

CLIFFORD CHANCE

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China and other activities not regulated by SFC

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EBA consults on loan origination and monitoring guidelines

The European Banking Authority (EBA) has launched a [consultation on draft guidelines](#) on loan origination and monitoring.

The draft guidelines aim to ensure that institutions have robust and prudent standards for credit risk taking, management and monitoring, and that newly originated loans are of high credit quality. The guidelines also aim to ensure that institutions' practices are aligned with consumer protection rules and anti-money laundering (AML) requirements.

The draft guidelines specify the internal governance arrangements for granting and monitoring of credit facilities throughout their lifecycle. They also introduce requirements for the borrowers' creditworthiness assessment together with the collection of information and data for the purposes of such assessments. The guidelines also reflect recent supervisory priorities and policy developments related to credit granting, particularly in relation to environmental, social and governance (ESG) factors, AML and counter-terrorist financing, as well as technology-based innovation.

This is the first instance in which the EBA is proposing requirements that apply to providers of consumer credit under the Consumer Credit Directive (CCD) and to non-bank mortgage credit providers under the Mortgage Credit Directive (MCD). This follows the result of the EU Commission's review of the three European Supervisory Authorities, which will see the CCD added to the EBA's scope.

Comments are due by 30 September 2019.

EBA publishes opinion on strong customer authentication under PSD2

The EBA has published an [opinion](#) on the elements of strong customer authentication (SCA) under the revised Payment Services Directive (PSD2).

The EBA intends the opinion to be a response to market actors' queries as to which authentication approaches the EBA considers to be compliant with SCA. The opinion also discusses the complexity of EU payments markets and challenges arising from the changes that are required as well as the possibility that national competent authorities (NCAs) may decide to work with payment service providers and relevant stakeholders to provide limited additional time.

The EU Commission has [welcomed](#) the EBA's opinion and called on market participants to step up efforts in the run-up to 14 September 2019.

Sustainable finance: EU Commission publishes new guidelines on climate-related reporting and welcomes three expert reports

The EU Commission has published new [guidelines](#) on corporate climate-related information reporting.

The guidelines are intended to provide EU-listed companies, banks and insurers with recommendations on how to report the impact that their activities are having on the climate as well as the impact of climate change on their business.

Alongside the guidelines, the EU Commission's Technical Expert Group (TEG) has published three new expert reports on:

- the [EU taxonomy](#) which is intended to provide businesses and investors with a common classification to identify to what degree economic activities can be considered environmentally sustainable;
- the [EU Green Bond Standard](#) which sets out the criteria for issuing green bonds; and
- the [EU climate benchmarks and Environmental, Social and Governance \(ESG\) benchmark disclosures](#) which set out the methodology and minimum technical requirements for indices that will enable investors to adopt a climate-conscious investment strategy.

MiFIR: PBoC transparency requirements exemption published in OJ

[Delegated Regulation \(EU\) 2019/1000](#) exempting the People's Bank of China (PBoC) from the pre- and post-trade transparency requirements under MiFIR has been published in the Official Journal.

The Delegated Regulation enters into force on 11 July 2019.

Capital Markets Union: Delegated Regulation on access to SME financing published in Official Journal

[Commission Delegated Regulation \(EU\) 2019/1011](#) amending Commission Delegated Regulation (EU) 2017/565 as regards certain registration conditions to promote the use of SME growth markets for the purposes of MiFID2 has been published in the Official Journal.

The Regulation, which amends the Market Abuse and the Prospectus Regulations, aims to:

- reduce reporting obligations;
- incentivise SMEs to access capital markets through SME growth markets; and
- provide a simplified prospectus for SMEs.

The Regulation entered into force on 22 June 2019 and will apply from 11 October 2019.

Banking Union: Eurogroup publishes documents on budgetary instrument, ESM treaty and EDIS

Ministers of the Eurogroup have prepared a set of documents aimed at advancing work on the Banking Union, following a call to action from the EU leaders at the Euro Summit held in December 2018. The documents agreed upon were:

- a [term sheet](#) on the main features of the budgetary instrument for convergence and competitiveness; and
- a [revised draft](#) on the European Stability Mechanism (ESM) treaty, which covers issues such as the common backstop for bank resolution, precautionary instruments, institutional matters, debt sustainability and cooperation between the ESM and the EU Commission.

The documents were submitted to the President of the EU Council ahead of the Euro Summit of 21 June 2019.

Alongside this package, the Chair of the Eurogroup high level working group (HLWG) on the European Deposit Insurance Scheme (EDIS) has published a [report](#) outlining principles he considers should guide the further strengthening of the Banking Union, including a common deposit insurance system. The report sets out an illustrative transitional path towards the Banking Union, covering the following key policy areas:

- EDIS;
- a framework for bank supervision, resolution and insolvency;
- sovereign exposures and financial stability implications; and
- enhancing market integration.

IOSCO reports on application of international cyber-risk standards

The International Organization of Securities Commissions (IOSCO) has published a [report](#) on the application of existing internationally recognised cyber-risk standards and frameworks. The report provides an overview of three cyber standards: the CPMI-IOSCO guidance on cyber resilience for financial market infrastructures; the National Institute of Standards and Technology framework for improving critical infrastructure cybersecurity; and the International Organization for Standardization 27000 series standards. It examines how IOSCO member jurisdictions use these standards and identifies potential gaps in application.

Key findings of the report include:

- many IOSCO member jurisdictions consider cyber to be at least one of the most important risks faced by regulated firms in their jurisdiction;
- most respondents indicated that their domestic regulations or supervisory practices were either 'generally consistent' or 'entirely consistent' with one of the three standards;
- nearly half of the respondents indicated that they are flexible and not prescriptive as to which cyber standards firms may use; and

- over a third of survey respondents reported that they intend to issue, within the next year, new regulations, guidance or supervisory practices that address cyber security for all or part of their financial sector.

IOSCO intends for the report to serve as a resource for financial market regulators and firms, raise awareness of existing cyber standards and promote good practices in the protection against cyber risk.

IOSCO reports on liquidity in corporate bond markets under stressed conditions

IOSCO has published a [report](#) on the factors affecting liquidity in secondary corporate bond markets under stressed conditions. The report is intended to increase understanding of how stressed conditions may affect bond and other financial markets, and the wider financial system more generally. It draws on information gathered from a review of the existing literature, past incidents of stress in corporate bond markets and discussions with industry stakeholders.

Key findings of the report include:

- greater risk aversion from intermediaries, the introduction of electronic trading and significant growth as a result of quantitative easing and low rates of return on other financial assets have changed the structure of secondary corporate bond markets and altered the provision of liquidity;
- a reduction in the capacity and desire of dealers to participate in the markets as principles may result in more extreme movements in bond prices in times of stress;
- characteristics of the markets, such as effective liquidity management by corporate debt issuers, reduced leverage and fewer leveraged players in the market and the low frequency with which many corporations enter primary bond markets for financing, reduce the risk that strong price movements will generate broader economic stress;
- whether market participants are willing and able to provide sufficient demand-side liquidity to help stabilise markets will be critical in determining how corporate bond markets operate under stress; and
- mutual funds are unlikely to cause either considerable selling or price volatility under stress.

FSB publishes progress report on implementation of compensation standards

The Financial Stability Board (FSB) has published its sixth [progress report](#) on the implementation of the FSB Principles for sound compensation practices and their implementation standards (P&S), which are intended to reduce the incentives for excessive risk-taking that may arise from the structure of compensation schemes in significant financial institutions.

The report finds that FSB jurisdictions have implemented the P&S for sound compensation for all banks considered significant for the purposes of P&S, although the effectiveness of practices and procedures which reduce the potential for inappropriate risk-taking is still being tested.

Amongst other things, the report highlights the changes that have taken place for significant banks, including:

- boards appearing more active and engaged and compensation processes being conducted with greater oversight;
- compensation arrangements with longer time horizons and including mechanisms that better align them with effective risk management practices and include a wider range of financial and non-financial risk assessment criteria; and
- an increased focus on compensation as a tool to address conduct risk and a greater emphasis on how results are achieved.

The report noted that, while the P&S are intended to apply to financial institutions recognised as significant for the purposes of compensation, identified institutions in most jurisdictions are mainly in the banking sector with fewer jurisdictions implementing the requirements for the insurance and asset management sectors.

Basel Committee discusses policy and supervisory issues and revises leverage ratio for banks

The Basel Committee on Banking Supervision (BCBS) met on 19-20 June to discuss a range of policy and supervisory issues and to take stock of its members' implementation of post-crisis reforms.

At its [meeting](#), the BCBS agreed on a targeted and limited revision of the leverage ratio to allow margin received from a client to offset the exposure amounts of client-cleared derivatives. This revision, which the BCBS intends to publish next week, seeks to balance the robustness of the leverage ratio as a safeguard against unsustainable levels of leverage with the G20 Leaders' commitment to promote the central clearing of standardised derivative contracts.

The BCBS also agreed on a set of disclosure requirements to curb leverage ratio window dressing. The standard will be revised to require banks to disclose their leverage ratios based on the quarter-end and average values of securities financing transactions. The BCBS intends to publish the disclosure requirements next week.

The BCBS also approved a report on Pillar 2 supervisory practices and approaches, and reviewed reports assessing the implementation of the Net Stable Funding Ratio and large exposures standards in Australia, Canada and India.

The BCBS also took note of the first comprehensive report by the Network for Greening the Financial System (NGFS) and discussed the implications of the report's recommendations for the future work of the BCBS. The Committee agreed to join the NGFS as an observer.

Basel Committee reports on Pillar 2 supervisory review practices

The BCBS has published an [overview](#) of Pillar 2 supervisory review practices and approaches.

The report describes key areas of the Pillar 2 supervisory review process, including:

- the risk assessment process;
- risk appetites;
- board and senior management roles and supervisory practices adopted to enhance transparency; and
- bank disclosure practices.

The report also describes a number of selected Pillar 2 risks, including business risk and interest rate risk in the banking book. It also presents a range of actions that are taken under Pillar 2. Case studies are included throughout the report to illustrate supervisory practices.

The BCBS also reports on the different practices in use across Basel Committee member jurisdictions. Supervisors use a range of approaches, methodologies and strategies to meet the overall objective of a sound supervisory approach to Pillar 2. According to the report, all Basel Committee supervisors use assessment programmes that reinforce and review banks' risk management frameworks, and most supervisors rely on banks' internal capital adequacy assessment process (ICAAP) and other risk reporting.

The BCBS also found that, notwithstanding some differences in supervisory approaches adopted by Basel Committee members, the Pillar 2 outcomes across these jurisdictions are directionally similar.

FCA and CSRC announce support for Shanghai-London Stock Connect scheme

The Financial Conduct Authority (FCA) and the China Securities Regulatory Commission (CSRC) have made a [joint announcement](#) of their approval of the Shanghai and London Stock Exchanges' new Shanghai-London Stock Connect. They have also published a [memorandum of understanding \(MoU\)](#) to provide the basis for the regulatory co-operation that will support the scheme.

The Stock Connect scheme is a reciprocal arrangement between the Shanghai Stock Exchange (SSE) and London Stock Exchange and is intended to encourage cross-border investment between the countries and provide investors and companies in the UK and China with mutual access to each other's capital markets.

FCA publishes first annual perimeter report

The FCA has published the first [annual report on its perimeter](#), covering the period 2018/19. The FCA perimeter comprises a variety of legislation set at the UK and EU level and determines which firms require authorisation by the FCA and what level of protection consumers can expect for the financial services and products they purchase. The FCA notes that its perimeter has been of particular importance in 2019 due to the recent harm caused by firms operating on its edges, the challenges posed by the adoption of new technologies in the financial services markets and the questions raised by Brexit.

In its report, the FCA sets out:

- what the FCA does and does not regulate;

- what challenges the perimeter poses and the actions the FCA is taking to overcome them;
- what this means for consumers; and
- whether there are any issues with the perimeter which might require legislative or other changes.

PRA publishes policy statement on Pillar 2 liquidity framework

The Prudential Regulation Authority (PRA) has published a [policy statement \(PS13/19\)](#) setting out final rules and feedback to its consultation (CP6/19) on changes to the Pillar 2 liquidity framework.

In CP6/19, the PRA proposed changes intended to provide further clarity to:

- the PRA110 liquidity reporting template and related instructions;
- reporting requirements for non-EU EEA banks;
- expectations under supervisory statement (SS24/15) 'The PRA's approach to supervising liquidity and funding risks';
- the PRA's approach to cashflow mismatch risk; and
- the Regulatory Reporting Part of the PRA Rulebook.

The PRA received nine responses to the consultation, which predominantly did not express concern with the proposed amendments. The PRA is therefore publishing the final rules largely as consulted upon, although it has set out some further clarifications in Chapter 2 of PS13/19. The changes are to be implemented through amendments to:

- the Regulatory Reporting Part of the Rulebook (Appendix 1);
- statement of policy 'Pillar 2 Liquidity' (Appendix 2);
- SS24/15 (Appendix 3);
- SS34/15 'Guidelines for completing regulatory reports' (Appendix 4);
- PRA110 reporting template (Appendix 5); and
- PRA110 reporting instructions (Appendix 6).

The amendments in Annex A of Appendix 1 and Appendices 2 to 4 will take effect from 1 July 2019 and the amendments in Annex B of Appendix 1 and Appendices 5 to 6 will take effect from 1 January 2020.

EMIR REFIT: Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment) Regulations 2019 published

The [Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment\) Regulations 2019 \(SI 2019/1031\)](#) have been laid before Parliament. The Regulations are made in relation to the Regulation amending the European Market Infrastructure Regulation as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty,

the registration and supervision of trade repositories and the requirements for trade repositories (EMIR REFIT).

Specifically, the Regulations make amendments to the provisions in UK legislation which allow the Financial Conduct Authority (FCA) to specify what information is required to be included in an application or notification to it as required under EMIR.

The Regulations will come into force on 9 July 2019.

Bank of England reports on future of UK financial system

Bank of England (BoE) Senior Adviser to the Governor, Huw van Steenis, has published a [report](#) summarising his findings following a review of the future of the UK's financial system and what it might mean for the BoE's future agenda and capabilities. Overall van Steenis notes that:

- a new economy is emerging, driven by changes in technology, demographics and the environment;
- the move from banks to market-based finance is likely to increase;
- many banks are struggling to make their cost of capital due to low rates, new regulations and investment into updating their businesses; and
- regulators will have to collaborate in new ways with the private sector as technology breaks down barriers.

The BoE has published a [report in response to van Steenis' findings](#).

Amongst other things, the report sets out what the BoE is currently doing and what it intends to do to meet van Steenis' recommendations, which include:

- enhancing the payments system for the digital age;
- supporting a platform to increase access for small businesses;
- supporting the transition to a carbon-neutral economy;
- developing a sound regtech and data strategy; and
- facilitating firms' use of technology to increase their operational resilience.

The two reports form part of the BoE's ['future of finance' project](#), which was announced in June 2018 by BoE Governor, Mark Carney, in his Mansion House speech. The project was launched to consider the ways in which financial services might evolve over the next decade and the impact on those that use, provide or regulate them.

Bank of Italy consults on proposed amendments to reporting requirements

The Bank of Italy has launched a [public consultation](#) on a set of proposed measures intended to amend the existing statistical reporting requirements applicable to credit institutions and other supervised financial institutions.

In particular, these proposals concern the following Bank of Italy regulations:

- Circular no. 272 of 30 July 2008 (Matrice dei conti);
- Circular no. 217 of 5 August 1996 (Manuale per la compilazione delle Segnalazioni di Vigilanza per gli Intermediari Finanziari, per gli Istituti di pagamento e per gli IMEL);

- Circular no. 148 of 2 July 1991 (Manuale delle Segnalazioni Statistiche e di Vigilanza per gli Intermediari del Mercato Mobiliare);
- Circular no. 189 of 21 October 1993 (Manuale delle Segnalazioni Statistiche e di Vigilanza per gli Organismi di Investimento Collettivo del Risparmio); and
- Circular no. 115 of 7 August 1990 (Istruzioni per la compilazione delle segnalazioni di vigilanza su base consolidata).

Comments are due by 17 August 2019.

China issues foreign exchange rules on depositary receipts

The People's Bank of China and the State Administration of Foreign Exchange (SAFE) have released the [Trial Measures on Cross-border Capital Management for Depositary Receipts](#), which set out the cross-border capital management framework with respect to China depositary receipts (CDRs) and international depositary receipts (IDRs).

Amongst other things, the following points are worth noting:

- market participants are encouraged to use RMB to process cross-border payments under depositary receipt business and the Cross-Border Inter-Bank Payments System for RMB settlement;
- capital management for DR issuance:
 - domestic issuers – domestic companies that use new shares for IDR issuance should follow the existing foreign exchange rules governing overseas listing of domestic companies and the relevant rules on cross-border RMB businesses; and
 - overseas issuers – overseas companies that use new shares for CDR issuance should register with the local SAFE bureau of the city where the relevant PRC exchange is located and open an RMB and/or foreign exchange account dedicated to such CDR offering upon successful registration. For issuance proceeds, overseas issuers may repatriate such funds abroad or utilise them in the PRC;
- capital management for cross-border conversion:
 - cross-border securities transaction registration – when processing depositary receipt issuance/cancellation, a depositary receipt converting agent (i.e. a qualified domestic/international securities firm responsible for arranging depositary receipt issuance/cancellation) should appoint a domestic custodian and process cross-border securities transaction registration with SAFE through the custodian;
 - dedicated account for cross-border conversion – upon a successful registration with SAFE, a depositary receipt converting agent may open an RMB and/or foreign exchange account dedicated to the cross-border conversion business; and
 - net inflow/outflow limits – the net inflow/outflow of money for an overseas/domestic converting agent to process depositary receipt issuance and cancellation with existing shares may not exceed the amount registered with SAFE; and

- capital management for depositaries – a depositary should open an RMB and/or foreign exchange account with a domestic custodian dedicated for the payment and settlement in relation to the distribution of dividends and bonuses, the allotment of shares and de-listings of depositary receipt.

NDRC set to further regulate overseas debt issuance by local state-owned enterprises

The National Development and Reform Commission (NDRC) has released the [‘NDRC Circular on Requirements for Local State-owned Enterprises Applying for Foreign Debt Registration’](#), which is intended to reduce the mid/long-term foreign debt risks and local governments’ indirect debt risks.

Amongst other things, the following points are worth noting:

- registration with the NDRC is required for all domestic enterprises (including local state-owned enterprises (SOEs)) and their offshore enterprises/branches when issuing debt outside the People’s Republic of China (which is stated as for these purposes excluding Hong Kong, Macau and Taiwan);
- a local SOE applying for registration must have an operating track record of no fewer than 3 years;
- local governments or governmental departments may not use or promise to use fiscal income to repay overseas debt obligations of local SOEs or provide guarantees for local SOEs’ foreign debt issuances;
- local government financing vehicles may only issue foreign debt to re-finance their mid/long term debt obligations that will become due within the next year; and
- it is strictly prohibited for local SOEs to state/imply in the offering documents that their debt is in any way linked to the credit of the local government.

SFC issues circular on foreign exchange margin trading in Mainland China and other activities not regulated by SFC

The Securities and Futures Commission (SFC) has issued a [circular](#) to licensed corporations on foreign exchange margin trading in Mainland China and other activities not regulated by the SFC.

With regard to unauthorised activities on the Mainland, the SFC notes that the State Administration of Foreign Exchange recently took action against a Mainland entity for soliciting Mainland China investors to engage in forex margin trading outside the Mainland on behalf of an online trading platform operated by the entity’s offshore shareholder. The SFC is also aware that some licensed corporations or their controlling entities and related corporations (collectively, related parties) offer leveraged foreign exchange trading or similar services to investors via websites presented in simplified Chinese and provide Mainland China investors toll free telephone numbers for enquiry.

In this connection, the SFC warns licensed corporations not to engage in unauthorised or illegal forex margin trading on the Mainland or assist other persons or Mainland China investors in such activities. Licensed corporations which provide or market forex margin trading or similar services to Mainland

China investors, or assist other persons to provide or market them to Mainland investors, are also advised to immediately review the legality of their activities under Mainland China law and regulations. Moreover, any non-compliant activities should be discontinued immediately and be notified to the SFC in accordance with 'paragraph 12.5' of the Code of Conduct for Persons Licensed by or Registered with the SFC.

Further, the SFC requires licensed corporations to ensure compliance with the licensing and other requirements of all the jurisdictions in which they operate or provide services and implement sufficient compliance controls. Before commencing business in a jurisdiction, licensed corporations should obtain a thorough understanding of the local legal and regulatory requirements, seek proper legal and professional advice and discuss the applicable requirements with the relevant regulatory authority.

With regard to the alleged fraudulent or illegal activities of related parties, the SFC believes that some licensed corporations' related parties may be associated with other alleged illegal activities in Mainland China, such as unauthorised stock broking or fraudulent crowdfunding or peer-to-peer lending, or alleged fraudulent London gold activities in Hong Kong. These licensed corporations may also have allowed related parties to use their names and SFC licensing statuses on websites or marketing materials to promote these activities. Further, licensed corporations licensed corporations' staff resources or business premises may also be shared with these related parties.

In this connection, the SFC reminds licensed corporations and their controlling entities to take all necessary steps to review the legality of the services offered by themselves and their related parties to ensure their activities comply with the law and regulations administered by it as well as the applicable requirements of other jurisdictions, and advises them to discontinue unauthorised or illicit activities. It has also warned licensed corporations that any contravention of the law or regulations of other jurisdictions may amount to a breach of 'paragraph 12.1' of the Code of Conduct, which may call into question the fitness and properness of a corporation to be, or to remain, licensed in Hong Kong.

FSC to reform benchmark interest rates

The Financial Services Commission (FSC) and the Bank of Korea (BOK) have jointly [launched a taskforce](#) to develop a new benchmark interest rate, which is intended to replace the current benchmark interest rate of certificate of deposits (CDs), in line with the global move to develop alternatives to enhance the representativeness and transparency of benchmark interest rates.

The FSC and the BOK note that CD rates have the following fundamental limitations in serving as a benchmark interest rate:

- the issuance of CDs is not sufficient; and
- CD rates are based on quotes, not real transactions.

Against this backdrop, the FSC and the BOK have jointly launched the taskforce, which is expected to publish the new benchmark interest rate, as an alternative to the CD rates, in March 2021. Meanwhile, the taskforce will also propose measures in the second half of 2019 to boost the issuance of CDs and improve the current method of calculating CD rates.

FSC to introduce electronic securities system

The FSC has [announced](#) the introduction of an electronic securities system, which is expected to save on the cost of issuing securities, reduce risks in securities circulation, and enhance transparency in corporate governance and securities transactions.

The electronic securities system is being introduced in response to the Act on Electronic Registration of Stocks, Bonds, etc. (Electronic Securities Act) and its subordinate decree, which will take effect on 16 September 2019.

Under the new system, securities certificates of listed stocks and bonds will be issued electronically only, not in physical form, starting from 16 September 2019, as well as be required to be recorded on an electronic register, allowing investors to acquire, transfer and exercise subsequent rights electronically. Most securities, except those that have effect only in written form, e.g. commercial papers, will be subject to mandatory electronic registration. Once registered electronically, securities issued in physical form will not have effect. Unlisted stocks, not subject to mandatory electronic registration, may be registered electronically upon the issuer's application.

Further, the Korea Securities Depository will act as an electronic registry under the Electronic Securities Act, ensuring a smooth transition to the paperless system. It will be in charge of electronic registration of securities, management of rights to electronically registered securities, operation of relevant information technology infrastructure and disclosure of issuance of electronic securities, etc.

MAS publishes monograph on emergency liquidity assistance in Singapore

The Monetary Authority of Singapore (MAS) has published a [monograph](#) to outline its approach to providing emergency liquidity assistance (ELA) to financial institutions (FIs).

In extraordinary situations where FIs come under liquidity stress, the MAS is empowered to provide loans or advances to FIs to safeguard the stability of, or public confidence in, the financial system. This role of providing ELA is commonly referred to, in central banking literature, as the Lender of Last Resort (LOLR). The MAS believes that providing greater clarity on the ELA framework can complement recovery and resolution planning, as well as prudential policies, in enhancing financial stability.

The MAS' ELA framework is underpinned by the following guiding principles which support the ELA objectives, while minimising the risk to its balance sheet:

- lend only to viable entities;
- lend against a wider set of collateral; and
- lend at a premium above business as usual market interest rates.

The monograph, which sets out the key parameters of the ELA framework, is intended to inform FIs' planning for liquidity stress and crisis management, particularly relating to the extent of central bank liquidity support. In particular, the monograph:

- explains the MAS' rationale for articulating the ELA framework;

- details the definition, legal basis and objectives of ELA;
- outlines the eligibility and modes of ELA;
- sets out the guiding principles underpinning the ELA framework;
- states the MAS' disclosure policy in the provision of ELA;
- describes the interaction between ELA and resolution or liquidation; and
- summarises the ELA framework.

Contributed by Clifford Chance Asia, a Formal Law Alliance in Singapore between Clifford Chance Pte Ltd and Cavenagh Law LLP.

Securities and Futures Amendment Regulations gazetted

The [Securities and Futures \(Trade Repositories\) \(Amendment\) Regulations 2019](#), the [Securities and Futures \(Clearing Facilities\) \(Amendment\) Regulations 2019](#), and the [Securities and Futures \(Organised Markets\) \(Amendment No. 2\) Regulations 2019](#) have been gazetted.

Amongst other things, the regulations:

- amend and replace the Second Schedule of the [Securities and Futures \(Trade Repositories\) Regulations 2013](#);
- set the formulae for the calculation of the applicable annual fee payable by a licensed trade repository or licensed foreign trade repository;
- set out the applicable annual fee payable by a licensed trade repository or licensed foreign trade repository that has been licensed before 1 July 2019, for the period starting 1 July 2019 and ending 31 December 2019, or any part of that period;
- revise part 1 of the [Securities and Futures \(Clearing Facilities\) Regulations 2013](#), which sets out the annual fee payable by an approved or recognised clearing house;
- revise the formula for the calculation of the applicable annual fee payable by an approved clearing house that establishes or operates clearing facilities for the period starting on the date of its approval and ending on 30 June of that calendar year (if the date of approval is between 1 January and 30 June) or the next calendar year (if the date of approval is between 1 July and 31 December);
- set out the applicable annual fee payable by an approved or recognised clearing house that has been approved or recognised before 1 July 2019, for the period starting 1 July 2019 and ending 31 December 2019, or any part of that period;
- amend the Schedule to the [Securities and Futures \(Organised Markets\) Regulations 2018](#), which relates to the annual fee payable by an approved exchange or recognised market operator; and
- set out the applicable annual fee payable by an approved exchange or recognised market operator that has been approved or recognised before 1 July 2019, for the period starting 1 July 2019 and ending 31 December 2019, or any part of that period.

The regulations are effective from 1 July 2019.

RECENT CLIFFORD CHANCE BRIEFINGS

New criteria being applied by the Spanish Supreme Court with respect to interest and insolvency

The Spanish Supreme Court has recently delivered two judgments on the treatment during insolvency proceedings of interest accruing on secured claims which could give rise to serious practical consequences.

The first judgment refers to the acknowledgement in the insolvency proceedings of interest (in general) corresponding to secured claims. The judgment establishes that if the insolvency receivers have not included in the list of creditors a contingent claim for interest that will accrue at a later date, the creditor will not be able to receive payment of any such interest.

The second judgment states that default interest does not accrue during the insolvency proceedings, even if such interest is secured, because once the insolvency situation has been declared it is impossible by law to make payments, which rules out the payment default scenario.

This briefing paper discusses the two judgments.

https://www.cliffordchance.com/briefings/2019/06/new_criteria_beingappliedbythespanishsuprem.html

All change in the Gulf – the new DIFC insolvency law

The introduction of the new insolvency law (DIFC Insolvency Law No 1 of 2019 and the DIFC Insolvency Regulations 2019 on 13 June) is the latest in a number of law reform initiatives taking place in the Gulf. Each of the reforms are aimed at encouraging trade and investment in the region. The DIFC insolvency law follows recent bankruptcy reforms introduced in the UAE and the KSA. It shares common themes, such as the use of formal restructuring procedures as a means of allowing debtors a fresh start, provides a mechanism for binding non-consenting creditors, and seeks to promote a range of efficient and cost-effective procedures.

This briefing paper discusses the new law.

https://www.cliffordchance.com/briefings/2019/06/all_change_in_thegulfthe new_difcinsolvenc.html

New regulation of Initial Coin Offerings (ICOs) in Japan

The amendment to the Financial Instruments and Exchange Act of Japan (FIEA) is the first step towards introducing detailed regulation to ICOs in Japan. This represents a significant step forward and brings some helpful regulatory clarity to this emerging asset class.

This briefing paper discusses the amendment.

https://www.cliffordchance.com/briefings/2019/06/new_regulation_ofinitialcoinofferingsicos.html

Sanctions with Chinese Characteristics – PRC Government Threatens to Brand ‘Unreliable’ Foreign Companies

China’s Ministry of Commerce (MOFCOM) introduced a new layer of complexity for companies doing business with Chinese companies with the

announcement of its new 'Unreliable Entity List' (UEL) on 31 May 2019. According to the announcement, the UEL will include foreign enterprises, organisations or individuals that fail to abide by market rules and discriminate against Chinese companies for non-commercial purposes. Examples given include boycotts, cutting off supplies, or restricting or blocking trade transactions in ways that cause serious damage to Chinese enterprises.

The names of the UEL entities and the specific restrictions applicable to them have not yet been published. To export control practitioners, the UEL might sound similar to the US Entity List, with a less ambiguous nomenclature and purpose. For foreign companies put on the UEL, the impact will no doubt be immediately felt.

This briefing paper discusses the newly announced UEL.

https://www.cliffordchance.com/briefings/2019/06/sanctions_with_chinesecharacteristicspr.html

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