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Briefing note

International Regulatory Update

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EU Commission publishes reflection paper on economic and monetary union

The EU Commission has published a reflection paper on deepening the economic and monetary union (EMU). The paper follows the publication of the Five Presidents' Report in June 2015, which mapped out a way forward for completing the EMU, in particular a first phase of 'deepening by doing' until June 2017 and steps needed for a second stage towards 2025, which would require further discussion and agreement among Member States. The EU Commission's White Paper on the future of Europe published on 1 March 2017 also highlighted the importance of the euro area for the EU27. The reflection paper is intended to take forward the views of the Five Presidents' Report and contribute to the broader debate initiated by the White Paper.

The report highlights the Commission's view that the monetary pillar of the EMU is well developed but the economic pillar is lagging behind, with less integration at EU level hampering its ability to support fully the monetary policy and national economic policies. The Commission views this as symptomatic of the need to strengthen the political will to cement the union part of the EMU.

The reflection paper describes the euro's achievements and challenges and offers a practical way forward, including some precise measures for the next two years and more exploratory measures for which the Commission has set out a range of options, in line with the overall vision and necessary sequencing.

Brexit: ESMA publishes opinion to support supervisory convergence on financial market participant relocations to EU27

The European Securities and Markets Authority (ESMA) has published an opinion on general principles to support supervisory convergence in the context of the UK withdrawing from the EU. The opinion is addressed to national competent authorities (NCAs) in the EU27 and is intended to address regulatory and supervisory arbitrage risks that may arise as a result of increased requests from financial market participants seeking to relocate to the EU27 in order to maintain access to EU financial markets. It assumes that the UK will become a third country after its withdrawal from the EU, without prejudice to any specific arrangements that may be reached between the UK and the EU.

The opinion is intended to foster consistency in relation to authorisation, supervision and enforcement and sets out the need for EU27 NCAs to prepare for an increase in activities in relation to authorisation and supervision. It sets out nine principles based on the objectives and provisions of the legislation referred to in Article 1(2) and (3) of the ESMA Regulation, which are applied to the specific case of relocation of entities, activities and functions following the UK's withdrawal from the EU, in particular:

- no automatic recognition of existing authorisations;
- authorisations granted by EU27 NCAs should be rigorous and efficient and ensure that conditions set by relevant legislation, in particular the AIFMD, UCITS Directive, MiFID1 and MiFID2, are met from day one of authorisation;
- NCAs should be able to verify the objective reasons for relocation;
- special attention should be granted to avoid letter-box entities in the EU27, in particular considering issues relating to the outsourcing and delegation of activities or functions;
- outsourcing and delegation to third countries is only possible under strict conditions;
- NCAs should ensure that substance requirements are met to ensure that any outsourcing or delegation

arrangements are clearly structured and set up in a way that do not hinder NCAs efficiently and effectively supervising entities;

- NCAs should ensure sound governance of EU entities, including ESMA's expectation that the key executives or senior managers of EU authorised entities are employed in the Member State of establishment and work there to a degree proportionate to their envisaged role;
- NCAs must be in a position to effectively supervise and enforce EU law, ensure they have the ability to adequately handle authorisation requests and respond to relevant market developments; and
- coordination to ensure effective monitoring by ESMA, including ESMA's intention to establish new practical convergence tools and establishing a new Supervisory Coordination Network to promote consistent decisions taken by NCAs.

ESMA intends to develop further guidance in relation to specific sectors, including asset managers, investment firms and secondary market participants, to provide further details on the issues described in the general principles.

Capital Markets Union: EU Council and Parliament reach agreement on venture capital rules in trilogue

The EU Council and EU Parliament have reached political agreement at trilogue negotiations on rules governing investment funds in relation to venture capital and social enterprises. The proposal adjusts the Regulations on European venture capital funds (345/2013 - Euveca) and European social entrepreneurship funds (346/2013 - Eusef) in order to make the funds available to fund managers of all sizes and to amend the range of companies that the funds can invest in. The amendments are also intended to make the cross-border marketing of relevant funds cheaper and easier.

The agreed text will be submitted to the Permanent Representatives Committee (COREPER) for endorsement on behalf of the Council. The Parliament and Council will be called on to adopt the proposed regulations at first reading.

Capital Markets Union: EU Council and Parliament agree securitisation rules in trilogue

The EU Council and EU Parliament have reached political agreement in trilogue negotiations on a package of proposals for simple, transparent and standardised (STS) securitisation.

The proposals form part of the EU Commission's Capital Markets Union (CMU) Action Plan and are intended to facilitate the development of the securitisation market in Europe. The package comprises two proposed regulations on:

- rules and criteria to define STS securitisation; and
- capital requirements for positions in securitisation, which will amend the Capital Requirements Regulation (CRR).

Among other things, the Council and Parliament have agreed to set the risk retention requirement at 5% in accordance with existing international standards.

The agreed text will be submitted to COREPER for endorsement, and the Parliament and Council will be called on to adopt the proposed regulations at first reading.

Criminalising money laundering: EU Council Presidency publishes compromise text

The EU Council Presidency has published a consolidated compromise text of the EU Commission's December 2016 proposal for a Directive to criminalise money laundering. The proposed Directive 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.

The Presidency has invited the Council to reach a general approach on the compromise text, which will constitute the basis for future negotiations with the EU Parliament in the context of the ordinary legislative procedure.

EU Council Presidency publishes compromise texts on proposed amendments to BRRD and CRR

The EU Council Presidency has published compromise texts on the proposals for:

- a Directive to amend the Bank Recovery and Resolution Directive (BRRD) as regards the ranking of unsecured debt instruments in insolvency hierarchy; and
- a Regulation amending the CRR as regards the transitional period for mitigating the impact on own funds of the introduction of IFRS 9 and the large exposures treatment of certain public sector exposures denominated in non-domestic currencies of Member States.

CRR: EU Commission adopts Delegated Regulation on objective criteria for applying preferential liquidity outflow or inflow rates

The EU Commission has adopted a Delegated Regulation supplementing the CRR with regard to regulatory technical standards (RTS) further specifying the additional objective criteria for applying preferential liquidity outflow or inflow rates for cross-border undrawn credit or liquidity facilities within a group or an institutional protection scheme.

The application of these preferential liquidity outflow or inflow rates is limited to those cases where the necessary safeguards are in place, as set out in Articles 29(2) and 34(2) of Delegated Regulation (EU) 2015/61. The Delegated Regulation further specifies these safeguards so as to clearly define the conditions for their compliance.

The Delegated Regulation will enter into force on the twentieth day following its publication in the Official Journal.

PSD2: EU Commission sets out amendments to EBA draft RTS on strong customer authentication

The EU Commission has written to the European Banking Authority (EBA) on substantive changes it envisages to the draft RTS submitted by the EBA on strong customer authentication and common and secure open standards of communication under the recast Payment Services Directive (PSD2).

The changes refer to chapters 1, 3 and 5 of the EBA draft and relate to:

- independent auditing by statutory auditors of the security measures in cases when the transaction risk analysis exemption is applied;
- a new exemption to the application of strong customer authentication concerning certain corporate payments, in particular when dedicated payment processes or protocols are used in the case where, due to the specificity of such solutions and the level of security achieved by them, the competent authorities can establish that those processes or protocols achieve the high levels of security of payments aimed for by PSD2;
- fraud reporting by payment service providers (PSPs) directly to the EBA to ensure the EBA can effectively review fraud rates; and
- contingency measures in case of unavailability or inadequate performance of the dedicated communication interface.

In addition to the substantive changes set out in the letter, the Commission Legal Service has also made certain amendments to the legal drafting, including additional clarifications on the text in the recitals and explanatory memorandum.

MiFID2/MiFIR: ESMA publishes opinions on transparency and position limit regimes for instruments traded on non-EU trading venues

ESMA has published two opinions clarifying the transparency and position limits regimes under MiFID2 for instruments traded on non-EU trading venues.

ESMA has published the opinions in order to prevent the development of inconsistent supervisory practices across competent authorities, contribute to supervisory convergence and strengthen the legal certainty required in the application of MiFID2. In particular, the opinions relate to determining:

- third country trading venues for the purposes of transparency under MiFIR, in particular on those third country trading venues that are subject to transparency provisions that are similar to the post-trade transparency requirements applicable to EU trading venues; and
- third country trading venues for the purposes of position limits under MiFID2, specifically whether a contract in commodity derivatives traded on a third country venue should be considered as traded OTC, and thereby whether such a contract could qualify as economically equivalent to OTC (EEOTC) contracts in accordance with RTS 21.

ESMA encourages market participants who are active in non-EU venues and are unsure about their application of the transparency and position limit regimes to make their national competent authority aware as soon as possible.

MiFID2/MiFIR: ESMA updates Q&As on market structures, commodity derivatives and transparency topics

ESMA has published updated questions and answers (Q&As) on MiFID2 and MiFIR market structures topics, commodity derivatives topics and transparency topics.

The Q&As have been updated as follows:

- on market structure issues a new answer has been published on algorithmic trading;
- on commodity derivatives eight new answers have been added that relate to position limits, ancillary services and third country issues; and

- on transparency topics, ESMA has included eight new Q&As relating to non-equity transparency, pre-trade transparency waivers, the systematic internaliser regime, data reporting services providers and third country issues.

ESMA intends to review its Q&As on a regular basis and issue updates when new questions are received.

MAR: ESMA updates Q&As

ESMA has updated its Q&As on the Market Abuse Regulation (MAR). The Q&A is aimed at competent authorities to ensure converging supervisory activities but is also intended to help investors and other market participants by providing clarity on MAR requirements.

The Q&As have been updated with answers to questions on:

- disclosure of inside information related to Pillar II requirements; and
- blanket cancellation of orders policy.

MAR: ESMA announces launch of reference data submission

ESMA has announced the launch of reference data submission under MAR. The Financial Instrument Reference Data System (FIRDS) will become operational from 17 July 2017. From this date, market operators of regulated markets as well as investment firms and market operators operating multilateral trading facilities will be able to transmit via FIRDS reference data concerning financial instruments for which a request for admission to trading was made, which were admitted to trading or were traded from 3 July 2016 onwards.

MAR: ESMA publishes draft ITS on cooperation between authorities

ESMA has published a final report on draft implementing technical standards (ITS) on regulatory cooperation under MAR. The ITS are intended to clarify how national competent authorities (NCAs) should cooperate with each other for the purposes of MAR, unless one of the exceptions of Article 25(2) of MAR applies, and sets out procedures and forms for NCAs on how to exchange information and assist each other where necessary under Article 25 of MAR.

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

CSDR: ESMA publishes guidelines on implementation

ESMA has published two sets of guidelines providing further details on the implementation of the Central Securities Depositories Regulation (CSDR).

The guidelines provide guidance on the process for the collection, processing and aggregation of data and information for the calculation of indicators to determine:

- the most relevant currencies in which settlement takes place; and
- the substantial importance of a CSD for a host Member State.

The guidelines also clarify the scope of the data to be reported and are accompanied by reporting templates in order to facilitate the reporting of data by CSDs to the competent authorities, and subsequently by the competent authorities to ESMA.

EMIR: ESMA consults on guidelines on CCP conflicts of interest

ESMA has launched a consultation on draft guidelines on central counterparty (CCP) conflicts of interest management, clarifying provisions under the European Market Infrastructure Regulation (EMIR).

Conflicts of interest exist when a stakeholder's own interests interfere with the CCP's interests or the CCP's clearing members' or clients' interests. ESMA has emphasised that CCPs must have robust organisational arrangements and policies in place to prevent conflicts of interest and to resolve them should they occur.

ESMA's draft guidelines deal with provisions on the management of conflicts of interest such as:

- written arrangements to identify and manage potential conflicts of interests between CCPs, clearing members and clients;
- where written arrangements are not sufficient, disclosure of conflicts of interest to the clearing member or clients prior to new transactions; and
- considering possible conflicts of interest with a CCP's parent undertaking or subsidiary.

Comments to the consultation close 24 August 2017. ESMA expects to publish a final report on the guidelines by the end of 2017.

European Supervisory Authorities consult on group-wide money laundering and terrorist financing risk management

The Joint Committee of the European Supervisory Authorities (EBA, ESMA and EIOPA) has launched a consultation on draft regulatory technical standards (RTS) setting out how credit and financial institutions should manage money laundering and terrorist financing (ML/TF) risks where a third country's law prevents them from implementing group-wide anti-money laundering and counter terrorist financing (AML/CFT) policies and procedures in their branches or majority-owned subsidiaries.

While most third countries' legal systems will not prevent groups from implementing group-wide AML/CFT policies that are stricter than national legislation requires, in some cases a third country's law may not permit the application of some parts of a group's AML/CFT policies. For instance, sharing of customer-specific information within the group may conflict with local data protection or banking secrecy requirements.

The draft RTS set out measures credit and financial institutions should take to handle the resultant ML/TF risks. These include:

- obtaining consent from customers to overcome restrictions on sharing and processing customer data;
- carrying out enhanced reviews to ensure branches and majority-owned subsidiaries in third countries are able to adequately assess and manage ML/TF risk; and
- restricting the ability of other entities within the group to rely on customer due diligence measures carried out by a branch or majority-owned subsidiary in a third country.

Comments are due by 11 July 2017.

IOSCO reports on objectives and principles of securities regulation

The International Organization of Securities Commissions (IOSCO) has published a report setting out 38 principles of securities regulation, which are intended to help achieve the following objectives:

- protecting investors;
- ensuring that markets are fair, efficient and transparent; and
- reducing systemic risk.

IOSCO expects jurisdictions to implement the 38 principles practically under the relevant legal frameworks.

It has also published an assessment methodology, intended to guide interpretation of its objectives and principles and to give guidance on conducting self-assessments or third-party assessments of the level of principles implementation.

BaFin publishes new circular on adequate business-related safeguards pursuant to section 25h KWG

The German Federal Financial Supervisory Authority (BaFin) has published the new Circular 5/2017 (GW) on adequate business-related safeguards pursuant to section 25h of the German Banking Act (Kreditwesengesetz).

According to the circular, chat messages that are related to transactions on the respective trading platform (e.g. Bloomberg and Reuters) and/or business relationships between the parties involved in such transactions need to be documented and stored for at least ten years. Any deletion of existing correspondence within this period is no longer permitted.

BaFin has emphasised that these regulatory provisions apply without prejudice to data protection requirements, which apply in addition to them.

Royal Decree-law on transposition of EU Directives on financial, corporate and medical matters and on movement of workers published

Royal Decree law 9/2017, of 26 May, on the transposition of EU Directives on financial, corporate and medical matters and on the movement of workers (RDL 9/2017) has been published in the Spanish Official Gazette (Boletín Oficial del Estado).

The amendments introduced in relation to financial matters, which are set out in Title I of RDL 9/2017, include the following:

- Article 1 of RDL 9/2017 amends Law 41/1999, of 12 November, on payment systems and securities liquidation. It has a dual objective:
  - first, RDL 9/2017 modifies the definitions of determination and irrevocability of transfer orders so that they comply with the operating protocol established in the EU for Target 2-Securities, a platform in which Iberclear, as Spanish depositary entity, will participate from September 2017; and
  - second, in connection with over the counter derivatives, RDL 9/2017 regulates the effects regarding guarantees constituted in favor of agents or participants regarding payment systems

and securities liquidation within insolvency proceedings; and

- Article 2 of RDL 9/2017 modifies Article 234.2 of Royal Decree Law 4/2015, of 23 October, approving the recast text of the Securities Market Law. The new article is intended to approve the suspension of the exercise of voting rights in connection with the shares regarding issuances when the acquisition of a significant stake in the company has not been notified.

RDL 9/2017 entered into force on 27 May 2017.

Polish Ministry of Economic Development and Finance presents draft amendment to Act on Bonds

The Polish Ministry of Economic Development and Finance has presented a draft amendment to the Act on Bonds. The main purpose of the proposed amendments is to allow insurance and reinsurance companies to issue subordinated bonds with the quality characteristics set out in Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

MAS consults on draft Securities and Futures (Offers of Investments) (Shares, Debentures and Business Trusts) Regulations 2017

The Monetary Authority of Singapore (MAS) has launched a public consultation on the draft Securities and Futures (Offers of Investments) (Shares, Debentures and Business Trusts) Regulations 2017 (SF(OI)(SDBT)R).

The consultation is the second of two phases of consultation on the draft regulations which are intended to support the implementation of the legislative amendments under the Securities and Futures (Amendment) Act 2017 (SF(A)A 2017), which was passed by the Parliament on 9 January 2017 and when the relevant provisions are operative. The consultation under phase one was published on 28 April 2017.

The MAS seeks comments on:

- proposed amendments on disclosure of financial information in a prospectus in the draft SF(OI)(SDBT)R;
- proposed amendments to prescribe the specific information that can be incorporated into a prospectus by reference, and the conditions and restrictions for incorporating information by reference, in the draft SF(OI)(SDBT)R;
- a new provision to prescribe the form and content of the offer information statement required for the prospectus exemption for an offer of securities by a subsidiary of a listed entity in the draft SF(OI)(SDBT)R;
- proposed amendments to the disclosure requirements set out in the schedules to the draft SF(OI)(SDBT)R; and
- consequential amendments in the draft SF(OI)(SDBT)R arising from the SF(A) A 2017.

Comments on the consultation are due by 23 June 2017.

MAS consults on proposed amendments to Securities and Futures (Licensing and Conduct of Business) Regulations

The MAS has launched a public consultation on proposed amendments to the Securities and Futures (Licensing and Conduct of Business) Regulations (SF(LCB)R). The consultation is the second of two phases of consultation on the draft regulations which are intended to support the implementation of the legislative amendments under the Securities and Futures (Amendment) Act 2017 (SF(A)A 2017), which was passed by the Parliament on 9 January 2017 and when the relevant provisions are operative. The consultation under the first phase was published on 28 April 2017.

The amendments to the SF(LCB)R are primarily intended to introduce certain licensing exemptions, and business conduct requirements for dealing in over-the-counter (OTC) derivatives contracts, and enhanced requirements on protection of customers' moneys and assets. The MAS also proposes consequential amendments to the SF(LCB)R to support the changes to product and regulated activities definitions under the SF(A)A 2017.

The MAS seeks comments on:

- the key proposed amendments to the SF(LCB)R, which include:
  - business conduct for intermediaries dealing in OTC derivatives contracts;
  - changes relating to the marketing of collective investment schemes (CIS);
  - consequential amendments to effect the revised product and regulated activities definitions; and
  - enhancement of regulatory requirements on protection of customer's moneys and assets;
- the proposal to amend the SF(LCB)R such that capital markets services (CMS) licensees have to keep the

books or documents required under regulation 39(2)(a) when they deal with all types of investors;

- the proposal to limit the application of title transfer collateral arrangements to customers who are accredited, institutional or expert investors;
- the proposal to broaden the exemptions that are currently available to CMS licensees when they deal with accredited and/or institutional investors, such that these exemptions will similarly be available to CMS licensees when they deal with expert investors;
- the proposal to exempt overseas-based clearing members clearing OTC derivatives contracts on Singapore-based central counterparties (CCPs) from the requirement to hold a CMS licence, subject to certain conditions; and
- the proposal to remove the SGD 250,000 base capital requirement for certain CMS licensees.

Comments on the consultation are due by 23 June 2017.

China enhances regulation of stock-selling by shareholders of listed companies

The China Securities Regulatory Commission (CSRC) has issued a set of provisions on stock-selling by shareholders, directors, supervisors and senior executives of listed companies, tightening the restrictions on (i) stock-selling by controlling shareholders and shareholders with more than a 5% stake in a listed company (Major Shareholders), (ii) stock-selling by directors, supervisors and senior executives, and (iii) the selling of pre-IPO shares and non-public offering shares by other shareholders (Other Shareholders). The Shanghai Stock Exchange (SSE) and the Shenzhen Stock Exchange (SZSE) have also released detailed implementing measures in this respect.

Under the stock-selling provisions and the implementing measures:

- the sales of shares through continuous auction in the secondary market by a Major Shareholder or an Other Shareholder within any successive 90 days may not exceed 1% of the total outstanding shares of the listed company. The sales of non-public offering shares through continuous auction by any shareholder within 12 months after expiry of the applicable lock-up period may not exceed 50% of the total shares obtained by such shareholder during the relevant non-public offering;
- the sales of shares through a block trade by a Major Shareholder or an Other Shareholder within any successive 90 days may not exceed 2% of the total outstanding shares of the listed company. The transferee may not further sell the shares so acquired within 6 months;
- when calculating the shareholding percentage and the relevant restriction above, the shareholding of a shareholder in multiple securities accounts should be aggregated, and the applicable cap of permissible stock-selling should be allocated among different accounts on a pro rata basis. The shareholding of a Major Shareholder should be aggregated with that of its 'persons acting in concert'; and
- the Major Shareholder, the director, the supervisor or the senior executive should report to the relevant stock exchange and publicly disclose its stock-selling plan 15 trading days prior to the initial selling. On-going disclosure of the selling process and results is required.

The stock-selling provisions and the implementing measures came into effect upon issuance. They demonstrate the Chinese regulator's commitment to prevent major shareholders from dumping their stakes on a large scale and causing volatility in the market. However, as these new rules are not applicable to shares acquired in the secondary market by Major Shareholders, their impact on foreign investors who acquire A shares through QFII/RQFII or the Stock Connect will be limited.

SAFE publishes Q&As on FX risk management by CIBM overseas institutional investors

The State Administration of Foreign Exchange (SAFE) has published a set of policy Q&As on the Circular Regarding the Management of Foreign Exchange Risks by Overseas Institutional Investors on the China Interbank Bond Market, providing clarifications on the hedging of foreign exchange (FX) risks by eligible overseas institutional investors (OIIs) when investing in the China interbank bond market (CIBM).

Among other things, the Q&As clarify that:

- FX risk exposure refers to the risk position incurred in relation to RMB exchange rate fluctuation borne by OIIs when investing in the CIBM, including bond assets (calculated as the full amount paid to acquire such assets), interest receivables and bond market price fluctuation;
- the FX derivative exposure may be adjusted corresponding to and should be capped at FX risk exposure;
- OIIs are allowed to conduct swap trading with RMB swapped-in in near end, and the RMB capital swapped-in should be used to invest in the CIBM;

- onshore FX derivative trading is limited to hedging such FX risk exposures as incurred by CIBM investment with funds (RMB or FX) remitted from offshore;
- settlement agents may provide forward, FX swap, currency swap, option and/or portfolio trading modes for a single FX risk exposure in accordance with the Implementing Rules for the Administrative Measures on the Foreign Exchange Settlement and Sale Business of Banks (SAFE Circular [2014] No.53);
- settlement agents should pay FX risk reserve to the People's Bank of China; and
- the Circular Regarding the Management of Foreign Exchange Risks by Overseas Institutional Investors on the China Interbank Bond Market does not apply to offshore RMB clearing banks given that they are already able to hedge their FX risk exposures through direct FX derivative trading in the CIBM.

PBoC consults on draft rules for Bond Connect

The People's Bank of China (PBoC) has published a consultation draft of the 'Interim Administrative Measures on the Connection Cooperation for the Mainland and Hong Kong Bond Markets', in order to establish the connection between the Mainland and Hong Kong bond markets (Bond Connect).

The following points are worth noting:

- the Interim Measures apply to northbound trading, with separate rules to be issued for southbound trading;
- trading and settlement activities should comply with the regulations and business rules of the jurisdiction where such activities take place;
- overseas investors investing in the China interbank bond market (CIBM) through the Bond Connect shall trade through trading platforms recognised by the PBoC and hold their bonds through a nominee account structure;
- the onshore bond depository and settlement institutions provide delivery-versus-payment (DvP) settlement services;
- overseas investors can invest both RMB and foreign exchange currencies in the CIBM. For investments in foreign currencies, the relevant RMB purchase and sale activities should be handled through qualified Hong Kong RMB clearing bank and participation banks; and
- cross-border regulatory cooperation will be established to regulate business activities and crack down on non-compliance under the Bond Connect.

Comments are due by 7 June 2017.

Amendment to Japanese Banking Act for open API between banks and fintech venture companies passed

An amendment to the Banking Act of Japan for the Open Application Programming Interface (Open API) and facilitation of collaboration between banks and venture companies has been passed and is to become effective within a year. The Banking Act amendment of 2016 became effective on 1 April 2017, meaning that amendments to the Banking Act relating to fintech have now been passed in two consecutive years.

The 2017 Amendment Act introduces a new licence for 'Electronic Settlement Agents', which would suit fintech bank account data aggregators. The term Electronic Settlement Agent is defined as a service provider which provides an intermediary service through electronic measures to (i) give fund transfer instructions to the account opening bank and/or (ii) obtain bank account data from the account opening bank in accordance with delegation and instructions from customers who are bank account holders. These types of business can be conducted only by licensed Electronic Settlement Agents from the effective date (existing service providers may however continue business without a licence for a 6 month grace period following the effective date).

Before the effective date, banks are required to decide and publish their policy regarding collaboration with Electronic Settlement Agents.

Electronic Settlement Agents are required to enter into agreements with relevant account opening banks to conduct settlement agent business in order to secure the interest of account holders. Banks are encouraged to enter into such agreements and are required to disclose their standards for entering into such agreements. Banks are prohibited from treating any Electronic Settlement Agents which satisfy such disclosed standards unfairly. Further, within 2 years of the effective date, banks are encouraged to let Electronic Settlement Agents gain access to the banking system through Open API or other systems under which Electronic Settlement Agents do not need to obtain IDs/passwords from account holders.

Separately from the 2017 Amendment Act, the Financial Services Agency of Japan (JFSA) has announced its target

for the number of banks that will let Electronic Settlement Agents gain access to their systems to be more than 80.

ASIC to extend start dates on Stronger Super reforms

The Australian Securities and Investments Commission (ASIC) has deferred the start dates for key superannuation reforms relating to the portfolio holdings and the choice products reporting requirements under the Corporations Act.

As legislation and regulations to implement these key superannuation reforms have not yet been finalised, ASIC has deferred the start date for the disclosure requirements for choice products to 1 July 2019 and for portfolio holdings to 31 December 2019.

New portfolio holdings disclosure obligations will require registrable superannuation entities to publish information about the fund's portfolio holdings on the fund's website, including:

- information that is sufficient to identify each of the financial products or other property in which assets, or assets derived from assets, of the entity are invested, at the end of the reporting day; and
- value of the assets, or assets derived from assets, of the entity, at the end of the reporting day, that are invested in each of the financial products or other property.

These requirements will be relevant for funds with Australian superannuation fund investors.

RECENT CLIFFORD CHANCE BRIEFINGS

Clifford Chance Anti-Bribery and Corruption Review – June 2017

The spotlight on anti-bribery and corruption compliance programmes continues to intensify as a number of countries adopt measures designed to make it easier to prosecute companies. Most significantly, France's Sapin II law requires companies subject to the provisions to adopt effective anti-corruption procedures, and has created a new agency to monitor compliance with these new requirements, while Australia is consulting on proposals for a new corporate offence of failing to prevent bribery.

Elsewhere, there has been a number of new developments in relation to deferred prosecution agreements and whistleblowing, and some significant new enforcement actions. The bar on anti-corruption compliance continues to be raised, and it is important for international companies to continue to review what they have to do to address the risks to their business, and to their reputation, and for them to keep up-to-date with ABC developments in the jurisdictions in which they operate.

Clifford Chance's Anti-Bribery and Corruption Review for June 2017 looks at recent developments in some of the jurisdictions around the world where we have offices.

https://www.cliffordchance.com/briefings/2017/05/anti-bribery_andcorruptionreview-june2017.html

The status of multilateral financial institutions in English law

Dealing with a multilateral financial institution raises different issues from transactions with private sector entities. This requires an understanding of the particular institution in question, including its immunities, if any, and its capacity, but there will seldom be insuperable problems.

This briefing paper discusses the status of multilateral financial institutions in English law and the issues that dealing with them can bring.

https://www.cliffordchance.com/briefings/2017/06/the_status_of_multilateralfinancialinstitution.html

FCA guidance consultation on Part VII Insurance Business Transfers

On 15 May 2017, the Financial Conduct Authority (FCA) issued GC17/5 – a consultation on new guidance regarding its approach to the review of insurance business transfers pursuant to Part VII of the Financial Services and Markets Act 2000 (FSMA). The FCA is seeking feedback by 15 August 2017.

Significantly, the FCA intends to apply its guidance on a 'comply or explain basis' akin to the approach used by the European Supervisory Authorities (ESAs) to implement Level 3 guidance. The FCA does not have the same legal remit as the ESAs to enforce compliance or explanation, but has made it clear that any divergence from the guidance will require explanation, possibly also to the Court. Therefore, firms wishing to avoid additional costs and delays on a Part VII (which could result if the FCA's expectations are not met) should take note of this guidance.

This briefing paper discusses the FCA's key expectations.

https://www.cliffordchance.com/briefings/2017/06/fca_guidance_consultationonpartviiinsuranc.html

New PRC Cyber-security Law comes into force

The Cyber-security Law of the People's Republic of China took effect on 1 June 2017. The law applies to everyone who operates networks in the PRC and will have a particular impact on multinational corporations. The Cyberspace Administration of China (CAC) has issued a series of regulations implementing the law, and has also asked the public for comments on other proposed implementing rules, including measures affecting the transfer of personal data outside the PRC.

This briefing paper discusses the new law.

https://www.cliffordchance.com/briefings/2017/06/new_prc_cyber-securitylawcomesintoforce.html

A concise guide to the 2017 insolvency and restructuring amendments to the Singapore Companies Act

On Tuesday 23 May, the 2017 insolvency and restructuring related amendments to the Singapore Companies Act came into effect.

Our concise guide to the amendments is intended to provide a summary of these important changes to the insolvency and restructuring regime in Singapore.

https://www.cliffordchance.com/briefings/2017/05/a_concise_guide_tothe2017insolvencyan.html