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Australia

ASIC consults on proposed changes to the capital requirements for market participants

ASIC has released a consultation paper proposing changes to the capital requirements for market participants, which prescribe the minimum amount of capital a participant must hold. The proposed changes will better protect investors and market integrity by strengthening the risk profile of market participants and reducing the risk of a disorderly or non-compliant wind-up.

Consultation Paper 302 (CP 302) sets out the proposals to improve and simplify the capital requirements, including further consolidating the two market integrity capital rulebooks into a single capital rulebook (the ASIC Market Integrity Rules (Capital) 2018).

ASIC invites submissions on CP 302 by 15 August 2018.

- Click here for the [Consultation Paper 302](#) and [Draft ASIC Market Integrity Rules \(Capital\) 2018](#).

Source: Australia Securities & Investments Commission, July 2018

ASIC updates guidance for funds management industry

ASIC has released a suite of seven new and updated regulatory guides to provide comprehensive guidance to the funds management industry. The new and updated regulatory guides are:

- Regulatory Guide 131 Funds management: Establishing and registering a fund (RG 131)
- Regulatory Guide 132 Funds management: Compliance and oversight (RG 132)
- Regulatory Guide 133 Funds management and custodial services: Holding assets (RG 133)
- Regulatory Guide 134 Funds management: Constitutions (RG 134)
- Regulatory Guide 136 Funds management: Discretionary powers (RG 136)
- Regulatory Guide 137 Constitution requirements for schemes registered before 1 October 2013 (RG 137), and
- Regulatory Guide 138 Foreign passport funds (RG 138).

The updates are comprehensive, including both administrative and substantive issues. Inclusions that may be particularly helpful to the funds management industry include:

- providing information on ASIC's decision-making process for registering a managed investment scheme or passport fund
- providing good practice examples and case studies on a range of compliance issues, including previous ASIC decisions on relief.

The updates do not include changes arising from corporate collective investment vehicles (CCIVs), as the legislation has not yet passed through Parliament. ASIC will review and re-release these seven regulatory guides to include material for the new CCIV regime after this regime is implemented into Australian law.

- For more details, refer to the [media release](#) from ASIC.

Source: Australia Securities & Investments Commission, July 2018

External report on fees and costs disclosure welcomed by ASIC

The Australian Securities and Investments Commission (ASIC) has today released the external report into Regulatory Guide 97 Fees and costs disclosure (RG 97) commissioned in November 2017.

The report, prepared by expert Darren McShane, concludes changes to the disclosure regime would be advantageous, and includes discussion of:

- (a) the way fee and cost information is presented to consumers; and
- (b) some of the information to be included in this disclosure.

ASIC agrees changes to the fees and costs disclosure are in the interests of consumers and industry and is keen to ensure any changes are practicable for industry while providing transparency and useable comparability for consumers. In the first half of the 2018-19 financial year, ASIC will release a consultation paper setting out ASIC's proposed response to the issues raised in the report. In the meantime, ASIC's facilitative compliance approach to fees and costs disclosure will continue.

- For more details, refer to the [media release](#) from ASIC.

Source: *Australia Securities & Investments Commission, July 2018*

Queensland Budget: Increased property taxes from 1 July 2018

The Queensland Government's FY2018-19 budget was announced in June and it includes an increase to 2 property taxes

(a) Land Tax

The rate of land tax will be increased by 0.5 per cent for owners of land who have aggregated holdings with a taxable value above \$10 million. From the 2018-19 financial year onwards, an increased rate of 2.25 per cent for resident individuals and 2.5 per cent for companies, trustees and absentees will apply to the portion of an owner's taxable landholding that exceeds \$10 million. Currently the top land tax rate of 1.75 per cent and 2 per cent respectively applies to the portion of an owner's taxable landholding that exceeds \$5 million.

(b) Additional foreign acquirer duty ("AFAD")

The Queensland Budget announced an increase in the rate of AFAD from 1 July to 7 per cent. This brings the rate applied in Queensland in line with the other States, with Victoria, South Australia and Western Australia all charging 7 per cent and New South Wales charging 8 per cent. The increased duty rate will apply to contracts formed on or after 1 July 2018 – it will not apply to a contract to acquire AFAD residential land executed before 1 July 2018, even if settlement occurs on or after that date.

Click here for the [publication](#) from Norton Rose Fulbright

Source: *Norton Rose Fulbright, July 2018*

Cayman Island

Investment Entity AML Officers: Only Two Months Remain to Make Appointments

30 September 2018 is the date by which all existing "in-scope" Cayman Islands investment entities must have appointed AML Officers.

Entities will be "in-scope" if they conduct "relevant financial business" in or from within the Cayman Islands. This will include all Cayman Islands investment entities, whether regulated or unregulated (including all hedge funds and private equity funds), structured finance vehicles and entities conducting securities investment business.

In-scope entities need to:

(a) Appoint AML Officers

All in-scope entities must appoint an Anti-Money Laundering Compliance Officer, a Money Laundering Reporting Officer and a Deputy Money Laundering Officer (together the "AML Officers") in accordance with the Anti-Money Laundering Regulations (2018 Revision) of the Cayman Islands (the "AML Regulations").

The AML Regulations (and associated guidance) require that the AML Officers be natural persons who have:

- i. sufficient skill, experience, seniority, authority and resources to perform the role;
- ii. specific knowledge regarding the applicable Cayman Islands legislative, regulatory and other requirements; and

- iii. the ability to carry out their duties and responsibilities without any conflict of interests.

An in-scope entity might consider appointing AML Officers from one of its existing service providers, such as persons designated by its investment manager or administrator (if applicable), or appointing persons from an external compliance provider.

(b) Notify CIMA (if applicable)

All fund entities registered with or licensed by the Cayman Islands Monetary Authority ("CIMA") that have not already filed the prescribed details of their AML Officers with CIMA must do so by 30 September 2018.

The AML Officers will also need to ensure that their in-scope entity has adequate procedures in place in accordance with the AML Regulations for identification, verification and diligence of all existing and future investors (including appropriate checks against global sanctions and watch lists).

CIMA has the power to fine entities that are in breach of these requirements and the fines can be significant.

- Click [here](#) for more details from Maples and Calder

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

Hong Kong

Hong Kong proposes a new vacancy tax on properties

The Hong Kong government has announced plans to introduce a new tax on vacant properties. The tax is targeted at newly built flats and will apply where properties remain unoccupied for six months in any year. A grace period will apply for the first twelve months after obtaining an occupation permit. It is proposed that the tax will be levied at the rate of 200% of the property's annual rental value, calculated by reference to market rates as determined by government assessors. Developers will be required to submit a report on the status of their properties annually. The new tax will not apply to vacant properties held by persons other than developers.

The new measures will need to be approved by the Legislative Council before they become law.

Unlike most taxes, the new tax does not aim to produce revenue. It is intended to encourage developers to release residential units more quickly into the market and address concerns about the spiralling cost of real estate in Hong Kong.

- Click here for [tax alert](#) from KPMG

Source: KPMG, July 2018

- Click here for the [press release](#) from Hong Kong Government regarding the six new initiatives on housing which aim to meet three objectives, namely making subsidised sale flats (SSFs) more affordable, increasing supply of subsidised housing units and enhancing support for transitional housing supply, and encouraging more timely supply of first-hand private flats.

Source: Hong Kong Government, June 2018

Resolution to implement Government Green Bond Programme to be introduced

The Chief Executive in Council has approved that a resolution be introduced into the Legislative Council (LegCo) to authorise the Government to borrow sums not exceeding HK\$100 billion or equivalent to implement the Government Green Bond Programme.

Sums raised under the Programme will be credited to the Capital Works Reserve Fund of the Government for funding public works projects with environmental benefits to demonstrate the Government's support for sustainable development and its determination to combat climate change and promote the development of green finance.

The Programme will align with guidelines/standards widely accepted by global investors for green bond issuance. To follow the best market practice and set a good example for other potential green issuers, the Government is inclined to engage independent reviewers to verify and/or certify the alignment of the frameworks of individual issuances under the Programme with these green bond issuance standards.

The Hong Kong Monetary Authority will assist in implementing green bond issuance under the Programme.

- Click here for the [press release](#) from the government of Hong Kong.

Source: The government of Hong Kong, June 2018

Japan

Integrated Resorts Act legalising casinos in Japan enacted

The Integrated Resorts Act of Japan (IR Act) has been passed by the Diet of Japan.

The IR Act will legalise casino gambling conducted in IR Areas, which will be highly regulated. Integrated resorts should consist of not only gaming facilities, but also hotels, convention centres and other resort and leisure facilities. The government believes the MICE (Meeting, Incentive Travel, Convention and Exhibition/Event) business will promote tourism and longer stays to a greater extent than a focus solely on gaming would do.

Since various concerns about casinos have been raised, including gambling addictions, the number of IR Areas will initially be limited to three, the size of casino areas is restricted and entrance fees and entry restrictions will apply to Japanese citizens and residents.

Detailed regulations will be provided by an enforcement ordinance and enforcement order to be drafted by the Cabinet Office and Ministry of Land, Infrastructure and Transportation (MLIT) respectively. A Casino Management Committee (CMC) will be established with supervising authority in respect of casino regulations.

IR Areas will be selected through a two-step process: (i) the local government will select a private company (likely formed by a consortium of private entities) as a potential IR operator; and (ii) MLIT will approve an IR Area based on the application made by the local government together with the selected potential IR operator.

No official timeline has been published so far but if the IR Area selection process is made on a rolling basis, it is anticipated that the first IR Area will be selected in 2021.

- Clifford Chance published a [briefing paper](#) highlighting the key features of integrated resorts and casinos

Source: Clifford Chance, July 2018

- For details, please refer to [press release](#) from House of Councillors

Source: House of Councillors, The National Diet of Japan, July 2018

Stewardship Code: 229 institutional investors have signed up to the Principles for Responsible Institutional Investors as of July 3, 2018

The Council of Experts on the Stewardship Code (hereafter, the "Council") discussed the revision of "Principles for Responsible Institutional Investors <<Japan's Stewardship Code>>" (hereafter, the "Code") from January 2017, and developed an exposure draft of the revised version of the Code this March. The Council then published the draft of the revised version of the Code and solicited comments from March 28 until April 27, 2017.

As of July 3, 2018, there are 229 institutional investors in the list, classified as follows;

- (a) Trust banks (Shintaku Ginko): 6
- (b) Investment managers (Toshishintaku/Toshikomono Gaisha): 163
- (c) Pension funds: 31
- (d) Insurance companies: 22
- (e) Others (service providers, etc.): 7

Next steps for institutional investors in accordance with the revised Code

(a) To institutional investors who are currently signatories of the previous version of the Code

Institutional investors who are currently signatories of the previous version of the Code are expected to update disclosure items based on the principles, including guidance, of the Code (hereafter, the "disclosure items"), in accordance with the revised Code within 6 months (November-end 2017) after the revision of the Code. Also, institutional investors are expected (to disclose and) to notify the Financial Services Agency (FSA) (jstewardship@fsa.go.jp) of such updates if they take place.

(b) To institutional investors who intend to newly sign up for the revised Code

Institutional investors who support the revised Code and are prepared to accept it are expected to publicly disclose their intention (Preamble 11. of the revised Code).

The FSA adds names of institutional investors who have notified the FSA of their intention to accept the revised Code to the published list when it receives notifications of acceptance of the revised Code from institutional investors. Those who intend to newly sign up for the

revised Code are invited to notify the FSA (jstewardship@fsa.go.jp) of their intention as well as the institution's name, name of the person in charge, contact information (email address), and address of the website (the URL) of the announcement of the acceptance of the revised Code and the disclosure items described in the revised Code.

- For further details, please refer to the [press release](#) and the [Japan's Stewardship Code](#) from Financial Services Agency

Source: Financial Services Agency, The Japanese Government, July 2018

Recent moves in Japan towards tougher corporate compliance

"Japan Inc" is now back on the front pages with many Japanese corporations increasingly pursuing significant M&A opportunities internationally given the mature market at home and high levels of cash reserves.

The corporate landscape in Japan has also been changing in other ways in recent years. As a consequence of a number of high-profile corporate scandals, Japanese legislators have been busy revising legislation to further improve corporate governance in the world's third biggest economy.

Clifford Chance published a [client briefing](#) focuses on three such reforms:

- (a) the bolstering of the role of independent outside directors;
- (b) the introduction of Japan's first ever plea-bargaining regime; and
- (c) the release of Japan's "Principles for Listed Companies Dealing with Corporate Malfeasance".

For the reasons explained in the briefing, global companies with operations in Japan should keep in mind this shift towards more regulation.

Source: Clifford Chance, June 2018

New Zealand

Overseas Investment Amendment Bill Approved

On August 15, the Overseas Investment Amendment Bill was approved by the New Zealand Parliament. The bill bars non-residential foreigners from buying existing homes. The amendments also include the following:

- (a) Treatment of commercial uses of residential land
- (b) Hotels developed under a lease-back model

Click here for the [Cabinet Paper](#) from The Treasury

Source: *The Treasury, August 2018*

Kensington Swan published a [summary](#) highlighting the important amendments prior to the approval of the bill as follows:

(a) Exemption to overseas investors purchasing hotel units:

In response to the shortage of hotel accommodation in New Zealand and to prevent financial investment in hotels being discouraged, the Committee has amended the Bill so that overseas investors may purchase and continue to own any number of units in hotels with 20 or more units, provided they enter into a lease-back arrangement with the hotel's developer or operator. The room must be used for operating the hotel and the overseas investor may not reside in it for more than 30 days in a year.

(b) Leases and periodic tenancies:

The Bill provides that short term leases of residential land with terms of three years or more require the consent of the OIO. Submitters noted that short term student accommodation could be caught under this requirement. The Committee has amended the bill so that overseas persons may take leases for up to five years over residential land without needing to obtain the consent of the OIO. The Bill now also provides that periodic leases (including residential tenancies) do not require the consent of the OIO.

Source: *Kensington Swan, August 2018*

Singapore

MAS updates Guidelines on Licensing, Registration and Conduct of Business for Fund Management Companies

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

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

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

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

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

- Click here for [guidelines](#) from MAS

Source: Monetary Authority of Singapore, June 2018

MAS publishes regulations relating to classification of Capital Markets Products

On 8 June 2018, the Monetary Authority of Singapore (MAS) gazetted the Securities and Futures (Capital Markets Products) Regulations 2018 ("Regulations"), which set out various provisions relating to the operation of section 309B of the Securities and Futures Act, Chapter 289 of Singapore (the "Act"). The Regulations came into force on 9 July 2018.

Key issues as follows:

- (a) Issuers of capital markets products are now required to classify the capital markets products they issue before making an offer of such capital markets products.
- (b) Issuers are also required to provide notification of the classification to (i) the approved exchange on which the capital markets products are listed and (ii) "relevant persons" (i.e. distributors) before making an offer of the capital markets products, and in each case any subsequent change to the classification.
- (c) "Relevant persons" are prohibited from making an offer of any capital markets products unless the relevant person has received a notification of the classification of such capital markets products.
- (d) Exemptions apply in circumstances where capital markets products are only offered to accredited investors, expert investors, institutional investors or non-individuals.

- (e) "Capital markets products" means any securities, futures contracts, contracts or arrangements for the purposes of foreign exchange trading, contracts or arrangements for the purposes of leveraged foreign exchange trading, and such other products as the MAS may prescribe as capital markets products.
- (f) Please note that certain definitions in the Act, including "capital markets products" and "securities", will be amended when the Securities and Futures (Amendment) Act 2017 comes into operation.

Clifford Chance published a [briefing paper](#) highlighting the changes and key issues.

Source: Clifford Chance, July 2018

- For further details, please refer to [Securities and Futures \(Capital Markets Products\) Regulations 2018](#) from MAS.

Source: Monetary Authority of Singapore, June 2018

South Korea

Ministry of Economy and Finance publishes Tax Revision Bill 2018

The Ministry of Economy and Finance (MOEF) has published the Tax Revision Bill 2018, which focuses on redistribution and sustainable growth.

Among others, key changes relating to the financial sector include:

(a) Revise property taxes

- Raise property tax revenues to around 1 percent to GDP by 2022, near the OECD average of 1.1 percent to GDP
- Separately tax housing rental income from other incomes if it does not exceed 20 million won a year starting in 2019
- Increase expense deductions for small-scale housing rental income (20 million won or less annually)

(b) Regulate overseas tax evasion

- Expand the duty of reporting overseas financial accounts held by overseas companies to individual owners of the company with 100 percent ownership, including beneficial owners, an expansion from corporate owners of the company
- Require corporations, in addition to individual citizens, to explain unreported offshore accounts

- Increase penalties for not reporting overseas property transactions, and require explanation for unreported investment overseas, including property investment
- Extend the statute of limitations for offshore transactions to 10 years
- Raise exit taxes: Impose up to 25 percent taxes on the sales of corporate shares and introduce a tax on the sales of property shares

For more details, [please refer](#) to press release from Ministry of Economy and Finance

Source: Ministry of Economy and Finance, South Korea, August 2018