in the consolidate tape.

The final draft RTS have been sent to the EU Commission for endorsement.

MiFID2: ESMA publishes final guidelines on circuit breakers and trading halts

ESMA has published final guidelines on the calibration of circuit breakers and publication of trading halts under MiFID2. The guidelines are intended to provide further detail on the calibration of trading venues' circuit breakers and also specify the format of submissions to competent authorities on the parameters for trading halts and any material changes to those parameters.

The guidelines are addressed to trading venues that allow or enable algorithmic trading on their systems and national competent authorities (NCAs) with the aim of ensuring consistent application of MiFID2.

Alongside the guidelines, ESMA has also published its final report, which sets out the feedback statement on its consultation paper.

Credit rating agencies: ESMA consults on updates to guidelines for third country credit ratings

ESMA has published a consultation paper setting out proposed updates to its guidelines on the application of the endorsement regime under Article 4(3) of the Credit Rating Agencies (CRA) Regulation. The endorsement regime allows credit ratings issued by a third country CRA to be endorsed by an EU CRA and used for regulatory purposes in the EU as though they had been issued by the endorsing EU CRA.

EMSA is proposing to update the guidelines to clarify that the endorsing CRA must be able to demonstrate that the conduct of the third country CRA fulfils, on an ongoing basis, requirements that are as stringent as the EU requirements. It will no longer be sufficient that the third country CRA is based in a country whose legal and supervisory framework has been positively assessed by ESMA and meets the minimum threshold of investor protection and financial stability. The proposed updates are also intended to clarify that ESMA has the power to request information regarding the conduct of third country CRAs directly from the endorsing EU CRA.

Comments are due by 3 July 2017.

BRRD: EBA publishes guidelines on bail-in

The European Banking Authority (EBA) has published three sets of final guidelines on bail-in under the Bank Recovery and Resolution Directive (BRRD).

The guidelines deal with:

- principles that resolution authorities should apply when setting debt-to-equity conversion rates in a bail-in context or when the power to write down and convert capital instruments is not applied in conjunction with any resolution tool, as well as clarification on when to set differential conversion rates for different classes of creditor;
- the treatment of shareholders in bail-in, in particular the circumstances under which it is appropriate to cancel, transfer, or severely dilute shares or other instruments of ownership; and
- the interrelationship between the BRRD and the Capital Requirements Directive (CRD 4) and Regulation (CRR), in particular the treatment of instruments which meet the criteria for recognition as AT1 under CRR but are progressively grandfathered due to the fact that they do not contain a point of non-viability (PONV) clause.

The guidelines will apply six months after their publication in the official languages of the EU.

European Supervisory Authorities consult on guidelines to prevent terrorist financing and money laundering in electronic fund transfers

The Joint Committee of the European Supervisory Authorities (EBA, ESMA and EIOPA) has launched a consultation on draft guidelines that set out what payment service providers should do to detect and prevent the abuse of funds transfers for terrorist financing and money laundering purposes.

The European Supervisory Authorities aim to foster a common approach to anti-money laundering and countering the financing of terrorism and to promote a common understanding of payment service providers' obligations in this area. The draft guidelines set out what intermediary payment service providers and the payment service providers of the payee should do to detect whether information on the payer or the payee is missing or incomplete. They also set out what payment service providers should do to manage a transfer of funds that lacks the required information.

Comments are due by 5 June 2017.

Basel Committee publishes guidance on prudential treatment of problem assets

The Basel Committee on Banking Supervision has published its final guidance on the prudential treatment of

problem assets, which provides definitions for non-performing exposures and forbearance.

The Basel Committee intends to harmonise the scope, recognition criteria and level of application of non-performing exposures and forbearance as asset quality measures, and to help promote consistency in supervisory reporting and disclosures by banks.

The definition of non-performing exposures:

- introduces harmonised criteria for categorising loans and debt securities that are centered on delinquency status (90 days past due) or the improbability of repayment;
- clarifies the consideration of collateral in categorising assets as non-performing; and
- introduces rules regarding the upgrading of a non-performing exposure to performing and the interaction between forbearance and non-performing status.

The definition of forbearance:

- provides a harmonised view on the modification or refinancing of loans and debt securities that result from a borrower's financial difficulty;
- allows forborne exposures to be categorised as performing or non-performing; and
- sets out criteria for discontinuing the forbearance categorisation and emphasises the need to ensure a borrower's financial soundness before the discontinuation.

The guidelines are intended to complement the existing accounting and regulatory framework for asset categorisation.

Brexit: BoE requests details of firms' contingency planning

The Bank of England's (BoE's) Deputy Governor for prudential regulation and CEO of the Prudential Regulation Authority (PRA) has written a Dear CEO letter addressed to banks, insurers and designated investment firms undertaking cross-border activities between the UK and the rest of the EU. The letter sets out the BoE's expectations with respect to appropriate contingency planning for Brexit by all firms with cross-border activities between the UK and the rest of the EU.

In particular, the letter highlights the BoE's expectation for firms to plan for a variety of possible scenarios in order that the safety and soundness of their UK operation is assured and the risk of any adverse financial stability impacts on the UK economy is mitigated. Firms currently relying on passporting arrangements to undertake business in the UK should take into account the need to apply for authorisation from the PRA, which may be required to continue operating either as an incoming branch or as a subsidiary after the UK's withdrawal from the EU.

In the letter, the Deputy Governor requests:

- written confirmation from firms that the board or local branch senior management has considered its contingency plans around UK withdrawal;
- a short summary of those plans;
- an assurance that those plans appropriately address a wide range of scenarios; and
- in circumstances where authorisation or other regulatory engagement is required, details should be provided.

Firms should submit full responses by 14 July 2017.

BoE consults on Shari'ah compliant fund based deposit facility

The BoE has published a consultation on establishing a Shari'ah compliant fund based deposit facility. The consultation is part of the BoE's strategy to broaden liquidity provision to the market and follows a consultation in February 2016, which set out Shari'ah compliant facility models which might feasibly be implemented in the UK. In particular, the BoE consulted on a fund based model and commodity trading model and, following a review of the feedback received, it has concluded that the fund based model with some adjustments would be the most feasible approach to establishing a deposit facility.

The consultation paper sets out more operational detail on how the fund based deposit model would work in practice and how the BoE has adjusted the design of the original model in light of feedback received from stakeholders.

The BoE is seeking feedback from UK Islamic banks and other interested parties; comments are due by 23 May 2017.

The BoE expects that the deposit facility will not be ready before spring 2018.

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2017 laid before Parliament

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2017 (SI 2017/500) has been laid before Parliament. The Order amends Article

53 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO).

Currently under the RAO, a regulated firm is giving regulated investment advice if they give advice that relates to the merits of a person's buying or selling certain investments. The RAO Amendment (No. 2) Order amends the definition of regulated advice to bring it in line with the MiFID definitions, but only for regulated firms. This means the majority of regulated firms will only be giving regulated advice when they provide a personal recommendation.

The amendment leaves the wider RAO definition of advice in place for unregulated firms, which will limit the activities that can be undertaken by unregulated firms.

The Order will come into force on 3 January 2018.

Legislative Reform (Private Fund Limited Partnerships) Order 2017 made

The Legislative Reform (Private Fund Limited Partnerships) Order 2017 (SI 2017/514) has been made. The Order enables a limited partnership which is a collective investment scheme (CIS) to be designated as a private fund limited partnership (PFLP) and amends some of the provisions of the Limited Partnerships Act 1907 as they apply to PFLPs and to partners in PFLPs.

The Order came into force on 6 April 2017.

Office of Financial Sanctions Implementation publishes guidance on monetary penalties for financial sanctions breaches

HM Treasury's Office of Financial Sanctions Implementation (OFSI) has published guidance setting out its approach to imposing monetary penalties for breaches of financial sanctions.

Under the Policing and Crime Act, which came into force on 1 April 2017, OFSI can impose penalties of up to GBP 1 million or 50% of the breach, whichever is higher. The guidance summarises OFSI's powers under the Act, its approach to compliance and enforcement, and sets out:

- assessment criteria for imposing monetary penalties;
- procedures for deciding the level of penalty; and
- procedures for imposing the penalty, including timescales and the rights of the penalised person or entity.

Alongside the guidance, OFSI has published a response to its consultation on the introduction of monetary penalties, which was launched in December 2016. The document sets out details of feedback received and OFSI's responses.

Consob approves amendments to regulations on issuers, markets and transactions with related parties to align them with EU Market Abuse Regulation

Further to a recent consultation with the market, Consob, the Italian securities regulator, has approved a number of amendments intended to align Consob regulations on issuers, markets and transactions with the new European regulatory framework on market abuse (notably, the Market Abuse Regulation (EU) 596/2014, which entered into force on 3 July 2016, and related delegated acts).

Amongst other things, these regulatory changes provide for new ongoing reporting requirements for issuers of widely distributed securities and transparency requirements for transactions carried out by relevant shareholders in securities of listed issuers.

The new provisions also set out a higher threshold (EUR 20,000 instead of the previous EUR 5,000) for disclosure obligations applicable to transactions carried out by managers in securities of the issuers employing those managers (internal dealing).

In this context, Consob has also launched a new consultation process on guidelines intended to provide practical clarifications on the new regulatory framework (in particular, on privileged information and preparation of insider lists and correct presentation of investment recommendations and disclosure of conflicts of interests). The consultation closes on 6 June 2017.

Legislative Decree implementing Payment Accounts Directive published in Italian Official Journal

Decree no. 37 of 15 March 2017 for the enforcement of the EU Payment Accounts Directive (2014/92/EU – PAD) has been published in Official Journal no. 75 of 30 March 2017. The PAD deals with the comparability of expenses related to payment accounts, the transfer of payment accounts and the access to a basic payment accounts. Publication of the Decree the Official Journal follows approval by the Italian Council of Ministers on 10 March 2017.

The Decree grants payment account holders greater transparency, simplified procedures for transferring a payment accounts and places limits on the fees chargeable in connection with a basic payment account.

The Decree enters into force on 14 April 2017.

Bank of Italy consults on proposed amendments to Circular on prudential regulation for banks

Bank of Italy has published a consultation document outlining certain proposed changes to Circular No. 285, which sets out prudential regulations for banks.

In particular, the changes relate to the supervisory review process and large exposures and are intended to align the Circular to the European regulatory framework for early intervention measures, interest rate risk in the banking book and limits to the exposures to shadow banking entities.

Comments are due by 30 April 2017.

MiFID2: Polish Financial Supervision Authority sets out remuneration rules for certain funds

Further to the standpoint of the Polish Financial Supervision Authority of 29 March 2017 concerning the recommended regulatory solutions for implementing MiFID2 with respect to remunerating distributors of investment fund units, the PFSA has set out its opinion that limiting the maximum amount of fixed remuneration for managing an open-ended investment fund and a specialised open-ended investment fund should be introduced gradually. The PFSA proposes that the target maximum limit of remuneration of 2% of a fund's net asset value per annum should be reached by 2022.

Polish President signs Amendment to Act on Trading in Financial Instruments

The President of the Republic of Poland has signed the Act amending the Act on Trading in Financial Instruments and Certain Other Acts.

Among other things, the Act is intended to abolish the current division of the regulated market into the stock exchange and the off-stock exchange market. Consequently, both types of market are will be covered by the same term – the regulated market. The amendment makes changes with regard to issuing a permit to run a regulated market, which will be issued by the Polish Financial Supervision Authority (PFSA). The PFSA will also be the competent authority for revoking permits and to prohibiting the running of the regulating market. The Act also introduces regulations on the institution of a derivatives account.

The Act awaits publication in the Journal of Laws.

MAS publishes Financial Advisers (Amendment) Regulations 2017 and updates guidance

The Monetary Authority of Singapore (MAS) has published the Financial Advisers (Amendment) Regulations 2017.

Among other things, the Regulations exempt dealers from section 27 of the Financial Advisers Act in relation to a recommendation of a listed excluded investment product provided to a dealer's client, subject to:

- the dealer or trading representative providing execution-related advice for the listed excluded investment product being recommended and the rationale for the advice alongside the recommendation; and
- the dealer providing notice to the client of the matters set out in Section 33A(2) of the Financial Advisers Regulations (Rg 2) (FA Rg 2) before any execution-related advice is given by the dealer, or the dealer's trading representative, to the client for the first time on or after 1 April 2017.

The Amendment Regulations also amend Section 34A(2) of the FA Rg 2 by updating the definition of 'execution activities' to mean either or both of:

- dealing in securities that have received approval in principal for listing and quotation on, or are listed for quotation or quoted on, any securities exchange or overseas securities exchange; and
- trading in futures contracts.

The Amendment Regulations are effective from 1 April 2017.

Alongside the Regulations, the MAS has also updated its Guidelines on conduct of business for execution-related advice, which set out the standards to be maintained by dealers and their trading representatives when providing execution-related advice in relation to any capital markets product, and Notice on recommendations on investment products.

Singapore and France sign FinTech cooperation agreements

The MAS has signed cooperation agreements with the Autorité de Contrôle Prudentiel et de Résolution (ACPR) and the Autorité des Marchés Financiers (AMF) of France to enhance FinTech cooperation between both countries.

The cooperation agreements provide a framework under which the ACPR, the AMF, and the MAS will share information about emerging FinTech trends, potential joint

innovation projects, and regulatory issues pertaining to innovative financial services. The framework will also allow authorised FinTech companies in Singapore and France to facilitate their understanding of regulatory requirements in each jurisdiction, so as to foster trades and flows across the two markets.

SFC issues circular to licensed corporations on submission of information on managers-in-charge of core functions and organisational charts

The Securities and Futures Commission (SFC) has issued a circular to licensed corporations on the submission of information on managers-in-charge of core functions (MIC) and organisational charts. As set out in the circular regarding measures for augmenting the accountability of senior management published by the SFC on 16 December 2016, the MIC measures will be implemented on 18 April 2017.

To facilitate submission of the required MIC information and organisational charts by corporations applying for a licence under the Securities and Futures Ordinance, the SFC has revised the existing form, Supplement 8 – Business Plan and Proposed Business Activities, and made a new form, Supplement 8A – Manager-In-Charge of Core Function(s). Corporate licence applicants are advised to use the revised/new licensing forms for submission of applications on or after 18 April 2017.

For existing licensed corporations, the MIC information and organisational charts should be submitted via the SFC Online Portal. Submissions via the SFC Online Portal will commence on 18 April 2017 and should be completed by 17 July 2017.

HKMA issues circular on consolidated and enhanced framework for Pillar 3 disclosure requirements

The Hong Kong Monetary Authority (HKMA) has issued a circular to authorised institutions on the consolidated and enhanced framework for Pillar 3 disclosure requirements, published by the Basel Committee on Banking Supervision (BCBS) on 29 March 2017 (March 2017 package).

The March 2017 package is the outcome of the second phase of the BCBS review of the Pillar 3 disclosure framework, which builds on the Revised Pillar 3 disclosure requirements published by the BCBS in January 2015. Seeking to promote market discipline through enhanced disclosure of banks, the March 2017 package covers the following three main elements:

- consolidation of all existing BCBS disclosure requirements into the Pillar 3 framework;
- two new enhancements to the Pillar 3 framework (i.e. the introduction of a 'dashboard' of a bank's key prudential metrics, and a new disclosure template on prudential valuation adjustments); and
- updates to reflect ongoing reforms to the regulatory policy framework, such as the total loss-absorbing capacity (TLAC) regime for globally systemically important banks issued by the Financial Stability Board in November 2015 and the revised market risk framework issued by the BCBS in January 2016.

The HKMA notes that, according to the BCBS timeline, the implementation dates for the enhanced disclosure requirements will generally be either end-2017 (where the associated policy frameworks have already taken effect), or some specified dates within the next two years depending on the effective dates of their associated policy reforms.

The HKMA has indicated that it will consult the industry later in 2017 on its proposed approach to enhancing the local disclosure regime to reflect the March 2017 package. In the meantime, locally incorporated authorised institutions (to which the March 2017 package will be applicable) are advised to study the relevant disclosure requirements and consider any system changes that are necessary for their implementation.

FSTB publishes consultation conclusions on protected arrangements regulation

The Hong Kong Government and the financial regulators, namely the HKMA, the Insurance Authority (IA) and the Securities and Futures Commission (SFC), have published the conclusion of their public consultation on the protected arrangements regulation to be made as subsidiary legislation under section 75 of the Financial Institutions (Resolution) Ordinance. The consultation conclusion sets out the authorities' response to the comments received and the proposals for taking forward the protected arrangements regulation.

The proposed regulation imposes constraints on the resolution authorities under the Financial Institutions (Resolution) Ordinance, namely the HKMA, the IA and the SFC, in the event that it is necessary to exercise their resolution powers to manage the orderly failure of a non-viable systemically important financial institution in Hong Kong. These constraints are designed to safeguard the economic effect of a set of financial arrangements, defined as 'protected arrangements' under section 74 of the

Financial Institutions (Resolution) Ordinance, that are crucial to the daily functioning of financial markets. Before the Financial Institutions (Resolution) Ordinance commences operation, it is considered prudent to have the protected arrangements regulation in place in order to provide legal certainty on the treatment of the 'protected arrangements' if a resolution authority were to exercise its resolution powers.

The government notes that the respondents generally agreed with the approach to the proposed regulation and it plans to table the regulation before the Legislative Council in second quarter of 2017, with a view to bringing the regulation and the Financial Institutions (Resolution) Ordinance into operation shortly after the completion of the negative vetting procedure within 2017.

CLIFFORD CHANCE BRIEFINGS

The future of bank finance – new EU rules for loss absorbency, subordination and holding companies

In November 2016, the European Commission published its proposals for a wide-ranging package of new EU legislation amending the Capital Requirements Directive (CRD), the Capital Requirements Regulation (CRR) and the Bank Recovery and Resolution Directive (BRRD).

This briefing paper discusses the proposals on loss absorbency, subordination and holding companies and how they are likely to affect EU and non-EU banks and their EU structures.

https://www.cliffordchance.com/briefings/2017/04/the_future_of_bankfinanceneweurulesfo.html

Luxembourg Legal Update – March 2017

The latest edition of the Clifford Chance Luxembourg Legal Update provides a compact summary and guidance on the ,new legal issues which could affect your business fina ,particularly in relation to bankingnce, capital markets, corporate, litigation, employment, funds, investment management and tax law.

https://www.cliffordchance.com/briefings/2017/04/luxembourg_legalupdate-march2017.html

Australia's insolvency law reforms

On 28 March 2017, as part of the National Innovation and Science Agenda, the Minister for Revenue and Financial Services, the Hon Kelly O'Dwyer MP, released draft legislation designed to reform Australia's insolvency laws. The proposed reforms are significant and are aimed at encouraging Australians to be more innovative and ambitious. Public submissions on the draft legislation close on 24 April 2017.

This briefing paper looks at the history leading to the draft legislation, the content of the draft legislation as it applies to corporate insolvency and areas of focus for affected parties.

https://www.cliffordchance.com/briefings/2017/04/australias_insolvencylawreforms.html