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Briefing note

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MiFIR: Delegated Regulation on package orders published in Official Journal

Commission Delegated Regulation (EU) 2017/194 regarding the treatment of package orders under Article 9(6) of MiFIR has been published in the Official Journal. The Regulation sets out criteria for identifying whether package orders should be classified as standardised and sufficiently liquid under MiFIR. Criteria for classification include amongst other things:

- how many individual components are included in the package order and whether any of the components are larger than normal market size;
- whether the components are available for trading on a trading venue;
- whether the components are from the same or multiple asset classes; and
- in package orders consisting of interest rate swaps, what the benchmark tenor is for the individual components.

The Delegated Regulation will enter into force on 18 December 2017 and will apply from 3 January 2018.

EU Commission publishes progress report on EU regulatory framework for financial services and consults on supervisory reporting requirements

The EU Commission has published its progress report on the follow-up to its September 2015 call for evidence on the EU regulatory framework for financial services.

In November 2016 the Commission adopted a communication on the follow-up to the call for evidence. The Commission concluded that, while the financial services framework in the EU was generally working well, targeted measures were justified in some areas.

The Commission's progress report discusses the progress achieved so far and gives further detail on the Commission's commitment to perform a comprehensive assessment of the overall supervisory reporting framework.

To build on the results of the call for evidence the Commission has launched a fitness check of existing supervisory reporting requirements. As part of the assessment, the Commission has published a consultation paper that aims to gather evidence on the cost of compliance with existing EU level supervisory reporting requirements, as well as on the consistency, coherence, effectiveness, efficiency and added value of those requirements. The consultation seeks feedback on the ways supervisory reporting could be simplified and streamlined in the future.

Comments to the consultation close 28 February 2018.

Banking reform package: EU Council Presidency reports on progress

The EU Council Presidency has published a progress report on the package of banking legislative proposals, which comprises amendments to the Capital Requirements Regulation (CRR) and Directive (CRD 4), the Bank

Recovery and Resolution Directive (BRRD) and the Single Resolution Mechanism Regulation (SRMR).

The report notes that on the two fast-tracked measures, the co-legislators reached a political agreement on 25 October 2017. These measures relate to:

- a Directive amending the BRRD as regards the ranking of unsecured debt instruments in insolvency hierarchy; and
- a Regulation on transitional arrangements for IFRS 9 and large exposures.

The Presidency expects that the two legal acts should be published in the Official Journal before the end of the 2017.

On the remaining four elements of the package, the report sets out key political issues that have arisen in discussions on the texts. Alongside the report, the Presidency has published compromise texts on the proposals.

The Estonian Presidency invites the Council to take note of the report with a view to progressing work further, and calls on the Bulgarian Presidency to build on the progress made when taking over the rotating presidency of the EU Council from 1 January 2018.

EU Parliament approves Regulation on IFRS 9 transitional arrangements

The EU Parliament plenary has adopted at first reading the proposal for a Regulation on transitional arrangements to phase in the regulatory capital impact of IFRS 9, which will amend the CRR.

The Regulation is intended to establish a transitional period in order to mitigate the impact on own funds of the introduction of International Financial Reporting Standard (IFRS) 9, which should be used by EU banks in their financial statements for financial years starting on or after 1 January 2018. Among other things, the text approved by the Parliament will:

- allow banks to add back to their Common Equity Tier 1 (CET1) capital a portion of the increased expected credit loss (ECL) provisions as extra capital during a five-year transitional period; and
- provide a three year phase-out of an exemption from the large exposure limit for banks' exposures to public sector debt denominated in the currency of any other Member State.

The co-legislators reached provisional agreement at trilogue negotiations on 25 October 2017. Now that the text has been adopted by the Parliament it will be submitted to the EU Council for formal adoption before publication in the Official Journal.

EU Parliament approves BRRD amending Directive on ranking of unsecured debt instruments in insolvency hierarchy

The EU Parliament plenary has adopted at first reading the proposal for a Directive amending the BRRD as regards the ranking of unsecured debt instruments in insolvency hierarchy.

The text incorporates total loss absorbing capacity (TLAC) into EU law, establishes a hierarchy of creditors to whom losses are to be allocated, and establishes a new class of non-preferred senior debt instruments.

The co-legislators reached provisional agreement at trilogue negotiations on 25 October 2017. Now that the text has been adopted by the Parliament it will be submitted to the EU Council for formal adoption before publication in the Official Journal.

Member States will be required to transpose the Directive into national law no later than one year after its entry into force or by 1 January 2019, whichever is earlier. The Directive will enter into force on the day following its publication in the Official Journal.

ECON Committee publishes draft reports on CRD and CRR amendments

The EU Parliament Committee on Economic and Monetary Affairs (ECON) has published two draft reports on legislative proposals for amendments to the capital requirements framework, which are dated 16 and 22 November 2017.

The draft reports set out possible amendments to the proposals for:

- a Directive amending CRD 4 as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures; and
- a Regulation amending the CRR as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements and amending the European Market Infrastructure Regulation (EMIR).

EMIR review: EU Council publishes compromise text

The EU Council Presidency has published a compromise text on the proposed regulation amending EMIR as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (REFIT proposal).

Fintech: EU Parliament adopts resolution on influence of technology on future of financial sector

The EU Parliament has adopted an own-initiative resolution on the influence of technology on the future of the financial sector. The resolution calls on the EU Commission to develop an action plan to enable new and innovative technologies to develop in the framework of the Capital Markets Union and Digital Single Market. It also outlines key priorities such as:

- cybersecurity and data protection;
- interoperability and passporting of fintech services within the EU;
- providing a level playing field for traditional companies and start-ups;
- financial stability and consumer and investor protection; and
- controlled experimentation with new technologies and fostering financial education and IT skills.

The EU Parliament has instructed its President to forward this resolution to the EU Council and the EU Commission.

PSD2: EU Commission adopts RTS on strong customer authentication

The EU Commission has adopted a Delegated Regulation with regard to regulatory technical standards (RTS) on strong customer authentication (SCA) and common and secure open standards of communication under the recast Payment Services Directive (PSD2).

The RTS specify security measures to ensure consumer protection and enhance competition in a rapidly changing market. In particular, the RTS set out:

- how SCA will be implemented, which will require consumers to prove their identity using at least two separate elements when making a payment; and
- a framework for payment initiation services and account information services linked to consumer payment accounts.

The EU Parliament and EU Council have three months to scrutinise the RTS. The RTS will enter into force on the day following their publication in the Official Journal and will apply 18 months after that date.

BRRD: EU Commission reports on EBA's mediation powers

The EU Commission has published a report addressed to the EU Parliament and EU Council on the powers of the European Banking Authority (EBA) to conduct binding mediation to take account of future developments in financial services law. The report has been prepared under Article 129 of the BRRD and considers the EBA's powers under three articles of the BRRD: Article 13 (Group Resolution Plan), Article 18 (Impediment to resolvability: group treatment) and Article 45 (MREL).

The three provisions establish that for groups, in the absence of a joint decision between the resolution authorities concerned, any resolution authority can, following a conciliation period, refer the matter to the EBA requesting it to take a binding mediation decision in accordance with Article 19 of the EBA Regulation. In such case, the responsibility to decide on the matter is deferred by the initially responsible resolution authority to the EBA.

The report identifies challenges for the effective application of the EBA's mediation powers. Overall, the Commission views mediation as a key component of the resolution process and extremely useful to ensure that decisions with respect to complex issues regarding groups of entities, such as the adoption of a resolution plan, addressing impediments to resolution and the definition of MREL levels, are taken in the form of joint decisions. The Commission states that it is addressing some of the challenges highlighted in the review of the European Supervisory Authorities (ESAs). For the remaining issues, the Commission will consider them as appropriate when it carries out its general review of the BRRD.

EBA publishes risk assessment of EU banking system

The EBA has published its tenth report on risks and vulnerabilities of the EU banking sector.

The report describes the main developments and trends that have affected the EU banking sector since the end of 2016, and also provides the EBA's outlook on future micro-prudential risks and vulnerabilities. Key findings include:

- an improvement in market sentiment, albeit subject to uncertainties over the pace of normalising monetary

policies in the context of high-indebtedness, as well as the political risk posed by Brexit;

- a decline in banks' total assets, the pace of which is likely to slow down should lending to corporate sectors and households increase;
- a reduction in the non-performing loans (NPLs) ratios, albeit that the level still remains too high;
- a slight increase of capital ratios, mainly driven by a reduction of the denominator, with banks decreasing their risk exposure amount, markedly for credit risk;
- a cautious improvement to profitability, although the average return on equity (RoE) remains below cost;
- evidence of adapting business models in light of fintech, although cyber and data security remain key risk drivers, which are aggravated by increased reliance on third party service providers; and
- operational risks remaining prominent, with over 30% of banks expecting heightened litigation costs in the future.

The report is complemented by the results of the 2017 EU-wide transparency exercise, which provides detailed data on banks' capital positions, risk exposure, leverage exposure and asset quality. This data can be accessed according to country or bank

ECB consults on euro unsecured overnight interest rate

The European Central Bank (ECB) has launched a consultation on developing a euro unsecured overnight interest rate. The consultation covers the high level features of the proposed new rate and the ECB is seeking feedback on the main features of the rate and its publication timing. The proposed interest rate would complement existing benchmark rates produced by the private sector and serve as a backstop reference rate. A second consultation discussing the methodology of the rate will follow.

Responses are due by 12 January 2018.

FSB consults on proposed guidance on bail-in execution and funding strategy elements for resolution planning

The Financial Stability Board (FSB) has published two consultations on guidance relating to the implementation of particular aspects of its Key Attributes of Effective Resolution Regimes for global systemically important banks (G-SIBs).

The Key Attributes set out general powers that authorities should have for the purposes of bail-in within resolution but do not consider the operational aspects of bail-in execution. As such, the FSB is consulting on principles on bail-in execution which set out principles to assist the work of authorities as they operationalise resolution strategies and plans, relating to:

- disclosures on the instruments and liabilities within the scope of bail-in;
- valuations to inform and support the application of bail-in;
- processes to suspend or cancel the listing of securities, to notify creditors, and to deliver new securities or tradeable certificates following the entry into resolution;
- securities law and securities exchange requirements during the bail-in;
- processes for transferring governance and control rights and establishing a new board for the firm in resolution; and
- market and creditor communications.

The FSB has also published a consultative document on funding strategy elements of an implementable resolution plan, which is intended to provide additional guidance for the development of plans to support the ongoing work of authorities to operationalise resolution strategies and plans. The FSB is seeking to build on existing supervisory and resolution guidance on liquidity risk management and resolution planning, including the FSB's guidance on the temporary funding needed to support the orderly resolution of a G-SIB which was published in August 2016.

Comments on both consultations are due by 2 February 2018.

BoE publishes Financial Stability Report

The Financial Policy Committee (FPC) of the Bank of England (BoE) has published its financial stability report.

The report sets out the FPC's views on the outlook for UK financial stability, including its assessment of the resilience of, and the current risks to, the UK financial system. It is published alongside results of the BoE's 2017 stress test, which have informed the FPC's conclusions and recommendations. These include:

- raising the UK countercyclical capital buffer rate to 1%, with binding effect from 28 November 2018; and
- setting capital buffers for individual banks.

- The report also identifies preparations and actions for mitigating the risks arising from Brexit, including:
- preserving the continuity of existing cross-border financial contracts, especially insurance and over-the-counter (OTC) derivatives contracts, via the introduction of legislation in both the UK and EU;
- implementing a 24-month implementation period;
- clarifying the conditions for authorising EEA-incorporated banks operating as branches in the UK; and
- the implementation of robust prudential standards in the UK.

In terms of long-term strategic responses, the FPC casts doubt on the suggestion that banks will be able to adapt to low periods of growth and a more competitive fintech environment without strategic change or taking on more risk.

Finally, the FPC does not recommend any changes to the regulatory perimeter beyond the core banking sector, although it continues to monitor the risks posed to the provision of market-based finance by the growth of electronic and algorithmic trading.

BaFin publishes guidance note on contracts for difference

The German Federal Financial Supervisory Authority (BaFin) has published a guidance notice on the implementation of the general administrative act of 8 May 2017 regarding contracts for difference (CFD) pursuant to section 4b para. 1 of the German Securities Trading Act (Wertpapierhandelsgesetz).

With its general administrative act of 8 May 2017, BaFin restricted the marketing, distribution and sale of CFDs. New CFDs with an additional payments obligation may no longer be offered to retail clients since the implementation period expired on 10 August 2017.

Since then, BaFin has been reviewing CFD offers on the German market on an ongoing basis in order to assess their compliance with the aforementioned general administrative act. The new guidance note is intended to highlight those points which BaFin considers important for the implementation of the provisions of the general administrative act

BaFin publishes new guidance note on revised German Payment Services Act

BaFin has revised its guidance note with respect to the revised German Payment Services Act (ZAG) which will enter into force on 13 January 2018.

BaFin's guidance note provides information on how BaFin construes specific provisions of the ZAG. In particular, the guidance note provides information on the applicable exemptions, e-money business and payment services regulated under the ZAG. In addition, BaFin specifies the licence, registration and notification requirements under the ZAG.

Bank of Italy publishes amendments to supervisory regulations for banks and investment firms

Further to a consultation launched in March 2017, the Bank of Italy has published a set of amendments to the existing regulatory framework intended to amend and integrate:

- Circular No. 285/2013, in particular with respect to supervisory control procedures, including the use of early intervention measures, and large exposures for banks; and
- the prudential supervisory regime for investment firms.

Bank of Italy updates reporting requirements applicable to collective investment funds

The Bank of Italy has modified the existing reporting requirements applicable to collective investment funds in order to fully implement and reflect the recent European and Italian legislative developments in the field of collective asset management.

In particular, the new regulatory framework takes into account newly introduced entities/fund vehicles such as SICAF (società di investimento a capitale fisso), EUVECA (European Venture Capital Funds) and EUSEF (European Social Entrepreneurship Funds).

The updates concern:

- Circular No. 189 dated 21 October 1993 on statistical and supervisory reporting for funds;
- Circular No. 286 dated 17 December 2013 on instructions for completing the supervisory reports; and
- Circular No. 154 dated 22 November 1991 on prudential supervision of credit and financial institutions.

MiFID2: CONSOB issues communication on position reporting obligations under Article 58

In application of the provisions of MiFID2, the Commissione Nazionale per le Società e la Borsa (CONSOB) has published a communication on position reporting obligations, as well as a technical annex, which provide for instructions for the appropriate compilation of reports.

These reports should be sent no later than 10:00 p.m. (Central European Time) on the working day following the day to which the reports refer.

CONSOB has indicated that its communication is addressed only to trading venues and investment firms. The communication does not apply to non-financial entities dealing in commodity derivatives, including those who obtained the exemption from the position limits regime because the positions they hold are objectively measurable as reducing risks directly relating to the commercial activity, as provided for in Article 57 (1) of MiFID2.

The communication will come into force on 3 January 2018.

CONSOB issues notice on closure of SeDeX and transition to new multilateral trading facility

Further to the closure of SeDeX, Borsa Italiana's regulated market dedicated to certificates and covered warrants, and the launch of a new multilateral trading facility (MTF), also known as SeDeX, CONSOB has issued a warning notice addressed to issuers with a view to informing them of the need to update their prospectuses through the publication of a supplement, to be approved by CONSOB, intended to acknowledge the fact that SeDeX is no longer a regulated market and is now an MTF.

Amongst other things, CONSOB has also clarified that the above does not apply to prospectuses for securities admitted to trading on a regulated market. These prospectuses can no longer be used during their remaining period of validity as SeDeX ceases to exist as regulated market.

CONSOB amends its resolution on reporting requirements

CONSOB has amended its resolution no. 17297 dated 28 April 2010 on reporting requirements applicable to supervised entities.

The new provisions will apply from 1 January 2018, with the following exceptions:

- provisions concerning reporting on marketing activities of collective investment funds (OICR: Organismi di Investimento Collettivo del Risparmio) and provisions concerning subscriptions without marketing will apply from 1 April 2018; and
- provisions concerning reporting on real estate funds and provisions concerning communications on starting, interruption, and restarting of provision of services and activities will apply as from 1 July 2018.

CONSOB consults on definition of SMEs' listed securities and regime applicable to issuers of widely publicly circulated financial instruments

CONSOB has issued a consultation document containing amendments to Regulation No. 11971/1999 on intermediaries (Issuers Regulation) intended to amend the definition of SMEs' (small and medium-sized enterprises) listed securities and the regime applicable to the issuers of financial instruments having a wide circulation among the public.

In particular, with respect to the definition of SMEs, the amendments are intended to:

- review the criteria for calculating the capitalisation of the yearly sales figures;
- deal with compliances of an informative nature for which the issuers are liable in relation to the SMEs' acquisition of qualification or their disqualification; and
- detail methods of publishing the list of SMEs.

Comments are due by 23 January 2018.

Royal Decree-law on basic payment accounts, payment account switching and comparability of fees related to payment accounts published

Royal Decree-law 19/2017, of 24 November, on basic payment accounts, payment account switching and the comparability of fees related to payment accounts (RDL 19/2017) has been published in the Spanish Official Gazette (Boletín Oficial del Estado).

The principal aim of RDL 19/2017 is to incorporate Directive 2014/92/EU on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (Payment Accounts Directive – PAD) into the Spanish legal framework.

RDL 19/2017 creates the basic payment account, a standard financial product to be offered to individuals not

acting for commercial or professional purposes by credit entities offering payment accounts.

RDL 19/2017 also has the following objectives:

- to facilitate the transparency and comparability of fees related to payment accounts; and
- to improve payment account switching.

RDL 19/2017 entered into force on 25 November 2017.

Royal Decree-law on non-financial information and diversity matters published

Royal Decree-Law 18/2017, of 24 November, amending the Commercial Code, the restated text of the Spanish Companies Law approved by Royal Legislative Decree 1/2010, of 2 July, and Law 22/2015, of 20 July, on Accounts Audit, on non-financial information and diversity matters (the Royal Decree) has been published. The Royal Decree implements Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups in Spain.

The Royal Decree establishes the obligation for those companies to which it applies to include in their management report (or in a separate document) certain information on social and environmental matters, employees, human rights and anti-bribery practices. This obligation applies to companies that are considered public-interest entities under Law 22/2015, of 20 July, on Accounts Audit, that have an average number of employees in excess of 500 (in the case of a group on a consolidated basis) and which are large undertakings or parent undertakings of a large group.

The Royal Decree also imposes the obligation for listed companies to include additional information on diversity in their annual corporate governance reports.

The obligations introduced by the Royal Decree will be applicable to financial years starting from 1 January 2017.

FINMA revises circular on auditing

The Swiss Financial Market Supervisory Authority (FINMA) has launched a consultation on the revision of Circular 2013/03 'Auditing'.

The revision aims to increase the efficiency of current audit procedures by tailoring the audit procedures to the risk profiles of supervised institutions. The revisions aim to reduce the cost of regulatory audits to the financial services industry by 30%. In particular:

- audit firms will only be required to conduct regulatory audits on small supervised institutions (categories 4 and 5) which do not exhibit high risks every two or three years, instead of conducting yearly audits on supervised banks, securities dealers and asset managers;
- the regular audit process will be more focused on certain high risk areas, or on selected topics that will change every year; and
- audit firms will be required to submit a cost estimate of audit procedures to be undertaken, together with the audit strategy to all institutions.

The consultation will close on 31 January 2018 and the revised circular is due to enter into force on 1 January 2019.

SFC announces investor identification for Northbound trading under Stock Connect

The Hong Kong Securities and Futures Commission (SFC) and the China Securities Regulatory Commission (CSRC) have reached an agreement on proposals to introduce an investor identification regime for Northbound trading under Mainland-Hong Kong Stock Connect. Mainland-Hong Kong Stock Connect provides for mutual stock market access between Hong Kong and Mainland China.

To prepare the market, the Stock Exchange of Hong Kong (SEHK) will soon issue an information paper on the operational details of the proposed regime, which is scheduled to be implemented by the third quarter of 2018.

In line with the principle of reciprocity and to assist one another in performing their regulatory functions under Mainland-Hong Kong Stock Connect, the SFC and the CSRC also agreed to introduce a similar investor identification regime for Southbound trading as soon as possible after the regime for Northbound trading is implemented.

The introduction of an investor identification regime for Northbound trading will entail the collection and use of personal data by the SEHK and its subsidiaries, as well as its transfer to the Mainland exchanges and the CSRC. The SFC will work with the SEHK to facilitate the collection, use and transfer in accordance with all applicable data privacy laws and principles.

HKMA and SFC share joint observations on managing conflicts of interest in financial groups

The Hong Kong Monetary Authority (HKMA) and the SFC have issued a circular highlighting the observations from their recent joint thematic reviews on the potential conflicts

of interest arising from the sale of in-house products by registered institutions and licensed corporations within a single financial group. The reviews mainly focused on internal controls and compliance.

The scope of the joint thematic reviews included order execution, product due diligence, selling processes, management of discretionary accounts, management supervision and controls and monitoring. The reviews concluded that, while intermediaries in general had put in place policies and procedures in respect of conflicts of interest, some key areas warrant further attention by intermediaries. In respect of the issues identified, the intermediaries concerned have been required to undertake remedial actions.

The circular reminds intermediaries about the regulators' expected standards in respect of conflicts of interest and provides examples of good practices in areas including client order execution and disclosure, product due diligence and discretionary portfolio management mandates. Specifically, senior management are expected to manage risks on a group basis and assess the robustness and effectiveness of systems and controls holistically.

The HKMA and the SFC will take into account the results of these reviews in their supervision to set unified regulatory standards for the financial industry and sustain market integrity.

HKMA issues revised supervisory policy manual on sharing and use of commercial credit data through a commercial credit reference agency

The HKMA has issued a revised module of the supervisory policy manual (SPM) on the sharing and use of commercial credit data through a commercial credit reference agency. The SPM has been revised in light of the latest industry initiative to expand the coverage of the commercial credit database in Hong Kong on 1 December 2017.

The SPM specifies the minimum standards that authorised institutions should observe in relation to the sharing and use of commercial credit data through a commercial credit reference agency.

FSC proposes amendments to Enforcement Decree of Act on Reporting and Use of Certain Financial Transaction Information

The Financial Services Commission (FSC) has proposed amendments to the Enforcement Decree of the Act on Reporting and Use of Certain Financial Transaction Information. The proposed amendments are intended to raise the compliance standards and requirements for financial firms' anti-money laundering (AML) internal controls and provide for greater consistency between domestic rules and rules set by the Financial Action Task Force (FATF).

The key proposals include the following:

- regulatory provisions granting financial firms exemptions from compliance with certain AML internal control requirements will be repealed, thus subjecting financial firms to stricter AML compliance requirements;
- financial firms engaging in a financial transaction with a corporate client will be required to establish the identity of the person representing the corporate client by verifying specific personal information including the national resident registration card number; and
- the 25-year record maintenance period for transactions involving electronic fund transfers and foreign exchange transactions will be shortened to five years.

Comments on the proposed amendments are due by 8 January 2018.

MAS responds to feedback and launches second consultation on new regulatory framework for payments

The Monetary Authority of Singapore (MAS) has published its response to the feedback it received on its August 2016 consultation on the proposed new payments regulatory framework, and has launched a second consultation on the proposed Payment Services Bill.

The Bill will streamline the regulation of payment services under a single legislation, expand the scope of regulated payment activities to include virtual currency services and other innovations, and calibrate regulation according to the risks posed by these activities.

When the new Bill is enacted, payment firms will only need to hold one licence under a single regulatory framework to conduct any or all of the specified payment activities. Only payment activities that face customers or merchants, process funds or acquire transactions, and pose relevant regulatory concerns will need to be licensed. The new framework will expand the scope of regulation to include domestic money transfers (e.g. transferring money through payment kiosks), merchant acquisition (e.g. acquiring transactions through a point-of-sale terminal or online payment gateway), and the purchase and sale of virtual currencies.

To help ensure that the expanded scope of regulation is not onerous, the Bill will differentiate regulatory requirements according to the risks that specific payment activities pose rather than apply a uniform set of regulations on all payment service providers. Further, the Bill will empower the MAS to regulate payment services for money-laundering and terrorism financing risks, strengthen safeguards for funds belonging to consumers and merchants, set standards on technology risk management and enhance interoperability of payment solutions across a wider range of payment activities.

Amongst other things, the MAS seeks views on the following:

- the scope of activities selected for regulation under the licensing regime;
- the definitions of e-money and virtual currency;
- the scope of virtual currency services, given that the MAS' primary regulatory concern is that virtual currencies may be abused for money laundering and terrorism financing purposes;
- the scope of the limited purpose e-money, limited purpose virtual currency, and regulated financial services exclusions;
- the proposed single licence structure and the three proposed licence classes and thresholds;
- the proposed licence and business conduct requirements;
- the proposed anti-money laundering and countering the financing of terrorism requirements;
- the proposed user protection measures and e-wallet protection measures;
- the proposed disclosure requirements for Standard Payment Institutions;
- the proposed technology risk management measures; and
- the MAS' powers under the Bill.

Comments on the second consultation are due by 8 January 2018.

MAS updates guidelines and FAQs on licensing, registration and conduct of business for fund management companies

Following the adoption of a simplified regulatory regime for managers of venture capital funds on 20 October 2017, the MAS has published updated guidelines and frequently asked questions (FAQs) on licensing, registration and conduct of business for fund management companies.

The following information has been updated in the guidelines and the FAQs in respect of the simplified venture capital fund managers regime (VC regime):

- As regards fund eligibility criteria:
  - whilst the minimum investment threshold of 80% of committed capital remains unchanged, it has been clarified that amounts drawn down for fees and expenses must be excluded from the calculation of the amount of committed capital invested in securities that are directly issued by an unlisted business venture that has been incorporated for no more than ten years at the time of initial investment;
  - whilst the maximum investment threshold of 20% of committed capital remains unchanged, it has been clarified that amounts drawn down for fees and expenses must also be excluded from the calculation of the amount of committed capital invested in other unlisted business ventures that have been incorporated for more than ten years at the time of the initial investment, and/or investments made through acquisitions from other investors in the secondary market; and
  - a venture capital fund manager (VC manager) may only manage funds that are offered to accredited investors as defined under the Singapore Securities and Futures Act or investors in an equivalent class under the laws of the country where the offer is made, and/or institutional investors.
- As regards admission and on-going requirements, a VC manager will need to meet the following two new requirements at all times:
  - have at least two directors, at least one of whom should be full-time and resident in Singapore, and at least two full-time resident professionals and representatives, who may include the directors; and
  - avoid any conflicts of interest and, where such conflicts arise, ensure that they are resolved fairly and equitably.

The MAS has also confirmed that a fund management company that acts as investment adviser or sub-adviser, or provides research to another investment manager, may operate under the VC manager regime if the advice and research that it provides relate to a fund that meets the eligibility criteria of a venture capital fund.

RECENT CLIFFORD CHANCE BRIEFINGS

Patience is a virtue — Government's proposals on unlocking capital for innovative UK businesses

The UK Government announced in its 2017 Budget that it would pursue a new action plan to help finance innovative UK firms. The proposals follow a year-long Government review process launched in November 2016 after Prime Minister Theresa May's address to the Confederation of British Industry on her vision for UK business. The Patient Capital Review focused on how to address the funding gap for UK scale-up businesses.

This briefing sets out the key recommendations from the review's panel of industry experts and the main Government measures announced in the Budget on 22 November 2017.

https://www.cliffordchance.com/briefings/2017/11/patience_is_a_virtuegovernmentsproposalso.html

Singapore's cybersecurity bill — response to public feedback

On 10 July 2017, the Singapore Ministry of Communications and Information and the Cyber Security Agency of Singapore jointly released a draft Cybersecurity Bill for public consultation and feedback. A report summarising industry feedback on the Bill and providing clarification and proposed changes was released on 13 November 2017.

The report provides clarification on a number of issues and directly addresses the view that the proposed requirements could be onerous. The clarifications seek to assure organisations that the costs of compliance would be kept to a minimum.

This briefing outlines the key developments in the draft Bill. In particular, it summarises proposed accommodations for owners of critical information infrastructure.

https://www.cliffordchance.com/briefings/2017/11/singapore_s_cybersecuritybill-responset.html

When will super priority be accorded for rescue financing?

The Singapore High Court's first decision on the new rescue financing provisions in the Companies Act (Cap. 50) provides useful guidance on when super priority status will be granted to new money financing.

This briefing discusses the case and the court's approach to rescue financing.

https://www.cliffordchance.com/briefings/2017/11/when_will_super_prioritybeaccordedforrescu.html

SAFE liberalises rental currency denomination under domestic leases

In October 2017, the State Administration of Foreign Exchange (SAFE) of the People's Republic of China promulgated The Circular on Relevant Issues of Foreign Exchange Administration of Financial Leasing Business, which allows lease rentals under domestic leases to be denominated in USD if certain conditions are satisfied.

This briefing explains the new circular and its conditions. The briefing also includes a table comparing eligibility requirements of this and previous rules.

https://www.cliffordchance.com/briefings/2017/11/safe_liberalisesrentalcurrencydenominatio.html