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Australia

ASIC consults on modified AFSL regime for foreign financial services providers

ASIC has for a long time provided licensing passporting relief for certain foreign financial services providers seeking to market overseas funds and investment management services (including in relation to direct and indirect real estate investments) to Australian based institutional and other wholesale/accredited investors.

The passporting relief was available (upon application to ASIC) to providers who are regulated firms in the United Kingdom, United States, Singapore, Hong Kong and Germany and more recently, Luxembourg.

The passporting relief has and continues to be relied upon by a significant number of overseas firms. ASIC has recently consulted on a proposal to repeal the passporting relief and impose a modified Australian financial services licence (AFSL) for foreign providers wishing to provide financial services to Australian wholesale clients. The relief would be repealed in September 2019, with a further 12 months transition period to apply for a modified AFSL.

The modified AFSL would impose a number of obligations, including acceptable conflicts of interest arrangements; adequate risk management systems; breach reporting and the obligation to comply with certain Australian financial services laws.

If ASIC proceeds with its proposal, this will raise the regulatory bar for foreign providers and may slow and limit the flow of financial services by foreign firms to Australian based institutional clients.

- For more information see Norton Rose Fulbright publication here.
- Click here for the CP 301 consultation paper.

Source: Norton Rose Fulbright, June 2018

Government consults on corporate collective investment vehicle bill

On 13th June 2018 the Government released for public consultation the first tranche of the Corporate Collective Investment Vehicle (CCIV) Bill 2018 and explanatory materials. The purpose of the reform is to allow Australian fund managers to market funds offshore using an internationally-recognised corporate structure vehicle.

The Bill includes revisions from the September 2017 consultation and would amend the Corporations Act 2001 to enact provisions establishing how the CCIV and its sub-funds would operate. The consultation period for the exposure draft ends on 11th July 2018.

The draft bill imposes a number of additional obligations on wholesale fund operators compared to the current managed investment structure for wholesale funds (such as the corporate director needing to be a public company, change of corporate director being aligned with retail CCIVs, lodgement of the constitution with ASIC and the regime relating to liability for agents).

- Click here for more details from The Treasury, Australian Government.

Source: Norton Rose Fulbright, June 2018

Government releases exposure draft to improve integrity of stapled structures

The Australian Government has actively supported foreign investment into Australian real property through tax policy for over 10 years. This policy manifests itself in the taxation of trusts on a 'flow-through' basis and the managed investment trust (MIT) regime introduced in 2008.

Since the introduction of the MIT regime, foreign investors (particularly pension funds) have increasingly stapled together:

(a) a corporate entity that undertakes an active Australian trading business; with

(b) a trust (usually a MIT) that derives passive income from leasing real estate assets, either to its counterpart in the structure or an independent third party lessee.

This structure is tax efficient as passive income is taxed on a flow-through basis at the investor's rate of tax or withholding tax, and the active income is taxed at the entity level at Australia's corporate income tax rate. The 'aggregation' of businesses also creates economic efficiency and allows best use of assets.

In January 2017, the Australian Taxation Office (ATO) released TA 2017/1, highlighting the proliferation of stapled structures in the market and their inappropriate use to 'fragment' a business or 'recharacterize' its trading income into a character that is subject to concessional taxation.

On 17 May 2018, the Government released for public consultation the first stage of exposure draft legislation and explanatory material giving effect to most of the proposed integrity measures for stapled structures that was previously announced on 27 March 2018. The draft legislation seeks to 'address the sustainability and tax integrity risks posed by stapled structures and limit the concessions currently available to foreign investors for passive income'.

The draft legislation contains the following four previously announced measures:

(a) restricting access to the 15% MIT withholding rate;

(b) preventing double gearing structures through the thin capitalisation rules;

(c) limiting foreign pension fund withholding exemptions; and

(d) limiting the sovereign immunity tax exemption.

The changes are expected to take effect from 1 July 2019, with the exception of the thin capitalisation changes which are scheduled to take effect from 1 July 2018. Transitional arrangements of seven years (ordinary business staples) and 15 years (for infrastructure assets) have been included in the current package (but exclude the thin capitalisation changes).

The proposed changes will particularly impact the after-tax outcomes that apply to foreign investors in many Australian infrastructure and real estate investments with cross-staple leases. However, the draft law is positive news for more traditional stapled real estate investment trusts (REITs) in the commercial and retail property sectors with little to no cross-staple lease arrangements, confirming that they should not be materially impacted by the proposed changes.

Going forward, real estate investments into Australia that are to be utilised by an associated trading business (for example infrastructure assets) will need to be structured carefully to minimise effective tax rates on the whole investment.

- For more information see Norton Rose Fulbright publication here.
- A link to the Treasurer's media release can be found here and a paper detailing the package can be found here.

Source: Norton Rose Fulbright, March 2018

Cayman Islands

Important Changes to the Cayman Islands Anti-Money Laundering Regime

Since October 2017, significant changes have been made – and continue to be made – to the Cayman Islands anti-money laundering ("**AML**") and combating of terrorist financing ("**CFT**") regime to align it more closely to the FATF Recommendations and global practice. Two specific, and very important, changes being:

(a) Cayman's AML/CFT regime now applies to a wider range of Cayman Islands entities, including unregulated investment entities; e.g. all closed-ended investment funds not registered with the Cayman Islands Monetary Authority ("**CIMA**"), such as real estate funds.

(b) Each investment entity subject to the AML/CFT regime must designate natural persons in the roles of Anti-Money Laundering Reporting Officer, Money Laundering Reporting Officer and Deputy Money Laundering Reporting Officer (together, the "**AML Officers**"). Previously, CIMA-registered investment funds were able to rely on the AML/CFT internal controls of their manager/administrators, where such manager/administrators were suitably regulated.

Accordingly, all Cayman Islands investment entities must maintain policies and procedures in accordance with the AML/CFT regime, and designate the AML Officers. However, subject to certain conditions, AML/CFT compliance functions (including those of AML Officers) can be performed by third party service providers as long as such delegation or reliance is formally recorded.

Due to the changes above, as well as other changes to Cayman's AML/CFT regime, all Cayman Islands entities should revisit their AML status, and reconsider whether their policies, procedures and other arrangements remain sufficient.

Further updates and guidance to Cayman's AML/CFT regime are expected in the coming weeks and months.

Source: Maples and Calder (Hong Kong) LLP, July 2018

China

Governor Yi Gang announces measures and timetable for further financial sector opening-up in Bo'ao Forum for Asia

Yi Gang, Governor of the People's Bank of China (PBoC), has announced a series of measures intended further to open up the domestic financial market. This follows a recent keynote speech delivered by President Xi at the Bo'ao Forum for Asia Annual Conference 2018, in which he committed China to continue its policy of further liberalising its economy and financial markets.

Among others, the following measures will be implemented by the government in the next few months:

(a) Remove the foreign ownership cap for banks and asset management companies, treating domestic and foreign capital equally; allow foreign banks to set up branches and subsidiaries at the same time.

(b) Lift the foreign ownership cap to 51% for securities companies, fund managers, futures companies, and life insurers, and remove the cap in three years.

(c) No longer require joint-funded securities companies to have at least one local securities company as a shareholder.

In addition, the following measures will be rolled out by the end of 2018, among others:

(a) Encourage foreign ownership in trust, financial leasing, auto finance, currency brokerage and consumer finance.

(b) Apply no cap to foreign ownership in financial asset investment companies and wealth management companies newly established by commercial banks.

(c) Remove restrictions on the business scope of jointly-funded securities companies, treating domestic and foreign institutions equally.

For further details please refer to the announcement from People`s Bank of China.

Source: People`s Bank of China, April 2018

ANREV

SAFE increases QDLP and QDIE quotas to USD 5 billion for each programme

The State Administration of Foreign Exchange (SAFE) has released a circular on supporting domestic institutions to innovate in overseas investment and promote the qualified domestic limited partner (QDLP) and qualified domestic investment enterprise (QDIE) pilot programmes. The circular indicates that, in response to the need for cross-border asset allocation by market players, the SAFE has recently increased the outbound investment quota to USD 5 billion for each of the programmes. Both programmes have been implemented in Shanghai and Shenzhen respectively since 2013.

As a next step the SAFE, together with other relevant departments and local governments, intends to further improve the macro-prudential management of the QDLP and QDIE pilot programmes, aiming to further facilitate the liberalisation of outbound investment under these schemes.

- For further details, please refer to the exhibit from SAFE

Source: Clifford Chance, April 2018

State Council announces reduction to VAT rates and other significant VAT changes

Following the State Council meeting held on 28 March 2018, an announcement was issued that the VAT rates would be adjusted as follows with effect from 1 May 2018. Although the announcement did not clearly mention that all the sectors subject to 17% and 11% rates will be entitled to the newly reduced rates, i.e. 16% and 10% respectively, it is reasonable to anticipate the rate changes will be applicable to the following sectors while detailed implementation rules expected to be issued by the Ministry of Finance and the State Administration of Taxation shortly.

Applies to:	Current rate	New rate from 1 May 2018
Sales of goods, importation of goods, leasing of tangible movable property; Repair and processing services	17%	16%
Transportation services, sales and leases of immovable property, basic telecommunications services, construction services, postal services, agricultural products and water and gas supplies	11%	10%

The State Council announcement did not indicate there would be any change to the 6% VAT rate.

Further, for the avoidance of any doubt, the State Council announcement did not specifically reference any changes to the 16% rate for the leasing of tangible movable property, nor did it specifically reference any change to the 10% rate for sale or leasing of immovable property. However, it would seem likely that these services would be similarly affected so as to avoid a multiplicity of rates in effect.

Purchase of immovable property: Circular Caishui [2016] 36 provides that purchases of immovable property and construction costs for immovable properties are potentially eligible for a staged 60% input VAT credit in year 1 and a 40% input VAT credit in year 2. When 1 May 2018 straddles this 2-year period, there is an issue as to whether the input VAT credit is calculated for year 2 at the 10% rate or at the original 11% rate. The latter would seem more appropriate.

- For further details, please refer to tax alert from KPMG.

Source: KPMG, March 2018

Hong Kong

Open-ended fund company structure to be introduced on 30 July 2018

Open-ended fund companies ("OFC") will be introduced with effect from 30 July 2018.

Currently, an open-ended investment fund may be established under the laws of Hong Kong in the form of a unit trust but not in a corporate form owing to various restrictions on capital reduction under the Companies Ordinance (Cap. 622) ("CO"). The Securities and Futures (Amendment) Ordinance 2016 ("the Amendment Ordinance") introduces a new OFC structure in Hong Kong. This will allow investment funds to be set up in the form of a company, but with the flexibility for investors to trade the funds through the creation and cancellation of shares.

Under the OFC regime, the Securities and Futures Commission ("SFC"), being the principal regulator, is responsible for the registration and regulation of OFCs. The legal and regulatory requirements relating to OFCs are set out in Part IVA of the Securities and Futures Ordinance (Cap.571) ("SFO") and the Securities and Futures (Open-ended Fund Companies) Rules (Cap.571AQ) ("OFC Rules").

- Click here for the external circulars from Companies Registry

Source: Companies Registry, July 2018

SFC concludes consultation on new OFC Rules and OFC Code

The Securities and Futures Commission (SFC) released consultation conclusions on the proposed Securities and Futures (Open-ended Fund Companies) Rules (OFC Rules) and Code on Open-ended Fund Companies (OFC Code) which set out detailed legal and regulatory requirements for the new open-ended fund company (OFC) structure. This will enable investment funds to be established in corporate form in Hong Kong, in addition to the current unit trust form.

- For more details, please refer to news & announcement from SFC
- Click here for the consultation conclusion and consultation paper from SFC.

Source: Hong Kong Securities and Futures Commission, May 2018

- Clifford Chance published a briefing paper highlighting the key features and implication of the new OFC structure which will be effective from July 2018.

Source: Clifford Chance, May 2018

Proposed changes to the tax bill on privately offered Hong Kong open-ended fund companies

On 22 January 2018, the Financial Services and the Treasury Bureau (FSTB) proposed amendments to the Inland Revenue (Amendment) (No. 4) Bill (the Bill), which was introduced by the Hong Kong SAR Government in June 2017 to provide profits tax exemption to privately offered Hong Kong open-ended fund companies (OFCs).

Main concerns:

(a) Whether or not the differential tax treatment of investments by the OFCs in local as opposed to overseas private companies would be considered as ring-fencing and harmful by the international tax community.

(b) Whether or not there was a technical loophole in the Bill that might give rise to tax leakage through investment in overseas private companies by the OFCs.

FSTB proposed to remove the 10% de minimis rule.

- PwC prepared a news flash summarises the proposed amendments and its impact on market players.

Source: PwC, February 2018

Ordinance to extend profits tax exemption to privately offered open-ended fund companies in Hong Kong gazetted

The Hong Kong government published in the Gazette on March 29 the Inland Revenue (Amendment) (No. 2) Ordinance 2018 to implement the 2017-18 Budget initiative of extending profits tax exemption to privately offered open-ended fund companies (OFCs) with their central management and control exercised in Hong Kong.

- For further details, please refer to press release and Inland Revenue (Amendment) (No. 2) Ordinance 2018

Source: Inland Revenue Department, March 2018

Amendment Ordinance implementing minimum standards of Base Erosion and Profit Shifting package and codifying transfer pricing principles gazetted

The Inland Revenue (Amendment) (No. 6) Ordinance 2018, which primarily implements the minimum standards of the Base Erosion and Profit Shifting (BEPS) package promulgated by the Organisation for Economic Co-operation and Development (OECD) and codifies the transfer pricing principles into the Inland Revenue Ordinance (Cap. 112) (IRO), was gazetted on 13th July 2018.

Under the Amendment Ordinance, the ultimate parent entity of a multinational enterprise (MNE) group which is Hong Kong tax resident is required to file country-by-country (CbC) reports to the Inland Revenue Department (IRD) for exchange with other relevant jurisdictions if the annual consolidated group revenue is not less than HK$6.8 billion.

The Amendment Ordinance also requires taxpayers to prepare master files and local files as part of the transfer pricing documentation, subject to certain exemptions. In addition, the Amendment Ordinance gives a statutory basis to the cross-border dispute resolution mechanism (i.e. mutual agreement procedure and arbitration) and advance pricing arrangement, which were previously implemented based on IRD’s administrative rules.

IRD will provide further implementation guidance to facilitate enterprises’ compliance with the new requirements through its Departmental Interpretation and Practice Notes.

- For further details, please refer to the press release from Inland Revenue Department
- Click here for the Inland Revenue (Amendment) (No. 6) Ordinance 2018

Source: Inland Revenue Department, July 2018

Hong Kong SFC provides update on Manager-in-Charge (MIC) regime

The Securities and Futures Commission (SFC) published the latest issue of its SFC Compliance Bulletin: Intermediaries to highlight its concerns when it considers licensing applications and provide an update on the implementation of the Manager-In-Charge (MIC) regime.

In the publication, it provides examples of steps which licensed corporations have taken to strengthen corporate governance and senior management accountability following the introduction of the MIC regime, and notes that the SFC will soon conduct a thematic review of the structure and effectiveness of the management of licensed corporations, including board governance and the responsibilities of MICs.

- Click here for the announcement and SFC Compliance Bulletin from SFC.

Source: Securities and Futures Commission, Hong Kong, May 2018

Two-tiered profits tax rates regime to be implemented from April 1 this year

The Inland Revenue (Amendment) (No. 3) Ordinance 2018 (the Ordinance) was gazetted on March 29 to implement the two-tiered profits tax rates regime announced in the 2017 Policy Address.

The two-tiered profits tax rates regime will be applicable to any year of assessment commencing on or after April 1, 2018. The profits tax rate for the first $2 million of profits of corporations will be lowered to 8.25 per cent. Profits above that amount will continue to be subject to the tax rate of 16.5 per cent. For unincorporated businesses (i.e. partnerships and sole proprietorships), the two-tiered tax rates will correspondingly be set at 7.5 per cent and 15 per cent. A tax-paying corporation or unincorporated business may save up to $165,000 and $150,000 each year respectively.

The two-tiered profits tax rates regime will benefit eligible enterprises with assessable profits, irrespective of their size. To ensure that the tax benefits will target small and medium enterprises (SMEs), the application of the two-tiered rates is restricted to only one enterprise nominated among connected entities. The Ordinance has prescribed a simple, clear and objective definition for connected entities.

"It is the Government's objective to adopt a competitive taxation system to promote economic development while maintaining a simple and low tax regime. The two-tiered profits tax rates regime will reduce the tax burden on enterprises, especially SMEs and startup enterprises. This will help foster a favourable business environment, drive economic growth, create job opportunities and enhance Hong Kong's competitiveness. On the assumption that 20 per cent of the tax-paying enterprises are connected enterprises, the tax revenue forgone arising from the implementation of the two-tiered regime will be about $5.8 billion per year, or around 4 per cent of the total profits tax received in 2016-17," a government spokesman said.

- For further details, please refer to press release and Inland Revenue (Amendment) (No. 3) Ordinance 2018

Source: Inland Revenue Department, March 2018

Indonesia

Real estate investment funds gain regulatory clarity in Indonesia

The Indonesian Financial Services Authority (Otoritas Jasa Keuangan – "OJK") issued OJK Regulation No. 64/POJK.04/2017 ("Regulation 64") on 22 December 2017 with the objective of increasing the prevalence of real estate investment funds in the form of collective investment contracts ("Real Estate CICs") in the Indonesian market. OJK acknowledged that since the issuance of the first set of regulations on Real Estate CICs in 2007 the utilisation of such investment vehicle has not been significant. Regulation 64 revoked and replaced four existing regulations on Real Estate CICs. It is hoped that by consolidating the regulations applicable to Real Estate CICs, the different players involved in setting up and administering Real Estate CICs will find it easier to understand the applicable regulations. The new regulation came into force on 22 December 2017

- Click here to download the publication from Indonesian Financial Services Authority

Source: Indonesian Financial Services Authority, December 2017

- Herbert Smith Freehills released a summary discussing the key principles in Regulation 64.

Source: Herbert Smith Freehills, March 2018

Japan

FSA consults on corporate disclosure

The Financial Services Agency (FSA) has invited public comments on current issues relating to corporate disclosure. The Working Group on Corporate Disclosure at the Financial System Council has been reviewing corporate disclosure requirements, including the contents to be disclosed and how corporate information should be provided, since December 2017.

The Working Group is considering the following key issues:

(a) enhancing financial and narrative (non-financial) information, in particular how to supplement financial information and enhance narrative information such as business strategy, management discussion and analysis (MD&A), and risk information, in order to provide investors with more insights regarding long-term vision, trends, and analysis of companies;

(b) how to enrich governance-related information, including cross-share holdings and executive remuneration, to promote constructive dialogues between investors and companies; and

(c) what information should be included to enhance reliability and timeliness of disclosure, such as information on audit, timing of disclosure.

For further information, please refer to the press release and exhibit from Financial Services Agency, The Japanese Government.

Source: Clifford Chance, April 2018

Malaysia

Abolishment of GST & introduction of SST post General Election

Malaysia will implement the sales and service tax (SST) in September 2018 to replace the goods and services tax (GST). Starting from 1st June 2018, the 6% GST will be zero-rated.

- Click here for the press release from Ministry of Finance Malaysia

Source: Ministry of Finance Malaysia, May 2018

Mauritius

Review of Taxation of Global Business Companies

The Deemed Foreign Tax Credit regime available to companies holding a Category 1 Global Business Licence will be abolished as from 31st December 2018.

A partial exemption regime will be introduced whereby 80% of specified income will be exempted from income tax. The exemption will be granted to all companies in Mauritius, except banks, and shall apply to the following income –

(a) foreign source dividends and profits attributable to a foreign permanent establishment;

(b) interest and royalties; and

(c) income from provision of specified financial services

Companies licensed by the Financial Services Commission (FSC), claiming the partial exemption, will have to satisfy pre-defined substantial activities requirements of the Commission.

The existing credit system for relief of double taxation will continue to apply where partial exemption is not available.

The Category 2 global business regime will be abolished and the Income Tax Act provisions applicable to that regime will be reviewed accordingly.

The current regime will continue to apply until 30th June 2021 for companies, which have been issued a licence prior to 16th October 2017.

- For more details, click here for the Budget Speech 2018-2019.

Source: Ministry of Finance and Economic Development, Mauritius, 2018

Amendment on Financial Services Act

The Financial Services Act will be amended to –

(a) allow the FSC to –

i. give directions to any person as may be required, for the purposes of its functions, to ensure compliance with licensing conditions;

ii. take actions against a licensee which fails to comply with section 52 or section 52A of the Bank of Mauritius Act; and

iii. appoint an administrator in relation to the business activities of a person whose authorisation has been withdrawn;

(b) ensure that licensees maintain the requirements needed for the grant of a licence at all times;

(c) extend the scope of the offence with respect to licensees who provide false and misleading information;

(d) extend the scope of the offence with respect to a person who destroys, falsifies, conceals or disposes of, or causes or permits the destruction, falsification, concealment or disposal of any document, information stored on a computer or other device where such information is relevant to the Commission;

(e) clarify that the Review Panel needs to receive the application for review within 21 days of the issue of the written notification;

(f) allow for any determination of the Review Panel to be published except that any information which the Review Panel considers to be sensitive shall be omitted;

(g) allow the FSC to regulate Custodian Services (Digital Asset) and Digital Asset Marketplace;

(h) allow the FSC to regulate Compliance Services and Global Shared Services;

(i) cease the issuance of Category 2 Global Business Licence as from 1st January 2019;

(j) rename the Category 1 Global Business Licence as Global Business Licence;

(k) remove all restrictions applicable to dealings in Mauritius;

(l) provide that all resident companies and partnerships incorporated/registered under the laws of Mauritius whose majority shareholdings/parts are held by non-resident and which conduct business mostly outside Mauritius will be required to seek a Global Business Licence or an authorisation from the FSC, through a duly appointed Management Company. The latter will be responsible for Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT), Legal, Regulatory & Corporate Governance compliance of these companies/partnerships; and

(m) provide for enhanced substance requirements for entities holding a Global Business Licence.

Consequential amendments will be made to sections in other legislations relating to companies holding a Category 1 or 2 Global Business Licence, namely, the Companies Act, Foundations Act, Insurance Act, Limited Liability Partnership Act, Limited Partnerships Act, Private Pension Schemes Act, Non-Citizens (Property Restriction) Act, Protected Cell Companies Act, Securities Act, and Trusts Act.

- For more details, click here for the Budget Speech 2018-2019.

Source: Ministry of Finance and Economic Development, Mauritius, 2018

Singapore

Singapore government raises additional buyer's stamp duty rates and tightens loan-to-value limits for residential properties

The Singapore government has announced adjustments to the additional buyer's stamp duty (ABSD) rates and loan-to-value (LTV) limits on residential property purchases, to cool the property market and keep price increases in line with economic fundamentals.

The current ABSD rates for Singapore citizens and Singapore permanent residents purchasing their first residential property will be retained at 0% and 5% respectively. The changes to ABSD rates are:

(a) ABSD will be raised by 5% points for all other individuals;

(b) ABSD will be raised by 10% points for entities; and

(c) an additional ABSD of 5% will be introduced for developers purchasing residential properties for housing development. This ABSD is non-remittable under the Remission Rules and is payable on the purchase price or market value, as applicable.

A transitional provision will apply for cases where an 'option to purchase' (OTP) has been granted by sellers to potential buyers on or before 5 July 2018, which has not been varied on or after 6 July 2018. For such cases, the ABSD rates applying as of 5 July 2018, instead of the revised ABSD rates as of 6 July 2018, will apply if the OTP is exercised on or before 26 July 2018 or within the OTP validity period, whichever is earlier.

LTV limits will be tightened by 5% points for all housing loans granted by financial institutions. These revised LTV limits do not apply to loans granted by the Housing and Development Board (HDB). The tightened LTV limits will apply to loans for the purchase of residential properties where the OTP is granted on or after 6 July 2018. In this connection, LTV limits for mortgage equity withdrawal loans (MWLs) will be tightened as follows:

(a) 75% for a borrower with no outstanding housing loan for the purchase of another residential property; and

(b) 45% for a borrower with an outstanding housing loan for the purchase of another residential property.

The tightened LTV limits will apply to MWL applications made on or after 6 July 2018. However, for refinancing of MWLs which were applied before 6 July 2018, the current LTV limits of 80%, or 60% (for borrowers with an outstanding housing loan for the purchase of another residential property) will continue to apply.

The Monetary Authority of Singapore (MAS) has revised its guidelines and updated its notices in response to the measures listed above.

Source: Clifford Chance, July 2018

- Click here for the media release from MAS

Source: Monetary Authority of Singapore, June 2018

- Click for the Additional Buyer's Stamp Duty (ABSD) fact sheet from Inland Revenue Authority of Singapore

Source: Inland Revenue Authority of Singapore, July 2018

MAS Issued Consultation Paper on Guidelines on Provision of Financial Advisory Service

MAS has issued a consultation Paper on Guidelines on Provision of Financial Advisory Service and Design of Advisory and Sales Forms, inviting comments on its proposal to issue new guidelines relating to the Financial Advisers Act to ("FAA"):

(a) provide greater clarity on what constitutes the provision of a financial advisory service under the FAA; and

(b) set out the key principles that financial advisers should incorporate in the design of their forms used to conduct fact-finding and needs-analysis, and to make suitable product recommendations.

Click here for the Consultation Paper from MAS. The consultation closes on 5 July 2018.

Source: Monetary Authority of Singapore, June 2018

- Shook Lin & Bok LLP prepared a client update discussing the proposed guideline.

Source: Shook Lin & Bok LLP, June 2018

MAS to strengthen individual accountability of senior managers in financial institutions

The Monetary Authority of Singapore (MAS) has proposed guidelines to strengthen individual accountability of senior managers and raise standards of conduct in financial institutions (FIs). The guidelines are a key part of MAS' broader efforts to foster a culture of ethical behaviour and responsible risk-taking in the financial industry.

The guidelines reinforce FIs' responsibilities in three key areas:

(a) Promote individual accountability of senior managers

(b) Strengthen oversight of employees in material risk functions

(c) Embed standards of proper conduct among all employees

Click here to view the media release and consultation paper from MAS.

Source: Monetary Authority of Singapore, April 2018

- PwC published a guideline highlighting the outcome-based approach to facilitate implementation proportionate to the context of specific FIs.

Source: PwC, May 2018

- Please refer to the briefing paper prepared by Clifford Chance, discussing the requirements and implication of the MAS guidelines

Source: Clifford Chance, May 2018

Stamp Duties (Agreements for Sale of Equity Interests) (Remission) Rules 2018 come into effect

The Stamp Duties (Agreements for Sale of Equity Interests) (Remission) Rules 2018 have been published in the Government Gazette.

With the exception of contracts or agreements for the sale of stock or shares in property-holding companies (i.e. those subject to additional conveyance duty under section 23 of the Stamp Duties Act), the rules revert to the position prior to amendments introduced by the Stamp Duties (Amendment) Act 2017 in relation to the timing of stamping of all share transfers. In other words, the relevant duty point for sale of stock or shares is the time when the share transfer form is executed instead of when the contract or agreement for the transfer of stock or shares is signed.

In addition, the rules set out other provisions on the remission of duties that are chargeable on contracts or agreements for the sale of:

i. any book entry securities (paperless securities) that are subject to any duty under section 23 of the Act (i.e. conveyance of equity interests in property-holding companies); and

ii. equity interests in an entity executed on or after 11 March 2017, where, subject to other requirements: (a) the contract or agreement is rescinded or annulled; and (b) the purchaser did not procure the rescission or annulment with a view to facilitating the disposition of the equity interests by the vendor to another person.

The rules came into effect on 11 April 2018.

- For further details please refer to Singapore Ministry of Finance and the Stamp Duties Act.

Source: Clifford Chance, April 2018

South Korea

Regulatory reform on entry barriers to financial services industry

The FSC outlined its plan on regulatory reform on entry barriers to financial services business in a bid to promote competition and innovation in the financial sector.

Currently, entry barriers are set too high for some financial investment services such as brokerage service, advisory service, trust business, given the nature of their business and level of risk.

The FSC will ease entry requirements in accordance with the nature of each business to facilitate the entrance of specialized players in financial investment business.

Takeaway: The FSC will permit the market entry of real estate trust business.

- Click here to download the press release from FSC.

Source: Financial Services Commission, South Korea, May 2018

INREV

Europe

Enforcement of EU General Data Protection Regulation (GDPR)

After four years of preparation and debate the GDPR was finally approved by the EU Parliament on 14 April 2016.

Enforcement date: 25 May 2018 — at which time those organizations in non-compliance may face heavy fines.

The EU General Data Protection Regulation (GDPR) replaces the Data Protection Directive 95/46/EC and was designed to harmonize data privacy laws across Europe, to protect and empower all EU citizens data privacy and to reshape the way organizations across the region approach data privacy.

Click here for key article of GDPR from EU GDPR Portal and EU Commission website.

Source: EU GDPR Portal

Additional references for GDPR:

1. **Major speech**
   Click here for the speech by Michel Barnier at the 28th Congress of the International Federation for European Law (FIDE)

   Source: European Commission, May 2018

2. **INREV statement**
   INREV published a statement on their website to inform members on the efforts that INREV has and will put into GDPR compliance. Click here for the statement and snapshot prepared by INREV. INREV also organized a briefing in April, discussing the key points on the General Data Protection Regulation and Anti-Money Laundering Directive.

   Source: INREV, April 2018

3. **Booklet from Hong Kong Privacy Commissioner for Personal Data**
   The Privacy Commissioner for Personal Data, Hong Kong issued a booklet on "European Union General Data Protection Regulation (GDPR) 2016". It aims to raise awareness amongst organisations and businesses in Hong Kong of the possible impact of the new regulatory framework for data protection in the European Union, as well as comparing some of the major requirements with those set out in the Personal Data (Privacy) Ordinance, Laws of Hong Kong (Cap 486) (PDPO).

   The GDPR, adopted in 2016, will come into force on 25 May 2018.

   For details, please refer to the booklet which can be downloaded from the website.

   Source: Privacy Commissioner for Personal Data, Hong Kong, April 2018

4. **Briefing papers**
   Clifford Chance published a briefing paper discussing data and security incident reporting under GDPR, PSD2, NISD and EIDAS regulation

   Source: Clifford Chance, March 2018

5. **Publication & guide**
   DLA piper wrote an article on "Asian businesses will be impacted by new EU data protection regulation" together with the General Data Protection Regulation Guide.

   Source: DLA Piper, May 2018

Proposed changes to AIFMD on Pre-marketing

The European Commission published a proposed directive and a proposed regulation amending the AIFMD and UCITS IV to facilitate cross-border marketing of funds.

Proposals for directive:

(a) a definition of "pre-marketing": broadly providing information to professional investors before the fund (AIF) is established; and

(b) pre-marketing by an EU AIFM must be allowed by Member States as long as it does not relate to or refer to an established fund (see further below).

Proposals for regulation:

(a) AIFMs will need to facilitate subscriptions and redemptions by retail investors;

(b) marketing communications should present the risks and rewards of investing in AIFs and UCITS;

(c) fund marketing rules must be published by national regulators and maintained centrally by ESMA;

(d) verification of compliance with national provisions, if required, must be decided within 10 working days;

(e) local levies, fees or charges must be proportionate to supervisory tasks carried out and published on regulators' websites;

(f) ESMA must maintain a central database on all AIFMs, UCITS management companies, AIFs and UCITS;

(g) the EuVECA and EuSEF Regulations will allow managers to test investors' appetite for opportunities or strategies through pre-marketing.

For further details, please refer to the proposed directive and proposed regulation published by European Commission.

Source: European Commission, March 2018

Click here for the summary prepared by CMS

Source: CMS, March 2018