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Austrian EU Council Presidency sets out its programme

The Austrian EU Council Presidency has published its programme for the next six months. The EU Council Presidency rotates among Member States, with the Austrian Presidency being the third under the current 18-month trio programme approved in June 2017 by the General Affairs Council covering the Presidencies of Estonia, Bulgaria and Austria.

The Austrian Presidency's work programme sets out details of its priorities for each Council configuration. For the Economic and Financial Affairs Council (ECOFIN), Austria intends to:

- reach agreement on the package of risk reduction measures to strengthen the Banking Union;
- continue work on the EU Commission's proposals for further reducing levels of non-performing loans;
- make significant progress on and, where possible, finalise dossiers on other topics related to financial services;
- ensure an appropriate follow-up to the EU Commission's Fintech Action Plan and ECOFIN conclusions, in particular focussing on opportunities and risks associated with virtual assets and potential regulatory and supervisory measures;
- advance work on the Capital Markets Union (CMU);
- continue work advanced by the Bulgarian Presidency on deepening and strengthening economic policy coordination; and
- continue to work on measures for improving efficiency and fairness in taxation.

EU Commission formally withdraws proposal for bank structural reform

The EU Commission has formally withdrawn the proposal for a Regulation on bank structural reform (BSR) after consulting the EU Parliament and EU Council. A commitment to withdraw the proposal, alongside fourteen others, was set out in the Commission's 2018 work programme, due to there being no foreseeable agreement on the proposals, or because the proposals are obsolete.

The Commission cited no foreseeable agreement as the BSR file, as it had not progressed since 2015. The Commission views the rationale behind the proposal as having been addressed through other regulatory measures in the banking sector.

EU Commission consults on Consumer Credit Directive

The EU Commission has published a roadmap on an evaluation of the Consumer Credit Directive (2008/48/EC). In May 2014 the EU Commission published a report on the implementation of the Directive, which concluded that consumers often encountered problems when exercising their rights and, in 2017, a REFIT Platform opinion recommended that the EU Commission assess the relevance, effectiveness and efficiency of the standard information requirements for advertising under the Directive. Following these assessments, the EU Commission has decided to launch a full evaluation of the Directive in line with its Better Regulation principles.

The evaluation will assess the Directive's effectiveness, efficiency, coherence with other related legislation, relevance and value-add. In particular, the EU Commission intends to seek evidence on:

- the design and distribution phases of credit products;
- cross-selling of credits with other financial products;
- the creditworthiness assessment;
- credit registers;
- information disclosure;
- rights of withdrawal; and
- right of early repayment.

The EU Commission has published its evaluation roadmap for consultation; comments are due by 27 July 2018. The Commission intends to launch the evaluation in the third quarter of 2018.

CRR: RTS on advanced measurement approaches for operational risk published in Official Journal

A Commission Delegated Regulation (2018/959) setting out regulatory technical standards (RTS) on advanced measurement approaches for operational risk under the Capital Requirements Regulation (CRR) has been published in the Official Journal. The Delegated Regulation forms part of an effort to harmonise practices for the approval of internal models in the area of credit, market and operational risk models across the EU banking sector.

The RTS will enter into force on 26 July 2018.

EBA publishes updated ITS on benchmarking of internal approaches

The European Banking Authority (EBA) has published updated implementing technical standards (ITS) on benchmarking of internal approaches. The update includes changes and clarifications based on the EBA's consultation launched published on 18 December 2017 and the updated ITS include all benchmarking portfolios that will be used for the 2019 benchmarking exercise.

The changes include:

- the introduction of a new set of portfolios for market risk benchmarking which are intended to be simpler in their composition and consist of plain vanilla instruments to allow a broader coverage of the instruments in the 2019 exercise; and

- adjustment to the data requested from institutions for credit risk portfolios.

The EBA has announced that resubmissions for the current 2018 benchmarking exercise are welcomed but advises that banks should not be obliged to resubmit the same data due to the different submission dates set out in the consolidated version of the 2018 ITS published by the EBA in October 2017 and the version of the ITS published in the Official Journal in May 2018.

EMIR: ESMA issues statement on clearing obligation for pension scheme arrangements

The European Securities and Markets Authority (ESMA) has issued a statement on the clearing obligation for pension scheme arrangements (PSAs) under the European Market Infrastructure Regulation (EMIR).

Under EMIR, a temporary exemption from the clearing obligation for PSAs was introduced to allow time for a suitable technical solution for the transfer of non-cash collateral as variation margins (VM) to be developed by central counterparties (CCPs). As two exemptions have already been granted, it is not possible to further extend the temporary exemption under EMIR. However, a further extension forms part of the EMIR Refit negotiations.

In the statement, ESMA has highlighted that it is aware of the challenges that certain PSAs would face if they begin clearing their OTC derivative contracts when the current exemption expires on 17 August 2018. ESMA expects national competent authorities to not prioritise their supervisory actions towards entities that are expected to be exempted again in a relatively short period of time and to generally apply their risk-based supervisory powers in their day-to-day enforcement of applicable legislation in a proportionate manner.

CRR: ECB consults on draft Regulation on materiality threshold for credit obligations past due

The European Central Bank (ECB) has published for consultation a draft ECB Regulation on the definition of the materiality threshold for credit obligations past due. Under the Capital Requirements Regulation (CRR) competent authorities have the power to set a threshold for assessing the materiality of a credit obligation past due. The ECB, as competent authority for carrying out microprudential tasks within the Single Supervisory Mechanism (SSM), is required to define such a threshold and considers that the threshold will increase the comparability of banks' defaulted exposures.

The ECB Regulation will set a single materiality threshold for all significant institutions within the SSM, both for retail and non-retail exposures, irrespective of the method used for the calculation of capital requirements. The threshold will comprise an absolute component and a relative component.

Alongside the draft ECB Regulation, the ECB has published a set of frequently asked questions (FAQs) and a costs and benefits analysis.

Comments on the consultation are due by 17 August 2018.

ECB publishes report on recovery plans

The ECB has published a report setting out the best practices it has identified from its work analysing the recovery plans of significant institutions. The report does not impose additional requirements on banks but is intended to assist significant institutions when further developing their recovery plans and making them operational.

Since the Single Supervisory Mechanism (SSM) was established, the ECB has conducted three cycles of recovery plan assessments and performed benchmarking analyses, which have been used to identify the best practices presented in the report.

The ECB has identified that recovery plans are not always operational during a stress situation and their usability could be improved. The ECB encourages banks to consider the best practices presented when updating their plans.

Key components addressed in the report include:

- how banks could improve their presentation of recovery options, including the impact and feasibility assessments;
- possible elements that banks could take into account when estimating their overall recovery capacity (ORC);
- how banks could select their recovery indicators and calibrate their capital and liquidity indicators; and
- making recovery plans easier to use, including elements that playbooks could cover based on the experience of several examples.

EUIR: Regulation amending lists of applicable insolvency proceedings and practitioners published in Official Journal

Regulation (EU) 2018/946 amending the recast EU Regulation on Insolvency Proceedings (2015/848 - EUIR) has been published in the Official Journal. The Regulation replaces Annexes A and B to the EUIR, which list the designations given in the national law of Member States to the insolvency proceedings and to the insolvency practitioners to which the EUIR applies.

The Regulation will enter into force on 26 July 2018.

Basel Committee publishes revised G-SIB framework

The Basel Committee on Banking Supervision (BCBS) has published an updated framework for the assessment methodology and high loss absorbency requirement for global systemically important banks (G-SIBs). The framework updates the previous version published by BCBS in 2011 and concludes the first review of the G-SIB framework, which will occur every three years.

Building on member jurisdictions' experience and the feedback received during the public consultation, BCBS has reconfirmed the fundamental structure of the G-SIB framework. Overall, BCBS views the framework as meeting its primary objective of requiring G-SIBs to hold higher capital buffers and providing incentives for firms to reduce their systemic importance.

Based on the review, a number of enhancements have been agreed:

- amendments to the definition of cross-jurisdictional indicators;
- the introduction of a trading volume indicator and modification of the weights in the substitutability category;
- an extension of the scope of consolidation to insurance subsidiaries;

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- revisions to the disclosure requirements; and
- further guidance on bucket migration and associated higher loss absorbency (HLA) surcharge when a G-SIB moves to a lower bucket.

The implementation of the enhancements is set out in a transitional schedule.

BCBS will complete the next review of the G-SIB framework by 2021.

Basel Committee issues technical amendment to NSFR

BCBS has approved a technical amendment on the treatment of extraordinary monetary policy operations in the net stable funding ratio (NSFR).

The technical amendment allows reduced required stable funding (RSF) factors for central bank claims with a maturity of more than six months subject to a floor of 5%.

The amendment is intended to provide greater flexibility in the treatment of extraordinary central bank liquidity-absorbing monetary policy operations and ensure a balanced treatment of all central bank operations under the NSFR.

The amendment has been adopted with immediate effect.

FSB consults on cyber lexicon

The Financial Stability Board (FSB) has published a consultation on a draft cyber lexicon comprising 50 core terms to foster a common understanding of terminology across the financial sector. The non-binding document is intended to support the work of the FSB, standard-setting bodies, authorities and private sector participants to address cyber security and resilience.

The draft lexicon has been developed by the FSB as part of its wider project on protecting financial stability against the malicious use of information and communication technologies (ICT), in line with the G20's 2017 Baden-Baden agreement.

Comments on the draft lexicon are due by 20 August 2018. The FSB intends to finalise the lexicon for delivery to the G20 Summit in Buenos Aires in November.

Financial Services and Markets Act 2000 (Prospectus and Markets in Financial Instruments) Regulations 2018 published

The Financial Services and Markets Act 2000 (Prospectus and Markets in Financial Instruments) Regulations 2018 (SI 2018/786) have been laid before Parliament.

The Regulations amend the Financial Services and Markets Act 2000 (FSMA) in order to implement Articles 1(3) and 3(2) of the EU Prospectus Regulation (2017/1129). The Regulations also correct minor technical errors and update outdated references in the original transposition of MiFID2 into UK law.

The Regulations will come into force on 21 July 2018.

Financial Services and Markets Act 2000 (Prospectus and Markets in Financial Instruments) Regulations 2018.

Brexit: Treasury Committee requests impact analyses from HMT, BoE and FCA

The Chair of the House of Commons Treasury Committee, the Rt Hon. Nicky Morgan MP, has written to the Chancellor of the Exchequer, the Rt Hon. Philip Hammond MP, the Governor of the Bank of England (BoE), Mark Carney, and the Chief Executive of the Financial Conduct Authority (FCA), Andrew Bailey, to request analysis on the impact of the UK's withdrawal from the EU. The Committee expects the analyses to assist Parliament when making key decisions once the terms of the Withdrawal Agreement and the UK's future framework with the EU have been negotiated.

The letter to HMT requests that the analysis should be published in good time and contain separate assessments of the long-term and short-term economic and fiscal impact. Morgan has requested that HMT's assessments:

- consider the impact of both a 'deal' and 'no deal' scenario against a 'status quo' baseline, showing the economic and fiscal effects that directly flow from each;
- separately describe the impact of any proposed changes to policy, laws or regulations not directly consequent on the Withdrawal Agreement and future framework;
- separately describe the impact arising from the conclusion of international agreements, including the impact of achieving the continuity of the EU's existing third-party trade agreements;
- disaggregate economic impact by sector and region, described in terms of relevant indicators, such as GDP, GDP per capita, labour productivity, household incomes, employment, exports, imports and the trade-weighted exchange rate; and
- describe fiscal impacts in terms of relevant indicators, such as net debt, revenues and expenditure.

The letter requests that the short-term analysis should cover the five years following March 2019 and assess the impact of risks, such as systems, infrastructure or personnel not being in place to facilitate cross-border trade flows, or the risk that negotiation and ratification over-run the implementation period.

The letter to the BoE and the letter to the FCA request information on the impact of the Withdrawal Agreement and future framework on their ability to meet their objectives..

BoE, PRA and FCA issue joint discussion paper on operational resilience of UK financial sector

The BoE in its capacity supervising financial market infrastructures (FMIs), the PRA and FCA have published a joint discussion paper on the UK financial sector's operational resilience. The discussion paper notes that there are numerous challenges to making sure businesses are resilient to operational disruption, which have become more demanding due to large scale technological change and a more hostile cyber environment. The paper focuses on how the provision of products and services that firms and FMIs provide can be maintained within reasonable tolerances regardless of the cause of disruption.

The paper envisages that boards and senior management can achieve better standards of operational resilience through increased focus on setting, monitoring and testing specific impact tolerances for key business services, which define the amount of disruption that can be tolerated. This includes focussing on the continuity of the most important business services and planning on the assumption that disruption will occur as well as seeking to prevent it.

The supervisory authorities are seeking feedback on the paper, in particular comments on how firms and FMIs currently address the issues and risks discussed in the paper. The supervisory authorities also welcome responses to the questions asked throughout the discussion paper and listed in Chapter 8, as well as other specific suggestions, issues or potential alternatives. Based on feedback, the authorities intend to work together to:

- develop potential proposals for consultation; and
- develop their respective supervisory approaches.

Comments are due by 5 October 2018.

PRA consults on applying systemic risk buffer framework

The PRA has launched a consultation on proposals to amend the UK leverage ratio to reflect the systemic risk buffer (SRB) framework. The SRB framework, which is expected to be implemented in 2019, subjects domestic systemically important banks (D-SIBs) to a leverage ratio buffer which mirrors their risk-weighted capital requirements.

In particular, the consultation sets out proposals to apply the SRB framework in the UK leverage ratio by:

- applying the UK leverage ratio framework on a sub-consolidated basis to ring-fenced bodies (RFBs) whose groups are already required to meet leverage ratio requirements on a consolidated basis;
- amending the additional leverage ratio buffer to reflect the SRB; and
- where applicable, expecting firms to hold capital on a group consolidated basis to address RFB group risk (the ‘Leverage Ratio Group Add-on’).

To implement these changes, the PRA is proposing to update:

- the Leverage Ratio, Public Disclosure, Reporting Leverage Ratio, and Ring-fenced Bodies Parts of the PRA Rulebook; and
- supervisory statements ‘The UK leverage ratio framework’ (SS45/15) and ‘UK leverage ratio: instructions for completing data items FSA083 and FSA084’ (SS46/15); and
- FSA083 Leverage Ratio Reporting template and instructions.

Comments are due by 25 September 2018.

FCA and PRA publish policy statements on extension of SM&CR

The FCA and PRA have published their final policy statements on extending the Senior Managers and Certification Regimes (SM&CR) to insurers. Separately, the FCA has published a policy statement on extending the SM&CR to solo-regulated firms, as well as a policy statement on how it will apply its Duty of Responsibility to insurers and FCA solo-regulated firms.

Alongside the policy statements the FCA has also published a guide for insurers and a guide for solo-regulated firms on the SM&CR.

The PRA policy statement (PS15/18) sets out feedback on two PRA consultations (CP14/17 and CP28/17) alongside the final rules on the extension. The policy statement includes a consolidated Statement of Policy (SoP) on conditions, time limits, and variations of approval, updated forms, and an updated supervisory statement (SS13/15) on strengthening individual accountability in insurance, as well as terminology updates to supervisory statements on:

- strengthening individual accountability in banking (SS28/15);
- whistleblowing in deposit-takers, PRA-designated investment firms and insurers (SS39/15);
- board responsibilities (SS5/16);
- Solvency II remuneration requirements (SS10/16); and
- Solvency II matching adjustment - illiquid unrated assets and equity release mortgages (SS3/17).

The PRA intends to issue a further consultation paper on consequential amendments to the rules prior to the policy commencement date, in order to ensure that the PRA Rulebook is suitability cross-referenced and aligned to the rules in the FCA Handbook. The PRA's policy statement should be read in conjunction with the policy statement published by the FCA (PS18/15), which provides feedback on responses to three FCA consultations (CP17/26, CP17/41, and CP17/42), and contains the FCA's equivalent policy to implement the extension of the SM&CR to insurers.

The extension of the SM&CR to insurers will apply from 10 December 2018.

Alongside its policy statement on insurers, the FCA has also published its policy statement (PS18/14) on extending the SM&CR to all solo-regulated firms, which are regulated by the FCA but not the PRA. The policy statement sets out feedback received on its consultations (CP17/25 and CP17/40) as well as near-final rules. All firms authorised under the Financial Services and Markets Act 2000 (FSMA) and regulated by the FCA will be affected by these changes, as well as EEA and third-country branches. The requirements depend on the classification of each firm as Limited Scope, Core or Enhanced. Firms affected by these changes will move to the new regime on 9 December 2019.

The FCA's policy statement on the Duty of Responsibility (PS18/16) sets out the FCA's approach to enforcement action against Senior Managers once the SM&CR has been extended to insurers and FCA solo-regulated firms.

FCA consults on new directory of financial services workers

The FCA has launched a consultation on a proposed new directory of financial services workers to be launched following the commencement of the Senior Managers and Certification Regime (SM&CR).

The proposed directory would include information currently available on the Financial Services Register but would cover a wider group of individuals, including:

- those who hold senior manager positions requiring FCA approval; and
- those whose roles require firms to certify that they are fit and proper.

The FCA intends the register to make it easier for consumers and firms to check whether an individual works for an authorised firm. The consultation paper has been published alongside an interactive prototype version of the directory.

The FCA is seeking feedback on the prototype, as well as which individuals should be included in the directory, what information should be published about them and when firms would need to submit and update information about their employees.

Comments are due by 5 October 2018.

FCA updates approach document on payment services and e-money

The FCA has updated its approach document on its role under the Payment Services Regulations 2017 (PSRs) and Electronic Money Regulations 2011 (EMRs).

The document, which was first published in September 2017, describes the FCA's approach to implementing the PSRs, EMRs and a small number of payment services and e-money-related rules in the FCA Handbook. It is intended to set out a comprehensive overview of the payment services and e-money regulatory regime in the UK and provides guidance for a practical understanding of the requirements.

The updated version sets out new guidance on operational and security risks under PSD2 in chapters 13 and 18, as well as minor changes to clarify the FCA's guidance or reflect legislative change.

FCA publishes regulated fees and levies for 2018/19

The FCA has published a policy statement (PS18/13) setting out its final periodic fees and levies for 2018/19. The fees cover the:

- FCA;
- Financial Ombudsman Services (FOS) general levy;
- Money Advice Service;
- Pension Wise service;
- Single Financial Guidance Body; and
- illegal money lending levy (IML) expenses of HM Treasury.

Alongside the policy statement, the FCA has published feedback on the responses received to its consultation paper (CP18/10).

The FCA feedback focuses primarily on responses that questioned its commitment to controlling costs and the transparency of the information provided in CP18/10. Additionally, it provided more detailed information on the calculation of costs for each Business Plan priority as well as its allocation to fee-blocks.

Fintech: FCA announces fourth regulatory sandbox cohort

The FCA has announced the 29 firms comprising the fourth cohort of its regulatory sandbox.

The firms selected to carry out sandbox tests represent a range of sectors, including automated advice, consumer credit and insurance. Technologies being tested include distributed ledger technology (DLT), geolocation technology, Application Programming Interfaces (APIs), artificial intelligence and blockchain.

The application window for the fifth cohort will open later this year.

AMF modifies General Regulation and updates policy on classes of units or shares in UCITS and AIFs

The Autorité des marchés financiers (AMF) has clarified the framework governing the creation of classes of units or shares with risk hedging for UCITs and AIFs open to non-professional investors.

The AMF has also specified that for UCITS only currency risk may be specifically hedged for a class of units or shares and counterparty risk for the same issuer resulting from financial contracts must be assessed for each class of units or shares. The rules applying to AIFs open to non-professional investors have been relaxed. The AMF has set out that a risk factor may be hedged by class of units or shares in addition to currency risk and the hedging strategy must not call into question the investment objective common to all the classes of units or shares. A list of possible strategies is included in the appendix of the AMF guide to the regulatory documents governing collective investment schemes (DOC-2011-05). The AMF has also updated the framework applicable to AIFs open to professional investors to give managers more flexibility to create more innovative investment strategies in a class of units or shares.

DOC-2011-05 has been updated in line with the changes.

Brexit: ACPR publishes short opinion on the future of cross-border contracts

The Autorité de Contrôle Prudentiel et de Résolution (ACPR) has published a short opinion on continuity of contract in the context of Brexit. The opinion follows the publication of opinions by the EBA and the European Insurance and Occupational Pensions Authority (EIOPA) on financial institutions hastening preparations for Brexit.

Within the scope of its competences regarding customer protection, the ACPR sets out that contracts concluded before Brexit with UK-based establishments and organisations remain valid and must be executed in good faith.

Securitisation: BaFin consults on draft circular on non-contractual credit support

The German Federal Financial Supervisory Authority (BaFin) has published a draft circular on non-contractual credit support in securitisation transactions. The circular will implement EBA guidelines into BaFin's administrative practice.

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BaFin specifies the meaning of standard market conditions pursuant to the Capital Requirements Regulation (CRR) and defines when a transaction is structured in a way that it does not constitute credit support. It also states the corresponding reporting and documentation obligations.

Comments may be submitted until 3 August 2018.

BaFin simplifies requirements for English language usage in approval process for securities prospectuses

BaFin has published an expert article according to which it is now easier for those issuing securities prospectuses in English to communicate with BaFin. BaFin has removed language barriers and now allows English to be used in the approval process to the extent legally permitted.

Since German is the official language, all applications and notifications associated with the approval process for securities prospectuses must continue to be submitted to BaFin in German. To streamline the process, however, BaFin now provides bilingual forms on its website for the approval and notification application, the filing of the final offer price and/or offer volume, and the notification of publication. The forms contain all the information necessary for the approval process.

Consob and OCF publish MoU on transfer of certain supervision and investigation functions

The Commissione Nazionale per le Società e la Borsa (Consob) and the Italian body responsible for the supervision of financial advisors, Organismo di vigilanza e tenuta dell'albo unico dei consulenti finanziari (OCF), have entered into a Memorandum of Understanding (MoU) pursuant to article 1, paragraph 41 of the Italian Law No. 208 of 28 December 2015 (Stability Law 2016).

The MoU allows the transfer of some functions of supervision and investigation to the OCF, which are presently carried out by Consob.

In particular, the OCF will become responsible for the following tasks:

- assessment of applications received, related checks on satisfaction of requirements and enrolment in the relevant register;
- maintenance of the registers of financial advisors; and
- investigation powers over conduct by financial advisors.

Consob consults on the definition of exemption threshold from publication of prospectuses

Consob has issued a public consultation document on revising the exemption threshold from the obligation to publish a prospectus pursuant to the provisions contained in article 34-ter of the Issuers Regulation (Consob Regulation no. 11971/1999).

The document is intended to bring national legislation into line with Regulation 2017/1129/EU on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market.

Comments on the consultation are due by 13 August 2018.

CSSF issues Regulation on setting countercyclical buffer rate

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a Regulation (18-04) on the setting of the countercyclical buffer rate for the third quarter of 2018.

The Regulation follows the Luxembourg Systemic Risk Committee's recommendation of 14 June 2018 (CRS/2018/003) and maintains a 0% countercyclical buffer rate for relevant exposures located in Luxembourg for the third quarter of 2018.

The Regulation entered into force on 1 July 2018.

Bill implementing EU Prospectus Regulation published

A new Bill no. 7328 on securities prospectuses has been lodged with the Luxembourg Parliament. The Bill implements the EU Prospectus Regulation (2017/1129) and repeals the law on securities prospectuses of 10 July 2015 (as amended).

The Bill is divided into five parts which correspond to those of the 2005 Law:

- Part I contains general provisions, definitions and the regime applicable to issuances denominated in a currency other than euro;
- Part II appoints the Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), as the competent authority in Luxembourg for the purposes of the Regulation and confers to it the necessary supervisory and investigative powers. It also lays down an administrative sanctions and prospectus liability regime in accordance with the Regulation and makes use of the option provided for in article 3(2) of the Regulation by exempting offers of securities to the public from the obligation to publish a prospectus where the total amount of such offer is less than EUR 8,000,000. An information notice will however need to be made available to the public for offers with a total amount equal or superior to EU 5,000,000;
- Part III includes the provisions relating to the drawing up, approval and distribution of the prospectus to be published where securities offered to the public or admitted to trading on a regulated market in Luxembourg are not covered by the Regulation. In the interest of simplification, legal certainty and investor protection and taking into account the requirements, specifications and modifications introduced by the Regulation, the scope of application of Part III has been reduced and new provisions to ensure easy access to prospectuses and to complete the regime on prospectus supplements are introduced compared to Part III of the 2005 Law;
- Part IV sets out the regulatory framework applicable to prospectuses for securities admitted to trading on a market located or operating in Luxembourg not being included in the list of regulated markets published by the European Securities and Markets Authority (ESMA); and
- Part V contains the final and transitional provisions. In particular, the 2005 Law will be abrogated with effect on 21 July 2019 (with the exception of articles 4(2)(h), 5(2)(e) and 6(2)(a) and (g) which will cease to apply as of the day of publication of the Bill in the Luxembourg Official Journal).

The Bill foresees its entry into force of the law as 21 July 2019 with the exception of its article 4 that is foreseen to become applicable as of the day of publication of the Bill in the Luxembourg Official Journal.

The lodging of the Bill with the Parliament constitutes the start of the legislative procedure.

Law introducing renewable energy covered bonds published

The law of 22 June 2018 amending the provisions of the financial sector law of 5 April 1993 (as amended) to introduce renewable energy covered bonds (RECB Law) has been published in the Luxembourg official journal (Mémorial A).

The RECB Law introduces renewable energy covered bonds as a new statutory covered bond class in Luxembourg. It also strengthens covered bond holder protection generally by implementing certain recommendations on the harmonization of EU covered bond frameworks, which were published by the European Banking Authority (EBA) on 20 December 2016. These include:

- introducing a mandatory liquidity buffer;
- the regulation of the use of derivatives;
- expanding the admission of substitute collateral to public entity commitments; and
- greater transparency requirements for covered bond banks.

The RECB Law is a further step for reaching sustainable development objectives and is intended to reinforce Luxembourg's position as a centre of excellence in green or sustainable finance.

The RECB Law entered into force on 30 June 2018.

Bill implementing EU Network and Information Security Directive published

A new Bill No. 7199 transposing the Network and Information Security Directive (2016/1148 - NIS Directive) has been lodged with the Luxembourg Parliament.

The Bill is intended to render the NIS Directive operational in Luxembourg by introducing into the Luxembourg legal framework provisions which, among other things:

- set minimum requirements for the security of networks and information systems which have to be respected by operators of essential services (OES), i.e. companies, active in various sectors, that provide an important service to society and the economy, and digital service providers (DSP), such as online marketplaces, online search engines and cloud computing services. In-scope OES and DSP will have to ensure an adequate level of security in relation to their networks and information systems and to notify the competent authority in Luxembourg of incidents which have a significant impact on the continuity of such essential services;
- designate the Luxembourg financial sector regulator, the Commission de Surveillance du Secteur Financier (CSSF), and the Luxembourg institute of regulation, Institut luxembourgeois de régulation (ILR), as the national

competent authorities (NCAs) responsible for fulfilling the tasks linked to the security of the network and information systems of OES and DSP. CSSF will be responsible for the banking and financial market infrastructure sectors whereas ILR will be the NCA for all other sectors;

- designate ILR as the national single point of contact responsible for coordinating issues related to the security of network and information systems and cross-border cooperation at EU level, as required by the NIS Directive;
- charge the Haut-Commissariat à la Protection Nationale (HCPN) with the task of elaborating a national strategy in the area of network and information system security; and
- with regard to the institutional framework for cybersecurity, transfer to the national information technology centre, Centre des technologies de l'information de l'Etat (CTIE), responsibility for being the cryptographic authorisation authority (a role previously entrusted to the national authority for the security of information systems Agence Nationale de la Sécurité des Systèmes d'Information (ANSSI)).

The publication of the Bill constitutes the start of the legislative procedure.

New Grand-Ducal Regulation on fees to be levied by CSSF published in Luxembourg Official Journal

A new Grand-Ducal Regulation modifying the Grand-Ducal Regulation of 21 December 2017 on the fees to be levied by the financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF) has been published in the Luxembourg Official Journal (Mémorial A).

The new Regulation introduces provisions on the fees to be levied in relation to:

- administrators of indices used as benchmarks in financial instruments and financial contracts;
- organised trading facilities (OTF) and their operators; and
- data communication service providers (Prestataires de services de communication de données).

The Regulation entered into force on 8 July 2018.

Dutch Government announces intention to abolish corporate income tax interest deduction for AT1/RT1 instruments issued by banks and insurers

The Dutch Government has submitted to the House of Representatives (Tweede Kamer) of The Netherlands its intention to abolish the corporate income tax interest deduction for Additional Tier 1 (AT1)/Restricted Tier 1 (RT1) instruments for banks and insurers from 1 January 2019. The abolition means that the coupon of new and existing AT1/RT1 instruments will no longer benefit from a specific interest deduction under Dutch corporate income tax laws as from that date.

The Dutch government informed the House of Representatives that the abolition follows from:

- state aid concerns raised by the European Commission; and

- the Dutch government's intention to avoid legal uncertainty for taxpayers while legal (infraction) proceedings at the European Court of Justice are pending.

This abolition of the interest deduction will be enacted in addition to the introduction of a specific thin-cap interest deduction limitation for banks and insurers that was announced in October 2017 and will limit the deduction of interest on debt exceeding 92% of the commercial balance sheet total. This thin cap rule is likely to enter into force as from 1 January 2020. A legislative proposal to implement this is expected later in 2018.

The formal legislative proposal to abolish the interest deduction for AT1/RT1 instruments is expected on 18 September 2018, to complete the legislative process by the end of this year in order that it will enter into force as from 1 January 2019.

Spanish Government consults on draft law to adapt Spanish legal regime to EU STS Regulation

The Spanish Government has launched a consultation on a draft law amending Law 5/2015, of 27 April, on the business financing promotion to adapt its contents to Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation (the "STS Regulation").

The enactment of the STS Regulation, which comes into force on 1 January 2019, calls for the adaptation of the Spanish legal regime on securitisation to ensure legal certainty. The draft law amending Law 5/2015 intends to:

- establish a supervision, inspection and sanction regime in respect of the obligations set out in the STS Regulation, identifying the responsible authorities;
- eliminate those components of the current national regulatory framework that are not coherent with the contents of the STS Regulation; and
- clarify the applicable regime for those forms of structured finance regulated by Law 5/2015 but which fall out of the scope of the STS Regulation.

Comments on the consultation are due by 12 July 2018.

CNMV circular on periodic reporting by securities issuers admitted to trading on a regulated market published in Official Gazette

The Spanish Securities Market Commission (Comisión Nacional del Mercado de Valores - CNMV) has approved Circular 3/2018, of 28 June, on periodic public information relating to issuers whose securities are admitted to trading on a regulated market. The circular repeals Circular 1/2008 and Circular 5/2015.

The Circular aims to develop the content and forms of periodic public information related to half-yearly financial reports, interim management statements and, when applicable, quarterly financial reports, to be submitted to CNMV in accordance with Royal Decree 1362/2007, of 19 October, which transposed into Spanish law several aspects of Directive 2004/109/EC on the harmonisation of transparency requirements with regard to information about issuers whose securities are admitted to trading on a regulated market.

Among other things, the Circular is intended to:

- adapt the content of the forms of half-yearly financial reports, either consolidated or individual, interim management statements and, when applicable, quarterly financial reports, to applicable recent regulatory developments regarding:
  - changes to international accounting regulation: NIIF 9 and NIIF 15; and
  - rules contained in Circular 4/2017, of 27 November, of the Bank of Spain and Royal Decree 583/2017, of 12 June, modifying the General Accounting Plan for Insurance and Reinsurance Companies; and
- undertake technical adjustments in order to foster a greater understanding of the required content and forms for periodic public reporting.

The provisions set out in the Circular will be applicable to the half-yearly and quarterly information submitted to CNMV during 2019 and 2020 and shall be further modified in order to adapt to the new European Single Electronic Format which requires the use of XBRL.

The Circular entered into force on 4 July 2018, one day after its publication on the Spanish Official Gazette (Boletín Oficial del Estado).

CBIRC proposes removal of foreign shareholding restrictions in domestic-funded commercial banks

The China Banking and Insurance Regulatory Commission (CBIRC) has published a consultation draft of decisions that propose the removal of the current foreign shareholding restrictions in PRC domestic-funded commercial banks. The consultation draft represents an effort by the PRC Government to implement the further opening-up of China's financial industries, as announced by President Xi in his speech delivered at the Bo'ao Forum for Asia Annual Conference 2018 in April 2018.

If implemented in its current form, the consultation draft would introduce, among other things, removal of foreign shareholding limits (previously 20% by a single foreign investor (together with its affiliate(s)) and 25% by all foreign investors in aggregate) of PRC domestic-funded commercial banks, including large state-owned commercial banks, joint-stock commercial banks, city commercial banks and rural commercial banks. Where foreign investors hold over 25% of the shareholding in a PRC domestic-funded commercial bank, this will not affect the bank's regulatory categorization as a PRC domestic-funded commercial bank, in order that the bank will remain subject to the same regulatory treatment as other domestic-funded commercial banks that do not have substantial foreign investor shareholding. Previously, the bank would be converted into a PRC foreign-invested bank, which is subject to a different regulatory regime from a PRC domestic-funded commercial bank. By remaining as a PRC domestic-funded commercial bank, it will not need to face additional regulatory and practical restrictions in conducting various businesses in China.

HKMA revises supervisory policy manual on counterparty credit risk management

The Hong Kong Monetary Authority (HKMA) has issued a revised version of its supervisory policy manual (SPM) module on counterparty credit risk management as a guidance note.

The SPM module revisions primarily incorporate the relevant international standards and guidelines issued by the Basel Committee on Banking Supervision (BCBS) and the Financial Stability Board (FSB). Moreover, parts of the guidance in the SPM module have been updated to ensure consistency with the capital treatments for counterparty credit risk under the Basel capital framework. The coverage of the SPM module has also been expanded to cater for relevant issues arising from credit valuation adjustments and central clearing.

The HKMA has advised authorised institutions to assess their counterparty credit risk management systems against the guidance laid down in the SPM module and establish an action plan to address any gaps identified within a reasonable timeframe, which should be no later than one year from the issue date of the SPM module.

SFC issues circular on launch of enhanced fund data reporting for SFC-authorised unit trusts and mutual funds

The Securities and Futures Commission (SFC) has issued a circular to management companies of SFC-authorised unit trusts and mutual funds to announce the launch of its enhanced reporting requirements for SFC-authorised funds and to provide details about the implementation timeline and filing arrangements.

In addition to the existing reporting obligations, starting from 30 September 2018, the enhanced requirements will cover periodic reporting in the following areas:

- quarterly reporting of liquidity profile of the fund's assets with reference to the liquidity categories - first filing for the quarter ending on 30 September 2018 is due on 5 November 2018;
- quarterly reporting of the fund's subscription and redemption amounts - first filing for the quarter ending on 30 September 2018 is due on 5 November 2018;
- quarterly reporting of the fund's asset allocation (with reference to a breakdown of major asset classes by country, asset quality and listing venue etc.) - first filing for the quarter ending on 31 December 2018 is due on 4 February 2019; and
- annual reporting of securities financing transactions and securities borrowing transactions of the fund (including information on outstanding balances, counterparties, collateral issuers and types etc.) - first filing for the quarter ending on 31 December 2018 is due on 4 February 2019.

Fund data required to be submitted under the enhanced reporting requirements is set out in full in the reporting forms. After the first filing, the subsequent filing deadline for each type of report is five weeks from the report date. For quarterly reporting, the quarter end report date is 31 March, 30 June, 30 September and 31 December. For annual reporting, the year end report date is 31 December.

Within seven business days of each report date, the SFC will send a notification email to the management company of each fund. The notification will include reporting forms, instructions for completing the forms and a link to the SFC Online Portal for submitting the completed forms. The management company (or its authorised entity e.g. the fund's administrator) are advised to complete and file reporting forms with the SFC via the SFC Online Portal.

SFC consults on proposed amendments to AML/CFT guidelines

The SFC has launched a consultation on proposals to amend the Guideline on Anti-Money Laundering and Counter-Terrorist Financing to keep it in line with international anti-money laundering (AML) and combating the financing of terrorism (CFT) standards, among other enhancements.

The proposed amendments include:

- expanding the types of politically exposed persons to include customers who have been entrusted with a prominent function by an international organisation; and
- streamlining the identification and verification processes for onboarding customers to allow flexibility for licensed corporations to adopt reasonable risk-based measures and determine the extent to which identification information would need to be verified. Licensed corporations may use appropriate technology for non-face-to-face account opening if they can ensure and demonstrate that there are adequate safeguards against impersonation risk.

The SFC is seeking comments on the amendment proposals, the revised draft Guideline on Anti-Money Laundering and Counter-Terrorist Financing, and the revised draft Prevention of Money Laundering and Terrorist Financing Guideline issued by the SFC for Associated Entities.

Comments on the consultation are due by 9 August 2018.

FSA publishes revised report on review of its supervisory approach

The Japanese Financial Services Agency (FSA) has published a revised report on how it intends to transform its supervisory approach by replacing checklists with engagement.

The revised report responds to feedback received on its January 2018 consultation on the review of its supervisory approach and sets out that the FSA intends to:

- establish a three pillars supervisory approach, to expand the scope of its supervisory approaches from a backward-looking, element-by-element compliance check with formal requirements to substantive, forward-looking and holistic analysis and judgment;
- revise its communications on supervisory policies and, in addition to theme-specific reports, consider publishing the outcomes of its horizontal supervisory reviews on specific issues, areas for improvements, and supervisory viewpoints;
- transform itself to better carry out new supervisory approaches by continuously inviting insights from the Advisory Group on Supervisory Approaches. It will also expand the current challenge process for on-site inspections to include off-site monitoring;

- develop longer-term staff rotation, conduct professional training and recruit experts from outside to improve skills and knowledge in specialised fields; and
- identify priority needs for analysis under the new supervisory approaches and build necessary information infrastructure utilising IT technology.

FSC proposes regulatory framework for financial benchmarks

The Financial Services Commission (FSC) has proposed a draft bill to introduce a regulatory framework for financial benchmarks. The new legislation is intended to adopt the IOSCO Principles for financial benchmarks. The extra-territorial effect of the EU Benchmarks Regulation (BMR), which requires third party country administrators to be authorised by endorsement, recognition or equivalence, has prompted the FSC to introduce a corresponding regulatory regime for Korea.

The draft bill is intended to:

- provide the FSC with powers to designate financial benchmarks that have a significant impact on financial markets as 'significant benchmarks', which will be subject to the new regulatory and supervisory framework;
- establish conduct requirements for setting, publishing and using significant benchmarks; and
- enable the FSC to impose corrective orders or penalties against any activities that could harm the accuracy and credibility of significant benchmarks.

Comments on the draft bill are due by 30 July 2018. The FSC plans to submit the draft bill to the National Assembly in September 2018.

FSC announces revisions to virtual currency anti-money laundering guidelines

The FSC has announced revisions to its virtual currency anti-money laundering guidelines to address certain insufficiencies relating to the implementation of the guidelines. The changes follow the results of inspections jointly conducted by the FSC and the Financial Supervisory Service (FSS) in April 2018, which looked at banks' compliance with the guidelines.

Major changes include:

- strengthened monitoring and enhanced customer due diligence (EDD), in order to prevent cryptocurrency exchanges from using their non-trading accounts for collecting money or other illegal activities, including a requirement for financial companies to strengthen monitoring on such non-trading accounts and conduct EDD if they find any sign of suspicious transactions;
- requirements on financial companies to share a list of domestic and overseas cryptocurrency exchanges and strengthen monitoring on money transfer to overseas exchanges in order to prevent tax evasion or money laundering through transactions between domestic exchanges or customers between overseas exchanges; and

- clarifications on rejecting transactions, which specify that financial companies should reject or cease transactions with cryptocurrency exchanges 'immediately' when they report transactions as suspicious to the Korea Financial Intelligence Unit (KoFIU). The revision also allows financial companies to reject or cease transactions when they are not able to conduct on-site inspections on cryptocurrency exchanges due to their incorrect address or contact information, or temporary or permanent closure.

The revised guidelines have been effective since 10 July 2018.

Bankruptcy (Fees) (Amendment) Rules 2018 and Bankruptcy (Debt Repayment Scheme) (Amendment No. 2) Rules 2018 gazetted

The Bankruptcy (Fees) (Amendment) Rules 2018 and the Bankruptcy (Debt Repayment Scheme) (Amendment No. 2) Rules 2018 have been gazetted.

Table B of the Schedule to the Bankruptcy (Fees) Rules (R 3) has been amended with the insertion of section 5A, setting out a SGD 5 fee for processing any of the following payments by the Official Assignee other than by electronic transfer:

- the payment of monies to a creditor under section 117(1) of the Bankruptcy Act;
- the payment or any surplus mentioned in section 122(1) of the Bankruptcy Act to a bankrupt; or
- the payment out of unclaimed monies from the Insolvency Assistance Fund under section 165(4) of the Bankruptcy Act to a claimant.

The Schedule to the Bankruptcy (Debt Repayment Scheme) Rules (R 6) has been amended with the insertion of section 6A, which sets out a SGD 5 fee for the payment by the Official Assignee of any of the following, other than by electronic transfer:

- a dividend to a creditor under a debt repayment scheme, under section 56J(2) of the Bankruptcy Act; or
- unclaimed monies paid into the Debt Repayment Scheme Assistance Fund, under section 164A(5) of the Bankruptcy Act.

The Bankruptcy (Fees) (Amendment) Rules 2018 and the Bankruptcy (Debt Repayment Scheme) (Amendment No. 2) Rules 2018 are effective from 2 July 2018. The amendments will not be applicable to any payment where the request for payment was made before 2 July 2018.

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

The Monetary Authority of Singapore (MAS) has published updated guidelines on licensing, registration and conduct of business for fund management companies (FMCs).

Amongst other things, the revised guidelines provide that licensed accredited/institutional FMCs (A/I LFMCs), including venture capital fund managers, and registered FMCs (RFMCs) may carry on business in fund management with their employees only if these employees either:

- meet the definition of an 'accredited investor'; or
- are investment professionals employed by the FMC or employed within the same corporate group. For RFMCs, such investment professionals shall be considered qualified investors for the purpose of paragraph 5(1)(i) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations. The funds that such investment professionals invest in, which are otherwise offered to accredited investors and institutional investors, shall also be considered qualified investors.

The revised guidelines also clarify that where an A/I LFMC or RFMC carries on business with the employees who do not meet the accredited investor status, the FMC is required to have, among other things, the following safeguards in place:

- the FMC must maintain records of investment professionals with whom the FMC carries on business in fund management;
- the investment professionals' participation in the fund management arrangement must be strictly voluntary;
- the investment professional must be apprised of the risks involved with an investment, and be required to acknowledge in writing that they would not be accorded the regulatory safeguards as a retail investor for their investment into the funds managed by the FMC; and
- if the investment professional ceases employment with the FMC or corporate group, that investment professional must not be allowed to make further investments into the funds managed by the FMC. The FMC must have a clear policy regarding the treatment or handling of such investment professionals' investments in the event of the cessation of the employment.

Australian Government consults on draft Asia Region Funds Passport Regulations

The Australian Government has launched a consultation on the draft Asia Region Funds Passport Regulations and related explanatory materials.

The Passport is a common framework of coordinated regulatory oversight to facilitate cross border issuing of managed investment funds in Asia-Pacific. Australia, Japan, Korea, New Zealand and Thailand are signatories to the Passport's Memorandum of Cooperation (MOC), which took effect on 30 June 2016.

Legislation to establish the Passport passed the Senate on 28 June 2018. The Regulations provide additional detail on the operation of the Passport Bill. In particular, the Regulations:

- require an operator of a notified foreign passport fund to lodge copies of documents in the prescribed form and set out other requirements regarding lodging documents with the Australian Securities and Investments Commission (ASIC);
- list the particulars to be included on the new register of passport funds and give the public a right to search the register;
- extend many of the disclosure requirements and exemptions that currently apply to managed investment products to foreign passport fund products; and

- amend various fee regulations to prescribe new fees for certain matters relating to notified foreign passport funds.

Comments on the consultation are due by 13 July 2018.

ASIC consults on proposed changes to capital requirements for market participants

ASIC has launched a consultation on proposals to prescribe the minimum amount of capital a market participant must hold. The proposed changes are intended to better protect investors and market integrity by strengthening the risk profile of market participants and reducing the risk of a disorderly or non-compliant wind-up.

The consultation paper sets out ASIC's proposals to:

- improve and simplify capital requirements, including further consolidating the two market integrity capital rulebooks into a single capital rulebook, the draft ASIC Market Integrity Rules (Capital) 2018;
- require market participants of futures markets to comply with a risk-based capital regime instead of a net tangible asset requirement, and hold core capital of at least AUD 1,000,000 at all times;
- increase the minimum core capital requirement for securities market participants to AUD 500,000, as well as introducing new rules such as an underwriting risk requirement; and
- remove redundant rules and forms and more closely align capital requirements with the financial requirements of the Australian financial services licensing regime.

The proposals follow ASIC's review of the adequacy of its capital regime. The review identified elements of the capital requirements that were outdated and not able to adequately address the risks of operating a market participant business. ASIC considers that it is important for market participants to maintain a financial buffer of liquid and core capital to decrease the risk of market disruption from a disorderly wind-up. Well-capitalised market participants are also better able to absorb losses and more likely to be able to meet their financial obligations to clients.

Comments on the consultation are due by 15 August 2018.

RECENT CLIFFORD CHANCE BRIEFINGS

Private Funds Update - summer 2018

The summer 2018 edition of the Private Funds Update contains a selection of short 'need-to-knows' covering technical developments relevant to private fund managers operating in Europe.

https://www.cliffordchance.com/briefings/2018/07/clifford_chance_privatefundsupdatesummer2018.html

Crunch time? The EU takes stock of Brexit at the June European Council

EU leaders met on 28-29 June 2018 at a time of growing divisions across Europe. A migration crisis reinvigorated by the election of a populist government in Italy, an incipient trade war with the US, and weakening transatlantic co-operation in NATO, all left time short to discuss Brexit. The Council was apparently, however, not obviously impressed by the current state of the Brexit negotiations. With the clock ticking, all eyes are now on the October Council as a final hurdle - or last chance saloon - before a no deal Brexit becomes increasingly inevitable.

This briefing discusses the Council and next steps.

https://www.cliffordchance.com/briefings/2018/07/crunch_time_the_eutakesstockofbrexitatth.html

French Supreme Court finds Romanian insolvency proceedings protect director from sanctions in France arising from mandatory filing obligations

In some jurisdictions, management are left with little time to consider restructuring options and instead are subject to a mandatory time period which obliges them to commence a formal insolvency process. The consequences of failing to file can be severe and can include personal liability, prohibitions on management, and in some cases criminal sanctions. A recent French Supreme Court Case may offer some comfort, however, where it was held that when proceedings against the same debtor were commenced in more than one court in the EU, the management could rely upon the formal filing made in one jurisdiction to satisfy its obligation to file according to the law in another Member State.

This briefing discusses the proceedings as well as the European Regulation on Insolvency Regulations.

https://www.cliffordchance.com/briefings/2018/07/commencement_of_romaniannmaininsolvenc.html

Brexit - what are the next steps for EU nationals in the UK

The Home Secretary recently published a statement of intent setting out how EU nationals and their family may be able to apply for 'settled status' if they wish to continue living in the UK after June 2021.

This briefing discusses what this might involve for EU nationals looking for secure long-term status in the UK.

Clifford Chance website version

https://www.cliffordchance.com/briefings/2018/06/uk_immigration_update-brexit-whatareth.html

FCA implements new premium listing category for sovereign controlled companies

On 8 June 2018, the FCA announced it was taking forward the new listing category for sovereign controlled companies, with the new rules taking effect from 1 July 2018. The new rules, which are contained in Policy Statement PS 18/11, will allow sovereign controlled companies to obtain a premium listing of shares or global depositary receipts (GDRs) and benefit from modifications to the existing premium listing rules.

This briefing discusses the new category.

https://www.cliffordchance.com/briefings/2018/06/fca_implements_newpremiumlistingcategoryfo.html

Crypto-trading in the Abu Dhabi Global Market

On 25 June 2018, the Abu Dhabi Global Market (ADGM) published its rules and accompanying guidance for a crypto business regulatory framework. The exciting new regime will permit firms to apply for a license to operate a 'crypto asset business' in the ADGM, including broker-dealer activities, operating an exchange and acting as a crypto asset custodian, but in each case in respect of the most well-established and traded crypto-currencies. The new regime presents a market leading set of regulations designed to be in tune with how crypto firms operate, but recognising the key risks posed to investors and the financial system.

This briefing discusses the new regime.

https://www.cliffordchance.com/briefings/2018/06/crypto-trading_intheabudhabiglobalmarket.html

PRC regulators further streamlined foreign exchange administration of QFII and RQFII

The State Administration of Foreign Exchange (SAFE) released an updated version of the Foreign Exchange Administrative Provisions on the Domestic Securities Investment by Qualified Foreign Institutional Investors (QFII) on 10 June 2018. Two days later, SAFE, together with the People's Bank of China (PBoC), jointly issued an updated version of the Circular on Administration of Domestic Securities Investment by Renminbi Qualified Foreign Institutional Investors (RQFII).

This briefing discusses the developments.

https://www.cliffordchance.com/briefings/2018/06/clifford_chance_clientbriefingprcregulator.html

Mexico - Anti-Corruption Tsunami Warning II (Lessons Learned from the Operação Lava Jato Investigation)

On 1 July 2018, in a tidal wave of support, voters elected Mr Andrés López Obrador, a left-wing politician who has voiced his determination to fight corruption in Mexico, as the country's next President.

Throughout his campaign, Mr Obrador stated on numerous occasions that he will end corruption in Mexico - a country that is ranked 135 of 180 on the Transparency International's Corruption Perceptions Index 2017. However, Mr Obrador has yet to explain how he will achieve this goal.

What is clear is that Mr Obrador and his new administration will be expected to increase anti-corruption enforcement activity in Mexico upon taking office, which would likely have a follow-on effect in the United States.

This briefing discusses the developments.

https://www.cliffordchance.com/briefings/2018/07/mexico_anti-corruptiontsunamiwarningi.html

Australian Insolvency Law Reforms

The Insolvency Law Reforms amend the Corporations Act 2001 (Cth) by creating new provisions designed to give greater certainty and flexibility to Australian businesses undergoing or entering into an insolvency process.

The ultimate aims of the Insolvency Law Reforms are to avoid unnecessary and premature administrations, receiverships and liquidations, drive cultural change amongst company directors, and promote the preservation of enterprise value to maximise shareholder and creditor returns. They do this by promoting entrepreneurship and innovation in two forms:

- providing a 'safe harbour' for directors from the liability of harsh insolvent trading laws; and
- giving companies breathing room where they are making efforts to trade out of difficult financial situations by preventing the enforcement of 'ipso facto' clauses in certain circumstances.

This briefing discusses the reforms.

https://www.cliffordchance.com/briefings/2018/07/australian_insolvencylawreforms.html

Penalties for corporate offenders in Australia set for significant increase

Australia is preparing for a big increase in the maximum penalties for corporate crime. The proposed increases bring Australia into line with the sanctions available in other jurisdictions, particularly the UK and US, thereby increasing their deterrent value to potential wrongdoers.

This briefing discusses the proposed reforms.

https://www.cliffordchance.com/briefings/2018/07/penalties_for_corporateoffendersinaustrali.html