

August 2018

PwC Regulatory Update



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Legislative/Government developments

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

The fifth round of public hearings was held in Melbourne from 6 August 2018 to 17 August 2018 and focused on superannuation. The sixth round of hearings, covering insurance, will be held in Melbourne from 10 September to Friday 21 September. The hearings will consider the following issues in relation to set out case studies:

- The sale and design of life insurance and general insurance products;
- The handling of claims under life insurance and general insurance policies;
- The administration of life insurance and superannuation trustees; and
- The appropriateness of the present regulatory regime for the insurance industry.

Source: [Royal Commission](#)

The Government consulted on the additional integrity rules that will apply to stapled entities

The Government released for public consultation, [draft legislation](#) on the additional integrity rules, which will apply to stapled entities accessing the infrastructure concession and/or transitional arrangements. The additional rules include:

- Extending current integrity rules that apply to Managed Investment Trusts (MITs) to ensure that all staples eligible for the transition rules or the infrastructure concession are required to adhere with the existing non arm's length income rule; and

- The introduction of statutory caps on the amount of cross-staple rent that is able to access the concessional 15% rate of withholding tax for economic infrastructure projects during the transition or concession period.

Source: [Treasury](#)

Legislation to combat illegal phoenix activity

The Government has released [draft legislation](#), *Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2018*, and is seeking feedback on the below reforms to:

- Introduce new phoenix offences that target those conducting as well as those facilitating illegal phoenix transactions;
- Prevent directors from backdating their resignations to evade personal liability;
- Prevent a sole director from resigning and leaving a company as an empty corporate shell with no director;
- Make directors personally liable for their company's GST and related liabilities; and
- Expand the power of the Australian Taxation Office's to retain refunds where there are outstanding tax lodgments.

Submissions are due by 27 September 2018

Source: [Treasury](#)

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Legislative/Government developments

Other key updates

The Government sought feedback on [draft legislation](#), *Treasury Laws Amendment (Consumer Data Right) Bill 2018*, which proposed to implement the Consumer Data Right consistent with the recommendations of the [Review into Open Banking in Australia](#)

See [media release](#)

The *Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Bill 2018* was passed in both houses. Under the legislation a 'bright line' test will determine a company's eligibility for the lower company tax rate of 27.5% from 2017-18. Companies that receive more than 80% of their income in passive forms will not be eligible for the lower company tax rate.

The Government has provided [ASIC](#) a further \$70.1 million to ensure the regulator has adequate resources and power to focus its strategies on:

- Proactive enforcement and onsite supervisory approaches; and
- New regulatory activities and, investigations to combat misconduct in corporations and in the financial services industry.

The Government has [legislated](#) that a second Deputy Chair be created at APRA, to strengthen the regulators capabilities to effectually carry out its mandate.

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What have the regulators been up to?

APRA

Australian Prudential
Regulation Authority

ASIC

Australian Securities and
Investments Commission

RBA

Reserve Bank of Australia

APRA proposed changes to improve the transparency, comparability and flexibility of the Australian ADI capital framework

APRA has released a [discussion paper](#) and is seeking industry feedback on potential approaches to adjust the capital framework for authorised deposit-taking institutions (ADIs) to ensure capital ratios are more transparent, comparable and flexible. The approaches proposed were to:

- Continue using existing definitions of capital and risk-weighted assets, but APRA would develop a methodology enabling them to improve the credibility and robustness of internationally comparable capital ratio disclosures; or
- Changing the method ADIs calculate capital ratios to instead use more internationally harmonised definitions of capital and risk-weighted assets.

Submissions are due by 2 November 2018.

See [media release](#)

Other updates

APRA has published a [letter](#) to all general insurers and level 2 insurance groups on the subject of reporting large exposures on reporting forms, GRF 117.0 / GRF 117.0(G). The free text fields in these forms have resulted in different insurers using different wording, which has limited the comparability of submissions. In response, APRA has developed lists of standard wording and is now advising insurers to match the exact spelling specified under these lists where applicable.

APRA has released [guidelines](#) on the *Banking Act 1959*. The Act places restrictions on financial businesses using certain words and expressions relating to banking. Financial businesses are required to have prior approval from APRA to use the words restricted under the Act. Non-financial businesses are similarly required to obtain APRA's approval before using a restricted word or expression in their company name.

2

What have the regulators been up to?

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Recent reports

ASIC has released a [report](#), *Review of reverse mortgage lending in Australia*, following their review of reverse mortgage lending from 2013-17. Key findings included:

- Reverse mortgages have helped borrowers achieve their immediate financial objectives.
- The 'no negative equity guarantee' (NNEG) has reduced the risk of negative equity.
- Some borrowers may not recognise the impact of equity erosion on their possible future needs.
- Borrowers still face a risk of being left with insufficient equity in their homes to pay for their future financial needs.
- The market for reverse mortgages is highly concentrated.

The report noted that further action is required for:

- Lenders to improve their approach to meeting the responsible lending obligations and to address consumer risks when they make decisions about potential reverse mortgages; and
- Those who give guidance to consumers about reverse mortgage to improve their ability to help clients understand the choices available.

ASIC has released a [report](#), *The sale of direct life insurance*, following their review of how life insurance products in the direct channel are designed and sold, and whether this may increase the likelihood of policies collapsing or consumers having their claims denied. Key findings included:

- Outcomes are often poor for consumers buying direct life insurance.
- Firms engaged in sales conduct that is likely to result in consumers products they can't afford.
- Industry conduct has improved over the review period.
- Training and scripts failed to set professional standards for sales conduct.
- Quality assurance frameworks did not always detect and address poor sales conduct.

Some of ASIC's recommendations included:

- Monitoring and publication of consumer outcomes;
- Remediation and enforcement action;
- Restricting outbound sales calls for life and funeral insurance; and
- Monitoring consumer outcomes for accidental death insurance.

The Financial Services Council (FSC) [commended](#) ASIC's review of direct life insurance sales.

2

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ASIC consults on the proposed establishment of GFIN

The Financial Conduct Authority (FCA) has in collaboration with 11 financial regulators and related organisations, including ASIC, released for public consultation, a [paper](#) on the proposed establishment of the Global Financial Innovation Network (GFIN).

The paper outlines the three main functions of the GFIN to:

- Act as a network of regulators to collaborate and share experience of innovation in respective markets, including emerging technologies and business models;
- Provide a forum for joint policy work and discussions; and
- Provide firms with an environment in which to trial cross-border solutions.

Submissions are due by 14 October 2018.

Other key updates

ASIC has released a [report](#), *Improved protections for deposit accounts with third-party access*, following a review by ASIC of deposit accounts operated by a third-party on behalf of the customer. Specifically, the review looked at the compliance measures and controls banks should have in place to deal with the risk of fraud and other risks associated with third party access to customers' money in deposit accounts.

All ASIC-regulated organisations have been urged to submit information on their business operations to the regulator via the new [ASIC Regulatory Portal](#), as part of new funding arrangements implemented in 2017. Most small proprietary companies and registered charities are not required to submit data.

RBA renews Bilateral Local Currency swap agreement with Bank Indonesia

The RBA has extended its Bilateral Local Currency swap agreement with the Bank Indonesia, which was due to expire in December 2018. The agreement allows for the exchange of local currencies between the two central banks of up to A\$10 billion or IDR 100 trillion. The agreement was implemented to encourage trade and investment between Australia and Indonesia and, support the existing financial cooperation between the two countries.

See [media release](#)

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Industry bodies

ABA

Australian Banking
Association

APN

Australian Payments Network

Combined Industry Forum releases report on improving mortgage broking industry for customers

The Combined Industry Forum has released an [interim report](#), *Working towards a better mortgage broking industry for customers*, highlighting the industry's efforts to deliver improved customer outcomes, competition and standards of conduct and culture in mortgage broking. The changes implemented demonstrate the industry's response to findings raised in ASIC's review of Mortgage Broker Remuneration and the Australian Banking Association's (ABA) Sedgwick review, which resulted in customers borrowing more than required under the previous investment structure.

See [media release](#)

APN consults on CNP Fraud Mitigation Framework

The Australian Payments Network has announced an industry consultation on the card-not-present (CNP) Fraud Mitigation [framework](#), which has been designed in an effort to combat the global problem of online fraud. Key elements of the framework include:

- Targets for card issuers to reduce CNP fraud across their card base;
- Requiring merchants to use multi-factor authentication in case they record fraud above an agreed industry benchmark, except for exempt (low-risk) transactions;
- Increasing the usage of tokenisation and compliance boosted with card-security standards (PCI DSS); and
- Encouraging the use of biometrics boosted in authenticating CNP transaction.

Submissions are due by 28 September 2018.

See [media release](#)

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Overseas developments – Global

FSB: Recent announcements

The Financial Stability Board (FSB) has launched a thematic [peer review](#) on implementation of the Legal Entity Identifier (LEI) and is seeking feedback on:

- The use of LEI by various private sectors and the benefits derived from such use;
- Costs of acquiring and maintaining LEIs together with challenges faced in its implementation by market participants;
- Ways to promote adoption of the LEI; and
- Awareness and adoption of the LEI in their jurisdiction.

Submissions are due by 21 September 2018.

The FSB, the Basel Committee on Banking Supervision (BCBS), the Committee on Payments and Market Infrastructures (CPMI) and the International Organisation of Securities Commissions (IOSCO) have released a consultation paper and sought feedback on the impact of G20 financial regulatory reforms on incentives to centrally clear over-the-counter (OTC) derivatives.

Source: [FSB](#)

IOSCO: Recent announcements

The IOSCO Board has released a report, *Mechanisms used by trading venues to manage extreme volatility and preserve orderly trading*, detailing:

- The mechanisms used by trading venues to manage volatile events;
- The process for establishing and monitoring the thresholds and reference prices used in these mechanisms;
- How and what information on these mechanisms is made available to regulatory authorities, market participants and the public; and
- Level of communication between trading venues both inside and outside their home jurisdiction.

Source: [IOSCO](#)

IOSCO: Recent announcements

The CPMI and IOSCO has released a consultation paper, *Governance arrangements for critical OTC derivatives data elements (CDE) (other than UTI and UPI)*, seeking feedback on:

- The key criteria for the CDE maintenance and governance;
- The different areas of CDE governance and governance functions;
- Proposed allocation of the governance functions to different bodies;
- The governance arrangements for the execution of maintenance functions by a Maintenance Body;
- Factors relevant for the identification of the International Governance Body; and
- Their approach to CDE implementation.

Submissions are due by 27 September 2018.

Source: [IOSCO](#)

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Overseas developments – Europe

EBA: Recent consultations

The European Banking Authority (EBA) has released three consultation papers, seeking feedback on proposed changes to the Implementing Technical Standards (ITS) on supervisory reporting for the reporting framework 2.9. This is to keep in line with the regulatory framework changes and the Supervisory Authorities' risk assessments. The EBA will also prepare users for its new modular release.

The three consultation papers cover:

- Common reporting framework (COREP) - securitisation. Submissions are due by 27 November 2018.
- Financial reporting framework (FINREP) - non-performing and forborne exposures reporting, P&L and IFRS16; Submissions are due by 27 November 2018.
- COREP - Liquidity coverage requirement (LCR) as regards review based on the coming new LCR delegated act. Submissions are due by 26 October 2018.

Source: [EBA](#)

ESMA: Recent announcement

The European Securities and Markets Authority (ESMA) has further extended the prohibition of the marketing, distribution or sale of binary options to retail clients for three months to 2 October 2018 from 2 July 2018.

Source: [ESMA](#)

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Overseas developments – UK

PRA: Recent announcements

The Prudential Regulation Authority (PRA) has released supervisory disclosures under the Solvency II Directive, to foster transparency and accountability between supervisory authorities. The disclosures include:

- Aggregate statistical data on key aspects of the application of the prudential framework;
- A table covering the manner of exercise of the options provided for in the Solvency II Directive;
- Links to the insurance regulations applicable in the United Kingdom; and
- Links to the PRA's supervisory approach.

Source: [PRA](#)

PRA: Recent announcements

The PRA has updated its Statement of Policy to reflect the policy changes on establishment of the Enforcement Decision Making Committee (EDMC). The policy statement sets out:

- Final procedures for the EDMC;
- Final amendments to the PRA's approach to enforcement; and
- Changes to the procedure statements for supervision of financial market infrastructures.

Source: [PRA](#)

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Overseas developments – US

CFTC: Recent announcements

The U.S. Commodity Futures Trading Commission (CFTC) has issued [final rules](#) to simplify Chief Compliance Officer duties and annual reporting requirements for futures commission merchants (FCM), swap dealers and major swap participants.

The CFTC has issued final rules exempting swaps entered into by bank holding companies, savings, and loan holding companies with consolidated assets of \$10 billion or less. The CFTC's aim is to reduce the unnecessary regulatory burdens that are placed on them.

Furthermore, the CFTC is seeking feedback on its proposed rules to simplify policies and procedures for foreign clearing organisations to obtain a derivatives clearing organisation (DCO) registration exemption.

The comment period ends 60 days after the proposal is published in the Federal Register.

Source: [CFTC](#)

OCC: Recent announcements

The Office of the Comptroller of the Currency (OCC) has released an Advance Notice of Proposed Rulemaking (ANPR) and is seeking feedback on modernising the regulatory framework implementing the *Community Reinvestment Act* (CRA). Key proposals include:

- Increasing lending and services to people and in areas that need it most;
- Clarifying and expanding the types of activities eligible for CRA consideration;
- Revisiting how assessment areas are defined and used;
- Establishing metric-based thresholds for CRA ratings;
- Improving the timeliness of regulatory decisions related to CRA; and
- Reducing the cost and burden related to evaluating performance under the CRA.

The comment period ends 75 days after the proposal is published in the Federal Register.

Source: [OCC](#)

SEC: Recent announcements

The Securities and Exchange Commission has issued final amendments, simplifying and updating information disclosure to investors with the aim of reducing compliance burdens for companies.

One of the main amendments include eliminating the redundant and overlapping requirements that arise due to the similarities in GAAP and IFRS disclosures. Additionally, the commission has also removed several outdated requirements, as they have become obsolete from regulatory and technological changes.

Source: [SEC](#)

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Overseas developments – Asia

HK: Recent news

The Securities and Futures Commission (SFC) has signed an agreement with the China Securities Regulatory Commission (CSRC) for the implementation of an investor identification regime for northbound trading under Mainland-Hong Kong Stock Connect on 17 September 2018.

All trades are settled under the Bond Connect on a Delivery versus Payment settlement basis.

The SFC is seeking feedback on proposed guidelines to address risks in securities margin financing (SMF). Key proposals include:

- Providing qualitative guidance and quantitative benchmarks for margin lending policies to SMF brokers;
- Requiring prudent controls in place by SMF brokers to prevent excessive leverage; and
- Requiring brokers to set and enforce specific policies for margin calls and conduct stress tests at least monthly.

Submissions are due by 18 October 2018.

Source: [SFC](#)

Singapore: Recent news

The Monetary Authority of Singapore (MAS) has accepted the recommendations made by the Corporate Governance Council and revised the Code of Corporate Governance in the following aspects:

- Amendment of the SGX Listing Rules to clarify the expectations under the comply-or-explain regime;
- Changes in relation to board renewal, strengthening director independence and enhancement of board diversity;
- Disclosures of the relationship between remuneration and value creation; and
- Establishment of independent Corporate Governance Advisory Committee (CGAC) to advocate good corporate governance practices, monitor companies' implementation of the Code and provide support to companies by adopting good practices and areas for improvement.

The revised Code will be effective from 1 January 2019.

Source: [MAS](#)

Singapore: Recent news

The MAS and Dubai Financial Services Authority have signed a Memorandum of Understanding to help FinTech companies to expand into each other's markets by collaborating on joint research projects, information exchange, mutual consultations and expertise sharing.

Source: [MAS](#)

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PwC publications

PwC AUS: The new face of economic crime

PwC Australia has released a report on the 2018 Global Economic Crime & Fraud Survey. The survey data was sourced from over 7,200 respondents across 123 territories.

The report explores the changing nature of economic crime in Australia and provides guidance on what organisations can do to respond to the shift.

See [report](#)

PwC US: Imminent accounting changes for long-duration contracts of insurers

The Financial Accounting Standards Board (FASB) has issued Accounting Standards Update 2018-12, Targeted Improvements to the Accounting for Long-Duration Contracts (ASU). It includes revising key elements of the measurement models for traditional long-duration and limited-payment insurance liabilities, as well as the recognition and amortization model for deferred acquisition costs for most long-duration contracts.

PwC has published a report summarising the new guidance in relation to imminent accounting changes for long-duration contracts of insurers.

See [publication](#)

PwC US: US GAAP long duration targeted improvement survey 2018

On 15 August 2018, the FASB issued the targeted improvements to the US GAAP accounting for long duration contracts.

PwC has surveyed 24 life companies in anticipation of the guidance and published a report summarising the survey results of how insurance companies are planning to meet and implement the new requirements across their business operations.

See [publication](#)

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PwC publications

PwC US: Treasury's fourth fintech regulation report

The Treasury Department has published its fourth and final report on financial regulation, covering nonbank financials, FinTech and innovation.

PwC US has released a first take highlighting the five key points from the regulation report.

See [publication](#)

PwC US: Digital intelligence - Key thoughts on the Treasury's fintech report

PwC US has released a report, *Digital intelligence - Key thoughts on the Treasury's fintech report*, outlining the key takeaways on the top digital developments influencing financial services:

- OCC with support of Treasury moves forward with FinTech Charter;
- Specific recommendations to address consumer access to financial data;
- Recommendations for US regulatory sandboxes that would close the gap with other regions; and
- Treasury taking a stance on Madden vs Midland.

See [publication](#)

PwC HK: Manager-in-charge compliance

The Manager-In-Charge (MIC) regime, which was effective from October 2017, requires the Licensed Corporations (LCs) to appoint MICs across eight core functions, and submit the details of each MIC, the governance structure and their reporting lines to the SFC.

PwC has released a report discussing the responsibilities of each MIC, the factors that should be considered in assessing MIC compliance and how PwC can help in complying with the MIC requirement.

See [publication](#)

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