

China

- SAFE publishes Q&A providing further operational guidance on authenticity and compliance checks for cross-border transactions
- Cross-border data transfers: China issues new measures to strengthen data localisation
- SAFE publishes Q&A on overall macro-prudential management of cross-border financing

Singapore

- MOF announces measures relating to residential property
- MAS consults on proposed amendments to Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005
- MAS consults on proposed framework for Singapore Variable Capital Companies

Global

- Smart buildings - not all just bricks and mortar

Thailand

- New property tax regime within sight: what should we expect?

Hong Kong

- SFC consults on new guidelines on online distribution and advisory platforms
- Prudential measures for property mortgage loans

USA

- US senators raise questions about CFIUS and real estate transactions

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China

SAFE publishes Q&A providing further operational guidance on authenticity and compliance checks for cross-border transactions

The State Administration of Foreign Exchange (SAFE) has issued a set of questions and answers (Q&As) in respect of the circular on further promoting the foreign exchange administration reform and enhancing authenticity and compliance checks (batch 2), providing further operational guidance on carrying out authenticity and compliance checks for cross-border transactions. Among other things, the Q&As specifically clarify SAFE's position in respect of the following issues:

- proceeds under Nei Bao Wai Dai may be remitted to China in the form of (either direct or indirect) foreign debts and/or foreign direct investments under the corresponding regulatory regimes. However, securities investments are still prohibited;
- when processing a Nei Bao Wai Dai registration, the competent local bureaus of SAFE should register whether the proceeds will be remitted to China and the detailed proposed usage of proceeds;
- the restriction that proceeds under Nei Bao Wai Dai should only be used within the business scope of the debtor is still applicable;
- Nei Bao Wai Dai may not be used to pay the acquisition price in an outbound direct investment (ODI) project that is restricted under the current ODI policy;

- if the proceeds under Nei Bao Wai Dai are to be invested into special industries such as real estate, hotels, studios, entertainment, and clubs or used in specific investment structures that are discouraged, banks and competent local SAFE bureaus (where applicable) should enhance compliance and authenticity checks according to the relevant ODI rules and policies; and
- Chinese banks may not extend outbound loans to foreign borrowers for the purpose of supporting a Chinese entity's ODI transactions that are restricted under the current ODI policy.

Note: Nei Bao Wai Dai (内保外贷) financing provided by offshore financial institution upon guarantee by onshore financial institution

For details, please click [here](#).

Source: Clifford Chance Alert, April 2017

Cross-border data transfers: China issues new measures to strengthen data localisation

On 11 April 2017 the Cyberspace Administration of China (CAC) issued draft "Measures for Security Assessment of Cross-border Transfer of Personal Information and Important Data Overseas" (Measures) for public comment. In this briefing, we outline the key aspects of the Measures and examine the implications for businesses in China.

The draft Measures are one step further towards the implementation of the National Security Law of China and the Cybersecurity Law of China, which became effective on 1 June 2017. Once adopted, the Measures will have a significant impact on businesses (in particular, multi-national businesses) in China which have operational needs for cross-border data transfers. Multi-national businesses should therefore review their internal cross-border data transfer policies and be prepared to make necessary adjustments once the Measures are adopted.

For details, please click [here](#).

Source: Norton Rose Fulbright, April 2017

SAFE publishes Q&A on overall macro-prudential management of cross-border financing

SAFE has published its Policy Q&As No.1 on the Overall Macro-prudential Management of Cross-border Financing, providing clarifications to the Circular of the People's Bank of China (PBoC) on Matters regarding the Overall Macro-prudential Management of Cross-border Financing (Circular No. 9), in particular in relation to three aspects: (i) the transitional arrangement for foreign-invested enterprises (FIEs); (ii) the calculation of foreign debt size; and (iii) the management of foreign debt registration, account and currency exchange.

Among other things, the Q&As clarify that:

- FIEs may choose between the existing model and the model under Circular No. 9 during the one-year transitional period, by submitting a written filing report to the local SAFE when handling their first contract filing procedure with SAFE after the issuance of the Q&As. Other special types of FIEs, including foreign-invested leasing companies and holding companies, may continue to adopt the current model to borrow foreign debts under the SAFE Circular on Distributing the Administrative Measures for Registration of Foreign Debts (SAFE Circular [2013] No. 19), if not choosing to apply the new model under Circular No. 9;
- as to foreign debt arising from the borrower's performance of its payment obligation under Wai Bao Nei Dai, this shall be calculated into the risk-weighted cross-border financing balance under Circular No. 9 of the borrower. No extra quota, including the additional amount equal to the borrower's audited net assets by the end of last year under the SAFE Circular on Promulgation of the Provisions of the Administration of Foreign Exchange for Cross-border Guarantee (SAFE [2014] No. 29), will be available to the borrower;
- those foreign debts subject to the approval by other authorities (such as the National Development and Reform Commission) on a transaction-by-transaction basis, may also go through the contract filing procedures at SAFE based on the approved amount, which will be calculated into the balance;
- those cross-border financing businesses which are not taken into account when calculating the balance, such as indebtedness incurred under cash-pooling arrangements, Panda bond proceeds used for onshore subsidiaries and RMB trade financing, shall also be subject to the applicable registration requirements of SAFE; and
- the use of proceeds from cross-border financing under Circular No.9 by enterprises shall comply with relevant requirements set out in the SAFE Circular on Reforming and Regulating Policies on the Control over Foreign Exchange Settlement of Capital Accounts (SAFE Circular [2016] No. 16); for RMB foreign debts, the PBoC Circular on Clarifying the Operating Rules for RMB Settlement Business of Foreign Direct Investment (PBoC Circular [2012] No. 165) is also applicable.

Note: Wai Bao Nei Dai “外保内贷” refers to a scenario where both the borrower and lender are PRC onshore entities while the guarantor is an offshore entity.

For details, please click [here](#).

Source: Clifford Chance Alert, June 2017

Global

Smart buildings - not all just bricks and mortar

The real estate industry is fast becoming influenced by rapid technological advancements. Technology is a significant source of disruption and opportunity particularly in buildings and modern infrastructure. Buildings are changing, they are no longer just bricks and mortar. While it's not new for technology to form part of the inner workings of a building, sophisticated and advanced technologies are now being integrated into underlying designs and building management systems that underpin most modern building structures. These building management systems are no longer fully segregated from conventional IT networks, such as servers, customer relationship management or online payment systems. Buildings are becoming more mobile, flexible and connected - in effect becoming 'smart'. Landlords, tenants and owners are becoming increasingly reliant upon, and are leveraging, sophisticated new technologies in the day to day use of spaces, resulting in greater amounts of data being captured in buildings, office towers and homes around the country. Digital technology is reportedly being used by owners and landlords to assist in brick and mortar sales. For example - in retail centres, with the goal being to guide a customer from the start of their product acquisition right through to purchase i.e. a customer searches for a product on Google, finds the product at the shopping centre, is digitally guided by the landlord / centre to an open parking space at the property and then to the store to collect the product.

In hotels, cashless payment technologies are used to increase on-site spending patterns. In offices, mobile and wireless technologies support recent trends towards more open and collaborative workspaces. Employee movements around a floor can be recorded - the resulting data can be put to multiple uses - i.e. by staff to identify busy or quiet areas in the office or by organisations to cut cleaning costs, allowing them to focus on cleaning busy areas rather than unused areas. Lighting, humidity and temperature can all be pre-recorded and customised, window coverings can be programmed to block harsh light at certain times of the day, security passes can record movements and time entries, or indeed facial recognition can replace card activation altogether.

It's abundantly clear that such 'smart' buildings are invaluable for landlords in automating building management systems, for employers in improving workplace management and the work environment, and for tenants in increasing footfall to their unit. The data collected can be put to a myriad of uses, including increased efficiency and reduced maintenance costs. But, as with all big data collection, the use, storage and processing of personal information, raises a number of specific privacy, security and contractual issues for all involved.

In particular, employers need to consider the impact of workplace surveillance legislation and regulations when collecting data relating to their employees and ensure that they have appropriate arrangements in place to notify their employees in advance of any potential surveillance.

Landlords, tenants, operators and managers must all be cognisant of their legal obligations and responsibilities in complying with applicable privacy laws when collecting personal data.

Owners, landlords and tenants of smart buildings would be wise to closely consider their data and security protocols and the types of information and data they may be collecting through the use of advanced systems in buildings and how best to protect users from exposure of personal information. Cybersecurity and data protection are not just issues for the IT department, they are business critical issues which must be addressed at the highest level. Advanced data encryption, tested security protocols, privacy and security by design processes, compliant data policies and procedures and a heightened awareness of these issues and risks will ensure a long reign to the smart buildings of our future.

For details, please click [here](#).

Source: DLA Piper publications, May 2017

Hong Kong

SFC consults on new guidelines on online distribution and advisory platforms

The Securities and Futures Commission (SFC) has launched a three-month consultation on proposed guidelines on online distribution and advisory platforms. The proposed guidelines will apply to all SFC-licensed or registered persons when conducting their regulated activities in providing order execution, distribution and advisory services in respect of investment products via online platforms.

The proposed guidelines are intended to provide tailored guidance to the industry on the design and operation of online platforms and clarify how the suitability requirement would operate in the online environment.

The proposed guidelines clarify that the posting of factual, fair and balanced materials in relation to non-complex products on online platforms should not in itself trigger the suitability requirement. The suitability requirement will apply where investors can be subject to greater influence and need more protection, such as where robo-advice is provided.

Under the proposed guidelines, the suitability requirement will apply to the sale of complex products on online platforms on the basis that retail investors may have difficulty in fully understanding the nature and risks associated with a complex product based only on the information posted on an online platform. 'Complex products' refers to products whose terms, features and risks are not reasonably likely to be understood by retail investors because of their structure and which are difficult to value. Under the proposed guidelines,

online platforms are required to ensure that any transaction in a complex product (other than derivative products traded on an exchange) is suitable for the client in all circumstances, regardless of whether there has been any solicitation or recommendation.

The proposed guidelines also contain specific guidance on the provision of automated or robo-advice on an online platform.

Comments on the consultation are due by 4 August 2017.

For details, please click [here](#).

Source: Clifford Chance Alert, May 2017

Prudential measures for property mortgage loans

The Hong Kong Monetary Authority (HKMA) on 19 May 2017 issued guidelines to banks on a new round of prudential measures for property mortgage loans to strengthen banks' risk management and resilience. The measures are as follows:

- first: raising the risk-weight floor from 15% by 10 percentage points to 25% for new residential mortgage loans granted after 19 May 2017 by banks using Internal Ratings-Based Approach to calculate capital charges for credit risk;
- second: lowering the applicable loan-to-value ratio (LTV) cap by 10 percentage points for property mortgage loans extended to borrowers with one or more pre-existing mortgages, in addition to observing the existing requirement of lowering the applicable debt servicing ratio (DSR) limit by 10 percentage points; and
- third: lowering the applicable DSR limit by 10 percentage points for property mortgage loans extended to borrowers whose income is mainly derived from outside of Hong Kong, in addition to observing the existing requirement of lowering the applicable LTV cap by 10 percentage points.

The three measures took immediate effect. However, mortgage applications for transactions with provisional sale and purchase agreements signed on or before 19 May 2017 will not be affected for the second and third measure.

For details, please click [here](#).

Source: Clifford Chance Alert, May 2017

Singapore

MOF announces measures relating to residential property

The Ministry of National Development, Ministry of Finance (MOF) and Monetary Authority of Singapore (MAS) have announced the following measures to promote a sustainable residential property market and financial prudence among households:

- additional buyer's stamp duties (ABSD) and LTV limits – the government will retain the current ABSD rates and LTV limits to encourage households to further build up their financial buffers to protect against future interest rate increases or any losses in income;
- seller's stamp duties (SSD) – the government will revise the SSD rates applicable to all residential property purchased on and after 11 March 2017 as follows:
 - SSD to be imposed on holding periods of up to three years, down from the current four years; and
 - SSD to be lowered by four percentage points for each tier. The new SSD rates will range from 4% (for properties sold in the third year) to 12% (for those sold within the first year);
- total debt servicing ratio (TDSR) – the MAS will no longer apply the TDSR framework to mortgage equity withdrawal loans with LTV ratios of 50% and below; and

- additional conveyance duty – a new stamp duty, the additional conveyance duty (ACD) will be levied on the purchase and sale of residential real estate in property-holding entities with effect from 11 March 2017. The new tax is aimed at entities that hold at least 50% of their total tangible assets in Singapore residential properties. The ACD does not affect ordinary share transactions in listed companies by retail investors.

MAS has revised its guidelines and updated its notices in response to the measures listed above.

For details, please click [here](#).

Source: *Clifford Chance Alert, March 2017*

MAS consults on proposed amendments to Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005

MAS has launched a public consultation on proposed amendments to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005. The amendments are mainly intended to support the implementation of the legislative amendments under the Securities and Futures (Amendment) Act 2017, which was passed by the Parliament on 9 January 2017 and when the relevant provisions are operative.

The proposed amendments to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 (the CIS Regulations) include:

- listing the additional factors that MAS may take into account when recognising a foreign fund for offer to retail investors; and
- specifying the conditions for exempting physical asset funds (i.e. funds that do not invest in 'capital markets products') that are offered to accredited investors from fund authorisation and prospectus registration requirements.

In addition, MAS also seeks comments on other proposed changes to the CIS Regulations pertaining to collective investment schemes (that did not arise from the Securities and Futures (Amendment) Act 2017), in order to improve operational efficiency. These amendments are intended to:

- allow real estate investment trusts (REITs) to publish pro forma financial information; and
- allow restricted schemes in the form of REITs to have managers who are licensed or regulated to carry out REIT management activities in their principal place of business.

For details, please click [here](#).

Source: Clifford Chance Alert, March 2017

MAS consults on proposed framework for Singapore Variable Capital Companies

Mr. Lawrence Wong, Minister for National Development and Second Minister for Finance of Singapore, announced at IMAS' 20th Anniversary Conference that MAS had launched a public consultation on a new corporate structure called the Singapore Variable Capital Company (S-VACC), essentially a Singapore-domiciled open-ended investment company. According to Mr. Wong, "the S-VACC will complement Singapore's existing corporate structures as one that is tailored for investment funds," and "will allow asset managers to further consolidate their operations in Singapore by domiciling more of their funds in Singapore alongside their fund management activities".

Key features of the proposed S-VACC include:

General

- S-VACCs will be governed by a new S-VACC Act to be administered by ACRA;
- the S-VACC structure can only be used as a vehicle for collective investment schemes (CIS) and can be structured as an open-ended or closed-ended fund;
- sub-funds with segregated assets and liabilities can be created within the S-VACC. Incorporation will be required only for the S-VACC while sub-funds, each without a legal personality, will be constituted by registration with ACRA which in turn will provide each sub-fund with a unique identification number;

- S-VACCs will be allowed to issue debentures, including debentures relating to specific sub-funds; and
- foreign structures that are equivalent to an S-VACC will be permitted to re-domicile as an S-VACC in Singapore.

For investors

- an S-VACC will be allowed to redeem shares and pay dividends using its capital provided that shares are issued and redeemed at their net asset value; and
- an S-VACC will not be required to disclose its register of shareholders to the public. However, it must make the register available to supervisory and law enforcement agencies where necessary.

For details, please click [here](#).

Source: Sidley Austin, April 2017

Thailand

New property tax regime within sight: what should we expect?

On 31 March 2017, the land and buildings tax bill (Draft Bill) was approved in principle by the National Legislative Assembly (NLA). The Draft Bill, which was prepared by the Council of State and approved by the Cabinet, is currently under the consideration of the responsible committee and will later be forwarded to the main assembly for final consideration. The Draft Bill is to replace existing house and land tax, as well as the local development tax under the Household and Land Tax Act B.E. 2475 and Local Land Development Tax Act B.E. 2508, which are currently collected by the local authorities and have been criticised as being regressive and outdated. The Draft Bill is intended to decrease income disparity among taxpayers, improve and encourage land utilization, increase effectiveness in tax collection and increase public revenue.

A significant change is that the new land and buildings tax collected under the Draft Bill will be calculated on a different basis from current house and land tax. The new land and buildings tax base is to be calculated on government appraised value, in contrast with the current house and land tax base which is calculated on the yearly rent.

While the existing house and land tax has a single imposed tax rate of 12.5%, it is expected, according to the Draft Bill, that the new land and buildings tax rate will be different depending on the type of property usage as follows:

Property usage	Ceiling rate (%)	Actual tax
Agricultural use	0.2%	<ul style="list-style-type: none"> Property is exempted from tax if its value is THB 50 million or less. Actual tax rate would be 0.05% for over THB 50 million.
Residential use	0.5%	<ul style="list-style-type: none"> First residential home, as shown in house registration certificate, is exempted from tax if the value is THB 50 million or less. First residential home would be taxed at the rate of 0.05% if over THB 50 million. For the second residential home of THB 50 million or less, tax rate would be 0.03%. The rate is 0.05% if over THB 50 million.
Use for other purposes, including commercial use	2.0%	<ul style="list-style-type: none"> The actual tax rates would be between 0.03% and up to 1.5% of the value of the property.
Unused or left vacant	5.0%	<ul style="list-style-type: none"> The rate of tax will start at 2% of the value of the property and rise by 0.5% every three years. The maximum tax rate shall not exceed 5% of the value of the property.

Following the consideration by the responsible committee, the Draft Bill would then be further deliberated by the NLA for approximately 2 to 3 months. After which, provided there are no further major comments or revisions, it should be announced in the Royal Gazette within this year. However, enforcement of the Draft Bill is expected to occur one year from the date of announcement.

As the new property tax regime looms, land and property owners, developers, property managers and family businesses should start early assessments of their tax exposures and commence restructuring their asset portfolios.

For details, please click [here](#).

Source: Baker McKenzie, April 2017

USA

US senators raise questions about CFIUS and real estate transactions

On 16 May 2017, several US senators formally requested that the US Government Accountability Office (GAO) undertake a study to assess how the Committee on Foreign Investment In the United States (CFIUS) evaluates real estate transactions in the US. The senators have requested identification of how CFIUS views the following issues:

- national security risks with respect to real estate transactions and, in particular, whether a real estate transaction would provide a foreign buyer physical or cyber access to US government personnel and systems;
- the use of complex transaction structures and opaque beneficial ownership chains by foreign investors acquiring US real estate (with a particular focus on structures used by certain Chinese investors). Following the senators' requests, a bill was introduced to require the US General Services Administration to collect beneficial ownership information as part of the leasing process for high-security leased space; and
- the extent to which certain minority transactions by foreign investors create national security risks and how such risks are managed.

If accepted, the outcome of the GAO study will be of interest to non-US real estate fund managers whose funds have acquired or are seeking to acquire US real estate assets. Investors should carefully consider in advance of such transactions how CFIUS may be relevant in order to mitigate risks for deal feasibility, timing, cost and reputational hazard.

For details, please click [here](#).

Source: Kirkland & Ellis, June 2017