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China

SAFE issues new circular on foreign exchange administration

The State Administration of Foreign Exchange (SAFE) has issued a 'Circular on further Promoting Foreign Exchange Administration Reform and Enhancing Authenticity and Compliance Checks', setting out certain foreign exchange-related policies covering a wide spectrum of cross-border trades, cross-border security, foreign direct investment, outbound direct investment, overseas loans extension etc. The circular reflects the unwritten philosophy of 'promoting inwards and restricting outwards funds flows' recently adopted by the Chinese government and is viewed as one of the measures intended to increase China's foreign exchange reserves and pursue the stability of the value of RMB.

Amongst other things, the following policies set out in the circular are worthy of note:

- cross-border trades – the settlement of domestic foreign exchange loans with a genuine goods trading background is permitted and such loans should be repaid using the foreign exchange funds obtained in the debtor's export transactions rather than foreign exchange funds bought in the domestic market;

- cross-border security – the proceeds under Nei Bao Wai Dai are permitted to be remitted back to China via lending, equity investments and other methods;

- foreign direct investments – banks should conduct a review of the submitted documents (including the internal resolution, tax filing form and audited financial statement) when processing the outwards remittance of profits earned by a relevant foreign invested entity the amount of which exceeds USD 50,000. No such remittance will be facilitated before the deficit of such entity in the preceding fiscal years has been covered in full;

- outbound direct investments – the domestic investor(s) should, besides submitting the relevant documents previously required, make a statement in respect of the source and usage plan of the investment funds, the internal resolution, the investment agreement and other documents evidencing the authenticity of the transaction, and the relevant bank should enhance its authenticity and compliance checks;

- centralised operation and management of foreign exchange funds by multinational companies – the maximum usable amount of the deposits received via the international foreign exchange funds principal account of a domestic bank has been lifted to 100% (previously 50%) of the daily average deposits balance in the preceding 6 months of such bank;

- settlement of foreign exchange accounts – the funds in the domestic foreign exchange accounts of foreign institutions in the relevant free trade zone are permitted to be settled; and

- overseas loans extension – total outstanding overseas loans (denominated either in RMB or other non-RMB currency) may be no higher than 30% of the ownership interests of the domestic company (as the lender) as set in the audited financial statement as of the end of the preceding fiscal year.

The circular came into effect upon issuance.

For details, please click **here**

Source: Clifford Chance Alert, January 2017

Hong Kong

SFC proposes to standardise rules for prescribing professional investors

The Securities and Futures Commission (SFC) has launched a public consultation on proposed amendments to the Securities and Futures (Professional Investor) Rules (PI Rules) to allow joint accounts with non-associates and assets held in investment vehicles owned by individuals to be counted in ascertaining whether individuals meet the monetary threshold to qualify as professional investors.

In addition, the categories of professional investors would be expanded to include corporations which have investment holding as their principal business and are wholly owned by one or more professional investors, as well as corporations which wholly own another corporation that is a qualified professional investor. Alternative forms of evidence would also be allowed to demonstrate qualification as a professional investor.

Under the proposals, the SFC envisages that more persons will qualify as professional investors. Nevertheless, intermediaries remain subject to the suitability requirement and other fundamental requirements when serving them.

Comments on the consultation paper was due on 3 April 2017.

For details, please click **here**

Source: Clifford Chance Alert, March 2017

Hong Kong 2017/18 Budget — promoting the fund industry

To facilitate Hong Kong's development into a full-fledged fund service center, the new Financial Secretary will shortly consult with the industry on a legislative proposal to extend the profits tax exemption to OFCs incorporated under the Securities and Futures Ordinance and regulated by the Securities and Future Commission (SFC). However, other resident fund entities, such as a resident unit trust or limited partnership funds (regardless of whether such unit trust or limited partnership is constituted under the laws of Hong Kong) would not be covered by the extension. This was presumably intended to act as an incentive for resident privately-offered funds to adopt the SFC-regulated OFC fund structure in Hong Kong.

For details, please click **here**

Source: EY Global Tax Alert, February 2017

Hong Kong — disclosure of beneficial ownership

The Hong Kong Financial Services and the Treasury Bureau has launched a consultation on a proposal to require companies incorporated in Hong Kong to obtain and hold up-to-date beneficial ownership information for public inspection upon request. The purpose of the proposal is to enhance the transparency of Hong Kong company ownership in an effort to meet prevailing international standards to combat money laundering and terrorist financing.

For details, please click **here**

Source: Clifford Chance Alert, February 2017

SFC consults on changes to the Fund Manager Code of Conduct

The SFC has launched a three-month consultation on proposals to enhance its regulation of the asset management industry in Hong Kong to better protect investors' interests and ensure market integrity.

The proposals follow a review of major international regulatory developments and take into account observations and views of industry stakeholders. The proposed changes will be made to the SFC's Fund Manager Code of Conduct (FMCC) and the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.

The key areas of enhancements under the FMCC are in respect of securities lending and repurchase agreements, custody of fund assets, liquidity risk management, and disclosure of leverage by fund managers. The proposed changes to the Code of Conduct aim to address the potential conflicts of interest in the sale of investment products and enhance disclosure at the point of sale by: In restricting an intermediary from representing itself as 'independent' or using any term(s) with a similar inference if the intermediary receives commission or other monetary or non-monetary benefits or it has links or other legal or economic relationships with product issuers which are likely to impair its independence; and requiring an intermediary to disclose the range and maximum dollar amount of any monetary benefits received or receivable that are not quantifiable prior to or at the point of sale.

Comments on the consultation was due on 22 February 2017.

For details, please click **here**

Source: Clifford Chance International Regulatory Update, November 2016

Compliance with SFC's manager-in-charge regime

The Securities and Futures Commission (SFC) has issued a circular to all licensed corporations to introduce measures to heighten the accountability of their senior management and to promote awareness of senior management obligations under the current regulatory regime. In particular, the circular is intended to:

- articulate the SFC's view as to who should be regarded as members of senior management of licensed corporations;
- promote awareness of the regulatory obligations and potential liabilities of senior management;
- express the SFC's general expectation that certain members of senior management should seek the SFC's approval to be responsible officers;
- outline certain roles and responsibilities of a licensed corporation's board of directors; and
- provide more guidance as to the information a licensed corporation (or corporate applicant for a licence) should submit in respect of its human resources and organisational structure.

Starting from 18 April 2017, new corporate licence applicants will have to submit up-to-date management structure information and organisational charts to the SFC. All existing licensed corporations should submit the required information by 17 July 2017. In addition, the 'managers-in-charge' of the overall management oversight and key business line functions who are not already responsible officers should have applied for approval to become responsible officers by 16 October 2017.

The SFC has also published a set of frequently asked questions (FAQs) to provide more guidance to the industry on the measures. The SFC has indicated that it will organise a series of industry workshops in the first quarter of 2017 to help the industry further understand the measures.

For details, please click **here**

Source: Clifford Chance Alert, December 2016

Hong Kong revises its strategy on implementing automatic exchange of financial account information

The HKSAR Government is proposing to expand the current list of "reportable jurisdictions" for automatic exchange of financial account information (AEOI) purpose from 2 to 74 jurisdictions. Under the proposal, for the first AEOI reporting in May 2018, financial institutions (FIs) in Hong Kong will need to collect and furnish financial account information (1) for the period from 1 January to 31 December 2017 for Japan and the UK and (2) for the period from 1 July to 31 December 2017 for the newly added 72 reportable jurisdictions, including China and Singapore. In subsequent years, FIs are expected to collect and furnish full-year data for all 74 reportable jurisdictions. In addition, the HKSAR Government is seriously considering the possibility of applying the Multilateral Convention on Mutual Assistance in Tax Matters to Hong Kong.

FIs already taking the "wider approach" should be less affected by the proposed changes. FIs taking the "targeted approach" should revisit their current policy, data collection strategy and methodology, and other resources for fulfilling the obligations under AEOI as soon as possible and consider making any necessary changes before 1 July 2017. If they have a reasonable excuse for not being able to furnish the required additional information with respect to the newly added reportable jurisdictions by May 2018, they can engage in discussions with the Inland Revenue Department (IRD) on the possible alternatives as soon as practicable.

For details, please click **here**

Source: PricewaterhouseCoopers, March 2017

OECD Common Reporting Standard (CRS) updates in Hong Kong

The OECD Common Reporting Standard (CRS) represents a globally coordinated approach to the disclosure of financial information of individuals and organizations outside their country of tax residence. With the passage of the Inland Revenue (Amendment) Bill 2016 in the Legislative Council on 22 June 2016, CRS has been effective in Hong Kong since 1 January 2017. Over 100 jurisdictions have committed to CRS to date. Reporting will commence from 2018 with respect to 2017 account information. CRS impacts a range of financial institutions, including investment funds. Financial institutions which are headquartered or have operations in these committed jurisdictions will need to have processes and procedures in place to meet their CRS obligations, with there being a number of potential business impacts. However it is important to note that the IRD will exchange information only with jurisdictions with which Hong Kong has a tax treaty or a tax information exchange agreement in place with, and with which it has entered into a supplemental agreement providing for such exchange.

For details, please click **here**

Source: KPMG, March 2017

Japan

The odds look good for integrated resorts in Japan

Japan has taken a significant step towards making integrated resorts a reality. On 15 December 2016, the Integrated Resort Areas Promotion Act (Act) was passed to promote integrated facilities including casinos, hotels, convention centres and other resort and leisure facilities. Japan's casino industry could become Asia's second-largest after Macau, with analysts' estimates of annual turnover ranging from USD10 billion to USD15 billion. Discussions over potential sites for Integrated Resorts and the legal and regulatory steps necessary for full implementation will heat up over the next 12 to 18 months.

Clifford Chance has prepared a briefing paper describing the key features of the Act and discussing opportunities for potential Integrated Resorts in Japan.

For details, please click **here**

Source: Clifford Chance Briefing, December 2016

Notification of ultimate parent entity

There is an upcoming new tax filing requirement with a deadline as early as 31 March 2017 for some Japanese taxpayers.

The 2016 Japan tax reform included revisions to Japanese transfer pricing documentation requirements. As a result, new rules apply to taxpayers belonging to a multinational enterprise (MNE) group with consolidated revenues of over JPY100 billion (in the preceding fiscal year) and apply to fiscal years beginning on or after 1 April 2016. The new rules therefore apply to the current financial period for Japanese companies or branches/permanent establishments belonging to an MNE group where the ultimate parent entity of the group has a March fiscal year end.

There are various obligations under the new rules, but the first requirement is to file the "Notification of Ultimate Parent Entity" form by the end of the applicable financial period of the ultimate parent entity. For Japanese companies or branches/permanent establishments belonging to an MNE where the ultimate parent entity has a March fiscal year end, the filing deadline was therefore 31 March 2017.

For details, please click **here**

Source: PricewaterhouseCoopers Japan, March 2017

Singapore

Automatic exchange of financial account information – final regulations gazetted

On 2 December 2016, the Singapore authorities gazetted the final regulations on the standard for Automatic Exchange of Financial Account Information (AEOI) in tax matters.

The Common Reporting Standard (CRS) is an internationally agreed standard for AEOI, endorsed by the Organisation for Economic Co-operation and Development (OECD) and the Global Forum for Transparency and Exchange of Information for Tax Purposes.

The first set of draft regulations highlighted the financial account information to be exchanged, the Financial institutions (FIs) required to be reported, the different types of accounts and taxpayers covered, as well as the customer due diligence procedures to be followed by FIs.

The final regulations that were released on 2 December 2016 have, to a large extent, taken into account public feedback. Other developments included the signing of nine Competent Authority Agreements (CAAs) by Singapore to date, with reciprocal exchange of information with these countries from as early as 2018.

A summary of EY's key observations:

- The release of the final regulations is timely as Singaporean FIs gear up for CRS which was live from 1 January 2017;
- Singapore authorities had sought extensive feedback through numerous channels including closed door consultations with industry bodies, advisors and FIs, as well as through public consultation that ended on 29 July 2016;
- Some of the key refinements noted in the final regulations were: a more calibrated approach to the onboarding procedures, the willingness to give due consideration for reasonable efforts and what may be practicable;
- Whilst such flexibility provides Singaporean FIs with certain options in the treatment of various items, it leads to more judgement and documentation of the CRS positions adopted by the Singaporean FIs – the onus is now on the Singaporean FI to demonstrate that it has established and maintained arrangements to comply with the CRS requirements; and
- As CRS compliance is expected to be monitored strictly, Singaporean FIs should consider their CRS status early and build a robust system to integrate CRS governance into their operations to avoid any penalties for non-compliance.

For details, please click **here**

Source: Ernst & Young, December 2016

MAS consults on proposed enhancements to competency requirements for representatives conducting regulated activities

The Monetary Authority of Singapore (MAS) has launched a public consultation on proposed enhancements to the competency requirements for representatives conducting regulated activities under the Securities and Futures Act (SFA) and Financial Advisers Act (FAA).

The consultation follows a review by the MAS of the examination framework for appointed representatives, and takes into consideration further changes in the regulatory landscape for the capital markets and financial advisory industries.

Amongst other things, the MAS proposes to:

- enhance the Capital Markets and Financial Advisory Services Examination (CMFAS) by introducing ethics and skills contents into the curriculum;
- customise the contents of the Rules, Ethics and Skills module to focus on a representative's job role;
- streamline the securities exchange-related and derivatives exchange related contents under the CMFAS framework;
- redesign the product knowledge modules to provide appointed representatives with the option of completing the CMFAS product knowledge examinations in fewer sittings;
- grandfather all existing appointed representatives and individuals dealing in or advising on over-the-counter derivative contracts from the revised CMFAS when the proposed amendments to the SFA take effect; and
- align the Continuing Professional Development training requirement for capital markets services appointed representatives with FAA appointed representatives.

For details, please click **here**

Source: Clifford Chance Alert, December 2016

USA

SEC announces 2017 examination priorities

On 12 January 2017, the SEC's Office of Compliance Inspections and Examinations (OCIE) published its Examination Priorities for 2017, many of which could impact private fund advisers, including:

- a continued examination concentration on private fund advisers, focusing on conflicts of interest and disclosure of conflicts and actions that appear to benefit the adviser at the expense of investors;
- an expanded never-before-examined adviser initiative to include focused, risk-based examinations of newly registered and never-before-examined advisers; and
- a continued focus on advisers providing advisory services from multiple locations, with a particular focus on the design and implementation of the adviser's compliance program and the oversight of advisory services provided from various offices.

So far in 2017, the SEC has continued its enforcement focus on investment advisers, including entering into consent orders with fund sponsors over disclosures of conflicts and violations of the pay-to-play rule. Advisers should continue to remain aware of the SEC's examination and enforcement priorities.

The OCIE examination priorities will be of interest to SEC-registered investment advisers, as well as "exempt reporting advisers", all of which can be subject to routine examination by the SEC.

For details, please click **here**.

Source: Kirkland & Ellis, January 2017

Global

Taskforce on climate — related financial disclosure

The Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD) was established to help identify the information needed by investors, lenders, and insurance underwriters to appropriately assess and price climate-related risks and opportunities.

The Task Force was asked to develop voluntary, consistent climate-related financial disclosures that would be useful to investors, lenders, and insurance underwriters in understanding material risks.

The TCFD has structured its recommendations around four thematic areas that represent core elements of how organizations operate: governance, strategy, risk management, and metrics and targets. It conducted a 60 day public consultation to solicit views on the Task Force's recommendations. The consultation closed on 17 February 2017 and results was shared in March 2017.

For details, please click **here**

Source: Taskforce on Climate-related Financial Disclosures, December 2016

Luxembourg CbC notification

Luxembourg implemented the Country-by-Country ("CbC") reporting Directive into its national law at the end of last year. In particular, the Luxembourg law foresees that notifications must be made by all Luxembourg entities – one notification per entity – to the Luxembourg tax authorities on their status. The notification basically indicates whether the entity submitting the notification is the Reporting Entity or not, and, if not, which entity of the group is the Reporting Entity. The deadline for the filing of the notifications is 31 March 2017, hence in one week. After that, penalties of up to EUR 250,000 may apply.

For details, please click **here**

Source: Baker Mckenzie News Alert, December 2016