

## INTERNATIONAL REGULATORY UPDATE 18 – 22 JUNE 2018

- **Banking reform package: ECON Committee agrees negotiating stance**
- **Capital Markets Union: EU Council Presidency publishes final compromise texts on cross-border distribution of collective investment funds**
- **MLD5 published in Official Journal**
- **ECON Committee supports ECB recommendation on regulatory competence over clearing systems**
- **MiFIR: ESMA announces temporary period for LEIs to end in July 2018**
- **Benchmarks: Working group on euro risk-free rates launches consultation on potential EONIA successors**
- **CRR: EBA consults on draft RTS on conditions for using purchased receivables approach to calculate KIRB**
- **Brexit: EU and UK publish joint statement on progress of Withdrawal Agreement negotiations**
- **Basel Committee reports on banks' implementation of principles for effective risk data aggregation and reporting**
- **FSB publishes guidance on bail-in execution and resolution funding for G-SIBs**
- **Leaders of France and Germany publish Meseberg Declaration**
- **Second Financial Market Amendment Act: Applications for use of interim provisions under paragraph 64x KWG to be submitted by 2 July 2018**
- **Payment Accounts Directive: Ministry of the Economy and Finance Decree published in Italian Official Journal**
- **Bank of Italy publishes updated circular on supervisory instructions for banks**
- **Bank of Italy consults on amendments to covered bonds regime**
- **Bank of Italy consults on amendments to regulations on financial statements for credit and financial institutions**
- **CSSF issues regulation implementing certain CRR discretions and ECB guideline on national options and discretions**

*Clifford Chance's International Regulatory Update is a weekly digest of significant regulatory developments, drawing on our daily content from our *Alerts: Finance Industry service*.*

**If you would like to continue to receive International Regulatory Update or would like to request a subscription for a colleague, please [click here](#).**

**To request a subscription to our *Alerts: Finance Industry service*, please email [Online Services](#).**

If you would like to know more about the subjects covered in this publication or our services, please contact:

### **International Regulatory Group Contacts**

[Chris Bates](#) +44 (0)20 7006 1041

[Nick O'Neill](#) +1 212 878 3119

[Marc Benzler](#) +49 69 7199 3304

[Steven Gatti](#) +1 202 912 5095

[Paul Landless](#) +65 6410 2235

[Mark Shipman](#) + 852 2826 8992

[Donna Wacker](#) +852 2826 3478

### **International Regulatory Update Editor**

[Joachim Richter](#) +44 (0)20 7006 2503

To email one of the above, please use `firstname.lastname@cliffordchance.com`

Clifford Chance LLP,  
10 Upper Bank Street,  
London, E14 5JJ, UK  
[www.cliffordchance.com](http://www.cliffordchance.com)

- **CSSF provides clarifications on EBA guidelines on product oversight and governance arrangements for retail banking products**
- **DNB enables submission of draft licence applications under PSD2**
- **Ministry of Finance publishes amendment to Act on Supervision of the Financial Market and Act on Investment Funds and Management of Alternative Investment Funds**
- **Swiss Parliament passes Financial Services Act and Financial Institutions Act**
- **SFC proposes margin requirements for non-centrally cleared OTC derivatives**
- **Payment and Settlement Systems (Finality and Netting) (Amendment) Act 2018 comes into effect**
- **ASIC issues guidance on oversight of Australian Financial Complaints Authority**
- **Recent Clifford Chance briefings: June edition of the Anti-Bribery and Corruption Review; the UK Pensions Regulator's power to issue a financial support direction; and the US Supreme Court's recent judgment on successive class action complaints. Follow this link to the briefings section**

## **Banking reform package: ECON Committee agrees negotiating stance**

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has agreed a negotiating stance on the package of risk reduction measures for the banking industry.

The package relates to:

- the [adoption of Basel III rules](#) via a proposed Directive amending the Capital Requirements Directive (CRD 5) and a proposed Regulation amending the Capital Requirements Regulation (CRR 2); and
- the [incorporation of international standards on loss absorption and recapitalisation](#) via a proposed Directive amending the Bank Recovery and Resolution Directive (BRRD 2) and a proposed Regulation amending the Single Resolution Mechanism Regulation (SRMR 2).

MEPs propose amendments to the EU Commission's original proposals, including on the Net Stable Funding Ratio (NSFR), the eligibility criteria for the instruments and items that can count towards compliance with rules on minimum requirements for own funds and eligible liabilities (MREL), and the proposed moratorium power to suspend payments by banks that are entering difficulty.

The EU Parliament plenary is expected to confirm the Parliament's stance in July, ahead of trilogue negotiations with the EU Council and EU Commission.

## Capital Markets Union: EU Council Presidency publishes final compromise texts on cross-border distribution of collective investment funds

The EU Council Presidency has [published](#) the latest compromise proposals for a negotiating position on the proposals for a [Directive](#) amending the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive and the Alternative Investment Fund Managers Directive (AIFMD) with regard to cross-border distribution of collective investment funds and a [Regulation](#) on facilitating cross-border distribution of collective investment funds.

The Council has invited the Permanent Representatives Committee (COREPER) to agree on the negotiating mandate and authorise the Austrian Council Presidency to enter into negotiations with the EU Parliament with a view to reaching an agreement at first reading.

### MLD5 published in Official Journal

The [fifth Anti-Money Laundering Directive](#) (Directive (EU) 2018/843 - MLD5) has been published in the Official Journal. MLD5 amends Directive 2015/849 and forms part of the EU Commission's action plan on strengthening the fight against terrorist financing.

The main changes to Directive 2015/849 involve:

- broadening access to information on beneficial ownership, improving transparency in the ownership of companies and trusts;
- addressing risks linked to prepaid cards and virtual currencies;
- cooperation between financial intelligence units; and
- improved checks on transactions involving high-risk third countries.

The Directive will enter into force on 9 July 2018 and Member States will have until 10 January 2020 to transpose it into their national laws.

### ECON Committee supports ECB recommendation on regulatory competence over clearing systems

The ECON Committee has [adopted](#) the European Central Bank's (ECB's) recommendation to amend its Statute to provide it with clear legal competence in the area of central clearing.

The ECON Committee has indicated that the new ECB powers should be restricted to monetary policy purposes and included an indicative list of regulatory powers, such as reporting requirements, that the ECB would apply under the amended Article 22 of the ECB Statute.

The text will now be voted on during an upcoming plenary session in July or September.

### MiFIR: ESMA announces temporary period for LEIs to end in July 2018

The European Securities and Markets Authority (ESMA) has [announced](#) that the temporary period allowing for trading venues to report their own Legal Entity Identifier (LEI) code will end on 2 July 2018.

Under MiFIR, trading venues are obliged to identify each issuer of a financial instrument traded on their systems with an LEI code.

In December 2017, ESMA announced a six month temporary period for firms that had not been able to obtain LEI codes from all their clients ahead of the 3 January 2018 deadline. Since that time, ESMA and national competent authorities (NCAs) have noticed a significant increase in the LEI coverage for issuers and clients. Based on these observations, ESMA and the NCAs have concluded that an extension of the temporary period to support the implementation of the LEI requirements under MiFID is not needed. The temporary period will end on 2 July 2018.

To ensure a high degree of supervisory convergence and the full application of MiFIR, ESMA and NCAs are coordinating the development of an appropriate and proportionate common supervisory action plan focused on compliance with the LEI reporting requirements under the respective MiFIR provisions.

### **Benchmarks: Working group on euro risk-free rates launches consultation on potential EONIA successors**

The ECB's working group on euro risk-free rates has launched a [consultation](#) on its assessment of candidate euro risk-free rates against key selection criteria.

The new euro risk-free rate will replace EONIA, which will no longer meet the criteria of the EU Benchmarks Regulation as of 2020. The three candidate euro risk-free rates are:

- the euro short-term rate (ESTER), the new wholesale unsecured overnight bank borrowing rate, which the ECB will produce before 2020;
- GC Pooling Deferred, a one-day secured, centrally cleared, general collateral repo rate, which is produced by STOXX, a wholly owned subsidiary of Deutsche Börse Group; and
- RepoFunds Rate, a one-day secured, centrally cleared, combined general and specific collateral repo rate, which is produced by NEX Data Services Limited, a wholly owned subsidiary of NEX Group plc, soon to be acquired by CME Group.

The working group intends to use the feedback received to this consultation as input for their discussions on recommending a new euro risk-free rate. It plans to make its recommendation on the new euro risk-free rate in autumn 2018.

Comments are due by 13 July 2018.

### **CRR: EBA consults on draft RTS on conditions for using purchased receivables approach to calculate KIRB**

The EBA has published a [consultation paper](#) (EBA/CP/2018/10) on draft regulatory technical standards (RTS) on the conditions for allowing institutions to calculate the capital requirements of securitised exposures (KIRB) in accordance with the purchased receivables approach.

Aimed at striking a balance between the specific circumstances surrounding securitisation transactions and the need for safe and prudent requirements on internal modelling, the draft RTS cover:

- the relationship between the Internal Ratings-Based (IRB) rules on purchased receivables and the securitisation framework (SEC-IRBA);

- eligibility conditions to allow institutions to calculate KIRB;
- IRB permissions and prior experience;
- eligibility to use the retail risk quantification standards; and
- use of proxy data.

The deadline for comments is 19 September 2018. A public hearing on the proposals will be held at the EBA on 4 September from 14:00 to 16:00 (GMT).

### **Brexit: EU and UK publish joint statement on progress of Withdrawal Agreement negotiations**

The negotiators of the EU Commission and UK Government have published a [joint statement](#) on the progress of the negotiations on the UK's withdrawal from the EU. The statement records the progress made since the publication of the draft Withdrawal Agreement on 19 March 2018 and sets out articles of the draft text where agreement has now been reached at negotiators' level, as well as those areas where further progress has been made.

The statement includes agreed wording to be included in the Withdrawal Agreement on:

- VAT rules for transactions that started before the end of the transition period;
- the recognition and enforcement of judicial decisions in respect of legal proceedings instituted before the end of the transition period; and
- provision for ongoing access to customs data and IT systems up to 2026.

It also includes a statement on the backstop on Ireland/Northern Ireland, which highlights that both parties recognise that the backstop requires provisions in relation to customs and regulatory alignment and commits the EU and UK to accelerate work on outstanding issues.

### **Basel Committee reports on banks' implementation of principles for effective risk data aggregation and reporting**

The Basel Committee on Banking Supervision (BCBS) has published an update on banks' implementation of the principles for effective risk data aggregation and reporting, which were issued in 2013. Firms identified as global systemically important banks (G-SIBs) in 2011 to 2012 were required to fully adopt the principles from January 2016.

The [report](#) is based on the results of a self-assessment survey completed by authorities having supervisory responsibility for G-SIBs. It found that most G-SIBs had made only marginal progress towards implementing the principles in 2017 and that many had not met the expected date of compliance. The report notes that this was due mainly to the challenges posed by complex and interdependent IT improvement projects.

In view of this outcome, the BCBS has made the following recommendations:

- banks should continue to implement the principles in accordance with the roadmaps agreed with their supervisors and consider how implementation would benefit other data-related initiatives and requirements;

- supervisors should continue to focus on ensuring that banks fully implement the principles, including meeting with their boards of directors and/or senior management to receive updates on progress; and
- supervisors should continue to promote home-host cooperation in the adoption of the principles by global banking groups.

The BCBS will continue to monitor G-SIBs' progress and plans to conduct the next assessment in 2019.

### **FSB publishes guidance on bail-in execution and resolution funding for G-SIBs**

The Financial Stability Board (FSB) has published guidance documents on bail-in execution and resolution funding to promote the resolvability of global systemically important banks (G-SIBs). The guidance is intended to assist authorities when implementing the FSB's Key Attributes of Effective Resolution Regimes.

The [guidance on bail-in execution](#) sets out principles to assist authorities when making bail-in strategies operational, including on:

- disclosures of instruments and liabilities within the scope of bail-in;
- communications with creditors;
- valuations;
- processes relating to the cancellation of securities; and
- securities law and securities exchange requirements during bail-in.

The [guidance document on funding strategy](#) covers the development of a resolution funding plan for G-SIBs, including firms' capabilities to monitor and estimate their resolution funding needs, private funding in resolution, and access to temporary public-sector backstop funding mechanisms and ordinary central bank facilities.

The guidance has been issued following consultations launched in November 2017. The FSB has published a [feedback note on the bail-in execution consultation](#) and a [feedback note on the funding strategy consultation](#) setting out how the responses have been incorporated into the guidance alongside the final guidance documents.

### **Leaders of France and Germany publish Meseberg Declaration**

The German Chancellery has published the text of the [Meseberg Declaration](#) agreed between the leaders of France and Germany. The declaration sets out several agreements between France and Germany ahead of finalising a new Elysée Treaty on strong bilateral cooperation by the end of 2018, with the ambition to foster their economic, social and fiscal convergence, to develop new tools for their cross-border cooperation and to renew their commitment to support and facilitate the learning of the language of the partner.

The declaration covers:

- foreign policy, security and defence;
- competitiveness and economic policy;
- taxation;

- Economic and Monetary Union (EMU);
- the European Stability Mechanism (ESM);
- the European Deposit Insurance Scheme (EDIS);
- Capital Markets Union (CMU);
- a proposal for a Eurozone budget;
- research, innovation, higher education, digital and space;
- climate; and
- reforming the EU institutions.

The measures relating to the Banking Union include a call for the ESM to be the backstop to the Single Resolution Fund (SRF), to be provided as a credit line and, based on sufficient risk reduction, to enter into force before 2024 with a decision on accelerated entry into force to be taken by the Eurogroup/EU Council of Finance Ministers (ECOFIN)/European Council. The backstop would replace the direct recapitalisation instrument. The declaration calls for a term sheet with the precise features of the SRF backstop to be developed for political endorsement by December 2018. On EDIS, the declaration comments that work on a roadmap for beginning political negotiations could start after the European Council summit in June 2018.

On EMU, the declaration sets out two steps to strengthen and deepen the euro area by:

- changing the intergovernmental Treaty of the ESM to include a common backstop instrument; and
- incorporating the ESM into EU law.

The proposals on taxation call for tax convergence between France and Germany regarding corporation tax. The leaders propose jointly to promote this in order to support and accelerate the European project to harmonise the corporate tax base in Europe.

### **Second Financial Market Amendment Act: Applications for use of interim provisions under paragraph 64x KWG to be submitted by 2 July 2018**

The Federal Financial Supervisory Authority (BaFin) has published on a [note](#) on the Second Financial Market Amendment Act (2nd FiMaNoG) and the extension of transactions requiring authorisation under the German Banking Act (KWG).

Amongst other things, the definition of operating an OTF (organised trading facility) was created in section 1 para. 1a sentence 2 no. 1d KWG, the scope of financial instruments under section 1 para. 11 KWG was expanded, exemptions in section 2 para. 1 and 6 KWG have been deleted and narrowed, and the scope of licence requirements for proprietary transactions (Eigengeschäft) has been expanded pursuant to section 32 para. 1a KWG.

The new regulations have been in force since 3 January 2018. According to paragraph 64x KWG, however, interim provisions apply. For credit institutions that were already licensed as CRR credit institutions on 3 January 2018, the licence to operate an OTF is deemed to have been granted. The same

applies to financial services institutions which at that time had a licence to operate a multilateral trading facility.

Pursuant to section 64x para. 2 to 8 KWG, institutions that have been conducting business which - since 3 January 2018 - requires authorisation can make use of the interim provisions if they submit a complete licence application or apply for an exemption from licence requirements.

Applications must be submitted to BaFin by 2 July 2018.

### **Payment Accounts Directive: Ministry of the Economy and Finance Decree published in Italian Official Journal**

The [Italian Decree No. 70 of 3 May 2018](#) of the Ministry of the Economy and Finance has been published in the Italian Official Journal (No. 140 of 19 June 2018).

The Decree adopts a second-level regulation implementing Articles 126-vicies semel, 126-vicies bis and 126-vicies quater of Legislative Decree No. 385 of 1 September 1993 (the Italian Banking Act), which were introduced by Legislative Decree No. 37 of 15 March 2017 in order to implement 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).

The Decree entered into force on 20 June 2018.

### **Bank of Italy publishes updated circular on supervisory instructions for banks**

The Bank of Italy has published the [22nd update](#), dated 12 June 2018, to its Circular no. 285 of 17 December 2013 intended to implement ECB Guideline No. 2017/697 and seven EBA guidelines.

The amendments were subject to a public consultation launched by the Bank of Italy on 18 April 2018.

Amongst other things, ECB Guideline No. 2017/697 covers:

- level and quality of own funds;
- capital standards;
- large exposures;
- liquidity; and
- transitional provisions of the Capital Requirements Regulation (CRR).

### **Bank of Italy consults on amendments to covered bonds regime**

The Bank of Italy has launched a public [consultation](#) on a set of proposed amendments to Part III, Chapter 3, Section II of Bank of Italy Circular No. 285/2013 concerning the regime applicable to covered bank bonds. The principal aim is the introduction of the possibility to issue covered bonds for banks with own funds that are below the threshold of EUR 250 million (subject to certain conditions). This set of amendments takes into account the EU Commission's proposal for a directive aimed at creating a common European framework for covered bonds.

Comments are due by 15 July 2018.

## **Bank of Italy consults on amendments to regulations on financial statements for credit and financial institutions**

The Bank of Italy has launched a public [consultation](#) concerning a set of proposed amendments to Circular No. 262 of 22 December 2005 - Banks' financial statements: budget schemes and accounting rules for the preparation of financial statements - and Regulation of 22 December 2017 - Financial statements of IFRS intermediaries other than banking intermediaries.

These amendments are intended to transpose the international accounting principle No. 16 'Leasing' in compliance with EU Regulation 2017/1986, which will replace the international accounting principle IAS 17 'Leasing' for the purpose of the budgetary treatment of leasing from 1 January 2019.

Moreover, disclosure obligations deriving from the amendment to the international accounting principle IFRS 12 'Disclosure of interest in other entities', in compliance with EU Regulation 2018/182, have been implemented.

In order to align the amending provisions in relation to financial statements, updates to the following circulars are subject to public consultation as well:

- Circular No. 272/ 2008 'Accounts matrix';
- Circular No. 115/1990 'Instructions for reporting consolidated supervisory reports';
- Circular No. 148/1991 'Manual on statistic reports for securities market intermediaries';
- Circular No. 189/1993 'Manual on statistic reports for collective investment undertakings'; and
- Circular No. 217/1996 'Manual on statistic reports for financial intermediaries, payment institutions and EMIs.

Comments are due by 20 August 2018.

## **CSSF issues regulation implementing certain CRR discretions and ECB guideline on national options and discretions**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a [new regulation](#) (No. 18-03). The Regulation implements certain discretions in the CRR and the ECB Guideline (EU) 2017/697 on the exercise of options and discretions available in Union law by national competent authorities (NOD) in relation to less significant institutions (LSI) (ECB/2017/9).

One part of the Regulation (Part II) applies to all CRR institutions as well as to Luxembourg branches of credit institutions or CRR investment firms incorporated in a third country and pertains to the exercise of certain NOD and requirements related to (i) the recognition of Additional Tier 1 and of Tier 2 instruments, (ii) large exposures exemptions and (iii) accounting standards.

The other part of the Regulation (Part III) applies to CRR institutions that are LSI and CRR investment firms. It also applies to Luxembourg branches of credit institutions and of CRR investment firms incorporated in a third country. This part pertains to the exercise of certain NOD in relation to own funds and liquidity requirements.

The Regulation repeals CSSF Regulation No. 14-01 and entered into force with immediate effect. A correlation table between CSSF Regulation No. 14-01 and the new Regulation as well as an explanatory memorandum with article-by-article comments is also annexed to the new Regulation.

### **CSSF provides clarifications on EBA guidelines on product oversight and governance arrangements for retail banking products**

The CSSF has issued a [new circular](#) (18/692) on the EBA guidelines on product oversight and governance arrangements for retail banking products (EBA/GL/2015/18).

The circular provides clarifications on the EBA guidelines, which entered into force on 3 January 2017 and that the CSSF has declared it complies with. The circular further provides an overview of the governance and product oversight duty specifications contained in the EBA guidelines.

The circular is addressed to all entities supervised by the CSSF as retail banking manufacturers or distributors, and in particular Luxembourg incorporated or established credit institutions, CRR investment firms, payment institutions and electronic money institutions, as well as Luxembourg law lenders and Luxembourg law intermediaries issuing credits for consumers relating to residential immovable property.

The circular specifies that manufacturers shall comply with the EBA guidelines and ensure that their distributors comply with them in relation to all retail banking products that are commercialised or, if already on the market, are significantly modified after the date of entry into force of the guidelines.

The CSSF emphasises that the circular has to be read in conjunction with CSSF circular 12/552 and CSSF circular 17/651, if and to the extent applicable to the entity concerned.

The circular became applicable with immediate effect.

### **DNB enables submission of draft licence applications under PSD2**

The Dutch Central Bank (DNB) has [announced](#) that, as of 6 July 2018, parties that want to provide payment services under the Payment Services Directive 2 (PSD2) in the Netherlands may submit a draft licence application to it.

The possibility to submit a draft licence application allows DNB to start with the assessment process before the Dutch PSD2 implementation act comes into force. This will enable DNB to grant definitive PSD2 licences shortly after the bill for the Dutch PSD2 implementation act has been enacted.

The bill for the Dutch PSD2 implementation act is currently still under discussion. A revised draft was submitted to the Dutch Parliament on 19 June 2018.

### **Ministry of Finance publishes amendment to Act on Supervision of the Financial Market and Act on Investment Funds and Management of Alternative Investment Funds**

The Ministry of Finance has published [the draft Act](#) Amending the Act on Supervision of the Financial Market and the Act on Investment Funds and

Management of Alternative Investment Funds, which is intended to ensure the implementation of Regulation (EU) 2017/2402

laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation.

The draft primarily proposes appointing the Polish Financial Supervision Authority as the competent authority with regard to the supervision of, compliance with and enforcement of the provisions of Regulation (EU) 2017/2402, with authority to impose administrative sanctions, including the publication of information on sanctions imposed in the circumstances specified in the draft.

### **Swiss Parliament passes Financial Services Act and Financial Institutions Act**

The two chambers of the Swiss Parliament have [passed](#) the Financial Services Act (FinSA) and the Financial Institutions Act (FinIA).

The FinSA governs the prerequisites for providing financial services and offering financial instruments. The law aims to achieve better protection of clients and create a level playing field and increased competitiveness of the financial market. It contains regulations for all professional financial service providers on the offering of financial services and the distribution of financial instruments, including increased transparency rules and execution rules.

The FinIA provides for an activity-based, differentiated supervisory regime for financial institutions requiring authorisation. The law brings into scope asset managers of individuals, pension funds and trustees. Not all financial institutions will be supervised. The supervision of asset managers of individuals and of trustees will be ensured by one or more independent supervisory authorities.

The entry into force of the new legislation is pending the adoption of several pieces of implementing sub-legislation.

### **SFC proposes margin requirements for non-centrally cleared OTC derivatives**

The Securities and Futures Commission (SFC) has launched a public [consultation](#) on proposals to impose margin requirements for non-centrally cleared over-the-counter (OTC) derivatives. The proposals are part of the comprehensive reforms to implement international standards and enhance Hong Kong's regulatory regime for OTC derivatives activities.

Under the proposals, a licensed corporation which is a contracting party to a non-centrally cleared OTC derivative transaction entered into with an authorised institution, a licensed corporation or another defined entity will be required to exchange margin with the counterparty if the notional amount of their outstanding non-centrally cleared OTC derivatives exceeds specified thresholds.

The consultation also specifies the instruments which will be subject to the proposed margin requirements and the assets eligible as margin.

Comments on the consultation are due by 20 August 2018.

## **Payment and Settlement Systems (Finality and Netting) (Amendment) Act 2018 comes into effect**

The [Payment and Settlement Systems \(Finality and Netting\) \(Amendment\) Act 2018 \(Commencement\) Notification 2018](#) has been gazetted, with the result that the Payment and Settlement Systems (Finality and Netting) (Amendment) Act 2018 came into operation on 6 June 2018.

The Amendment Act is intended to enhance the protection of payment transactions by extending the period during which transactions enjoy finality and hence protect a wider range of transactions from insolvency law in a liquidation event, set out clear criteria for the Monetary Authority of Singapore (MAS) to designate such systems, and strengthen the MAS' administrative powers.

The MAS has at the same time gazetted the following orders, which also came into operation on 6 June 2018:

- the [Payment and Settlement Systems \(Finality and Netting\) \(Designated System\) \(CLS System\) \(Amendment\) Order 2018](#);
- the [Payment and Settlement Systems \(Finality and Netting\) \(Designated System\) \(New MAS Electronic Payment and Book-Entry System\) \(Amendment\) Order 2018](#); and
- the [Payment and Settlement Systems \(Finality and Netting\) \(Designated Systems\) \(Cheque Clearing and GIRO Systems\) \(Amendment\) Order 2018](#).

## **ASIC issues guidance on oversight of Australian Financial Complaints Authority**

The Australian Securities and Investments Commission (ASIC) has released a [new 'Regulatory Guide 267: Oversight of the Australian Financial Complaints Authority'](#) (RG 267) ahead of the commencement of the Australian Financial Complaints Authority (AFCA) on 1 November 2018. The new regulatory guide is intended to provide policy certainty for stakeholders and support an efficient transition to the new single scheme.

The release of RG 267 completes another transitional step to AFCA commencement and follows:

- the Minister's authorisation of the operator of the scheme on 23 April 2018; and
- the Minister's announcements confirming that:
  - AFCA will commence accepting complaints on 1 November 2018;
  - financial firms required to be members of AFCA must be members by 21 September 2018;
  - AFCA is commencing public consultation on the proposed AFCA Rules; and
  - ASIC is giving disclosure relief for financial firms during the transition to AFCA.

ASIC has indicated that it will retain its existing guidance in 'RG 139' until all complaints made under the existing approved schemes, the Financial

Ombudsman Service and the Credit and Investments Ombudsman, have been resolved.

ASIC has advised licensees and credit representatives that they should continue to maintain their external dispute resolution membership through the transitional period, including paying membership and other scheme fees in full as required.

## RECENT CLIFFORD CHANCE BRIEFINGS

### Anti-Bribery and Corruption Review, June 2018

Fighting bribery and corruption continues to be high on the agenda for both legislators and enforcement authorities all over the world, with further measures to encourage the reporting of corruption offences, to stem corruption in public procurement and to impose liability for corruption offences on companies. Clifford Chance's Anti-Bribery and Corruption Review looks at recent developments in some of the jurisdictions around the world where we have offices, focusing particularly on changes to legislation, both recent and proposed, and on prosecutions and enforcement trends.

This month's edition of the Review covers, among other things, Germany's nation-wide central competition register, stricter rules on commercial bribery in the People's Republic of China, Italy's new whistleblowing legislation, the UK Government's Anti-Corruption Strategy 2017 – 2022, and corporate criminal liability initiatives in Australia, Germany and Poland.

[https://www.cliffordchance.com/briefings/2018/06/anti-bribery\\_andcorruptionreview-june2018.html](https://www.cliffordchance.com/briefings/2018/06/anti-bribery_andcorruptionreview-june2018.html)

### ITV fails to Box Clever in Court Determination on Pensions Deficit

The Pensions Regulator (TPR) recently indicated that it will not hesitate to use its anti-avoidance enforcement powers under the Pensions Act 2004 against any connected or associated company where it believes that it would be reasonable for that company to provide financial support to an underfunded defined benefit pension scheme. TPR was no doubt emboldened by the Upper Tribunal's decision last month in the Box Clever case which confirmed the very broad scope of TPR's jurisdiction and the considerable latitude that it enjoys when applying the statutory 'reasonableness' test.

This briefing discusses the legal issues considered in the Box Clever decision in terms of when TPR can exercise its power to issue a financial support direction.

[https://www.cliffordchance.com/briefings/2018/06/itv\\_fails\\_to\\_boxcleverincourt\\_determinationo.html](https://www.cliffordchance.com/briefings/2018/06/itv_fails_to_boxcleverincourt_determinationo.html)

### Supreme Court Rejects Extension of American Pipe to Stacked Class Actions

On 11 June 2018, the US Supreme Court strengthened important constraints on the period in which plaintiffs can timely pursue claims on behalf of a purported class of similarly-situated parties. In *China Agritech, Inc v Resh*, the Court adopted the position of most federal appeals courts, holding that the so-called *American Pipe* tolling rule—which holds that the timely filing of a class

action complaint 'tolls' (or pauses) the applicable statute of limitations for individual claims by members of the purported class—does not toll the limitations period for successive class action complaints brought by would-be class members. The ruling continues the Supreme Court's recent trend of restricting the use of class actions and provides a degree of certainty for companies exposed to the threat of class action litigation by affirming that that threat must come to an end within the statutory limitations periods mandated by Congress.

This briefing discusses the ruling.

[https://www.cliffordchance.com/briefings/2018/06/supreme\\_court\\_rejectextensionofamericanpip.html](https://www.cliffordchance.com/briefings/2018/06/supreme_court_rejectextensionofamericanpip.html)

# C L I F F O R D C H A N C E

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

[www.cliffordchance.com](http://www.cliffordchance.com)

Clifford Chance, 10 Upper Bank Street,  
London, E14 5JJ

© Clifford Chance 2018

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street,  
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to [nomorecontact@cliffordchance.com](mailto:nomorecontact@cliffordchance.com) or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Moscow • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.