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PwC Regulatory Update

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1 Legislative/Government developments

The Government seeks consultation on various bills and regulations

The Government consulted on an exposure draft of the *Treasury Laws Amendment (Mutual Entities) Bill 2018* and explanatory materials. The Bill introduces a definition of a mutual entity and removes the uncertainty for transferring financial institutions and friendly societies around the demutualisation provisions in part 5 of Schedule 4 the *Corporations Act 2001*.

See media release

The Government consulted on an exposure draft Bill and Regulations, relating to the proposed miscellaneous amendments to the Treasury portfolio laws. The amendments seek to ensure the law operates as intended by correcting technical or drafting defects, removing anomalies and addressing unintended outcomes.

See media release

The Government has released for public consultation the third tranche of the *Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill 2018* and related explanatory materials. The exposure draft includes:

- The independence requirement for the depositary – whose responsibility it is to safeguard the fund's assets and oversee some of the activities of the fund;
- Arrangements and reconstructions, receivership and winding up;
- Deregistration of sub-funds and CCIVs; and
- Takeovers, compulsory acquisitions and buy-outs, and disclosure requirements.

The Government is consulting on exposure draft regulations, *Corporations Amendment (Design and Distribution Obligations (DDO) and Product Intervention Powers) Regulations 2018* to support the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 and an explanatory statement. The regulations support the Government's proposed reforms by:

- Applying the regime to a range of financial products not covered by the Bill;
- Ensuring that the regime operates as intended when applying to distributors of financial products; and
- Altering the products that may be subject to a product intervention order by ASIC.

Submissions are due by 13 November 2018.

See media release

Recent consultation

The Australian and New Zealand Governments are jointly consulting on e-Invoicing governance arrangements as part of a common approach to progress e-Invoicing and have released a Discussion Paper, *Early thinking: Operational governance for trans-Tasman electronic invoicing (e-Invoicing),* for public consultation. The paper seeks feedback from interested parties on early thinking about operational governance options for trans-Tasman e-Invoicing arrangements.

Source: Treasury

1 Legislative/Government developments

The Government's Australian Financial Complaints Authority (AFCA) opens for business

The Australian Financial Complaints Authority (AFCA) will begin receiving complaints on 1 November 2018. Consumers and small businesses will have increased access to redress as AFCA will have significantly higher monetary limits and compensation caps than were available under the Financial Ombudsman Service (FOS) and Credit and Investments Ombudsman (CIO).

- AFCA will be able to hear consumer complaints where the value of the dispute is less than $1 million and will be able to award compensation up to $500,000;
- In the case of small business credit complaints, a small business will be able to have their complaint heard where it relates to a credit facility of less than $5 million and will be eligible for compensation up to $1 million;
- In the case of a small business primary production dispute, AFCA will be able to award compensation up to $2 million; and
- AFCA will retain an unlimited monetary jurisdiction for superannuation complaints.

Source: Treasury

Government addresses issues affecting retirees

The Government has announced new technical changes to address some minor issues affecting retirees, including:

- Amending the law to maintain the capped defined benefit treatment of market linked pensions under the transfer balance cap where they have been rolled over as a result of a successor fund transfer;
- Amending the definition of the life-expectancy period for innovative income streams to account properly for the number of days in a leap year;
- Moving to provide transfer balance cap credits and debits for innovative income stream products that are paid-off in instalments;
- Amending the valuation of defined benefit pensions under the transfer balance cap to reflect when pensions are permanently reduced following an initial higher payment; and
- Increasing the threshold superannuation balance for offering a Comprehensive Income Product for Retirement from $50,000 to $100,000 and delaying the requirement for funds to offer these products to 1 July 2022.

Source: Treasury

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What have the regulators been up to?

APRA
Australian Prudential Regulation Authority

ASIC
Australian Securities and Investments Commission

AUSTRAC
Australian Transaction Reports and Analysis Centre

RBA
Reserve Bank of Australia

APRA outlines BEAR expectations

APRA has released an information paper, *Implementing the Banking Executive Accountability Regime*, to assist authorised deposit-taking institutions (ADIs) to meet their obligations under the Banking Executive Accountability Regime (BEAR). The paper clarifies APRA's expectations of how an ADI can effectively implement the accountability regime on matters including:

- Identifying and registering accountable persons;
- Creating and submitting an accountability statement for each accountable person and an accountability map for the ADI;
- Establishing a remuneration policy requiring accountable persons' variable remuneration portion be deferred for a minimum of four years; and
- Notifying APRA of any accountability-related changes or breaches of accountability obligations.

The paper also includes questions and answers based on some of the issues commonly raised by ADIs during implementation.

See media release

APRA and ASIC empower consumers with new reporting standard on life insurance claims

The release of the Life Insurance Reporting Standard, *LRS 750.0 Claims and Disputes* will enhance the consistency and quality of life insurance data published through a ground-breaking program established last year by ASIC and APRA. Under the standard, it is mandatory for life insurers to report data on claims and disputes. The first public release of data collected under LRS 750.00, featuring insurer-level data, is due in early 2019, with ongoing publications to be issued every six months.

See media release

ASIC: Updates regulatory guides

ASIC has released an updated regulatory guide, *RG 261 Crowd-sourced funding: Guide for companies*, following the extension of the CSF framework to eligible proprietary companies, starting 19 October 2018. The guide will assist these companies to adhere to additional reporting requirements and accountability standards to be followed by companies while raising funds through the CSF framework.

Regulatory guide, *RG 262 Crowd-sourced funding: Guide for intermediaries,* has been released to support intermediaries seeking to provide a crowd-sourced funding (CSF) service to public and eligible proprietary companies by explaining its obligations as platform operators for CSF offers and investments.

2 What have the regulators been up to?

Other key updates

ASIC has released a new legislative instrument, *ASIC Corporations (Short Selling) Instrument 2018/745*, which provides various relief and modifications to the laws relating to short selling. The changes follow a public consultation under CP 299 *Short selling: Naked short selling relief, position reporting amendments and sunsetting class orders*. The new relief and modifications include:

- Legislative relief for ETF market makers;
- Deferred settlement trading;
- Initial public offering (IPO) sell downs; and
- An option for global firms to calculate their short positions as at a global end calendar time.

ASIC has also updated its existing guidance in Regulatory Guide 196, *Short selling*, to reflect the new legislative instrument.

Another a new legislative instrument released by ASIC is; *ASIC Corporations (Professional Standards—Transitional) Instrument 2018/894, which relates* to the professional standards reforms for financial advisers that were announced on 1 August 2018. The instrument makes changes to the reporting dates for several disclosure obligations in the transition to the new financial adviser professional standards reform. The instrument also makes minor technical amendments to address unintended consequences to ensure that the new education and training standards apply in a consistent way to individuals at the intended time.

The US Commodity Futures Trading Commission (CFTC) and ASIC have signed an arrangement to cooperate and support innovation with respect to financial technology ("FinTech"), and foster the use of technology for more effective and efficient regulation and oversight of financial markets and participants ("RegTech"). Under the arrangement the authorities expressed their willingness to collaborate in the interests of fulfilling their regulatory mandates and advancing their understanding and application of FinTech and RegTech in the United States and Australia.

ASIC has signed the Cooperation Agreement with The Luxembourg Commission de Surveillance du Secteur Financier (CSSF). The purpose of the agreement is to provide a framework for cooperation between the authorities with respect to promoting innovation and financial services. The agreement outlines how the authorities plan to share and use information to promote innovation in their respective markets.

ASIC has announced a review of industry compliance with Fee Disclosure Statements (FDS) and Renewal Notices requirements in the financial advice sector. ASIC will examine to what extent advice licensees:

- Issue FDSs and Renewal Notices to customers;
- Issue FDSs and Renewal Notices within the time frames set out by the law;
- Include the required content in the FDSs;
- Ensure the content of FDSs is accurate; and
- Have appropriate procedures in place to ensure fees for ongoing services are discontinued when the arrangements are terminated as a result of licensees failing to comply with the FDS or Renewal Notice requirements.

2 What have the regulators been up to?

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AUSTRAC releases draft amendments to Chapter 11 of the AML/CTF Rules

AUSTRAC has released draft amendments to Chapter 11 of the AML/CTF Rules for a four week public consultation period. Chapter 11 specifies the reporting and lodgement period applicable to the compliance reporting obligations under section 47 of the Anti-Money Laundering and Counter-Terrorism Financing Act (AML/CTF Act). Under the draft amendments:

- Reporting entities who ceased in 2018 and did not recommence to provide a designated service will be exempt from the requirement to submit a compliance report.

The consultation period is open from 25 October to 22 November 2018.

See media release

The Reserve Bank of Australia (RBA) consults on the New Payments Platform (NPP)

The RBA, in consultation with the Australian Competition and Consumer Commission (ACCC), is seeking views from interested stakeholders on issues relating to the functionality and access arrangements for the NPP, particularly whether the various ways of accessing the NPP, and their associated technical and other eligibility requirements, are suitable for different business models, or whether other forms of access or eligibility requirements may be justified. The ACCC will provide assistance in relation to access issues.

Submissions are due by 30 November 2018.

See media release

3 Industry bodies

ABA
Australian Banking Association

AFMA
Australian Financial Markets Association

Australian banks respond to the Royal Commission

Australia banks are amending the ABA Banking Code of Practice in an effort to mitigate against continuing to charge deceased customers.. The banks have adopted several key changes, including;

- Proactively contacting customers to confirm what advice is required and only charge fees for the services provided.
- Proactively identifying fees for products and services that can no longer be provided in the circumstances of a customer's death.
- Seeking new legislative changes to the Future of Financial Advice (FOFA) reforms to remove all legislative provisions that allow grandfathered payments and trail commissions in financial advice.

See media release

AFMA works with Government on OECD Review into Offshore Banking Unit regime

The Australian Financial Markets Association (AFMA) has committed to work with the Government to ensure that the Offshore Banking Unit (OBU) regime aligns with the Organisation for Economic Co-operation and Development (OECD) standards and can continue to support financial services exports, along with the economic benefits and job opportunities this brings to Australia. The changes in the OBU regime were in response to the concerns raised by the OECD's Forum on Harmful Tax Practices.

The OBU regime covers an expansive range of financial services that are internationally mobile with users of the regime including high tech companies that bring significant employment, income and taxation for Australia.

See media release

4 Overseas developments – Global

BIS: Recent consultations

The Basel Committee on Banking Supervision (BCBS) has issued a consultation paper on the leverage ratio treatment of client cleared derivatives in relation to:

- Whether evidence exists to warrant a targeted and limited revision of the leverage ratio's treatment of client cleared derivatives;
- The merits of introducing a requirement for initial margin to be segregated in order for any amended leverage ratio treatment to apply; and
- Forward-looking behavioural dynamics of the client clearing industry that might result from any amended treatment.

Submissions are due by 16 January 2019.

Source: BIS

BIS: Recent announcements

The BCBS has published its stress testing principles, replacing the *Principles for sound stress testing practices and supervision*, published in May 2009, in response to the evolving role and importance of stress testing.

The principles focus on the core elements of stress testing frameworks. These include the objectives, governance, policies, processes, methodology, resources and documentation to provide guidance on stress testing activities and facilitate the implementation of stress testing frameworks with equal relevance for banks and authorities.

Source: BIS

FSB: Recent report

The Financial Stability Board (FSB) has released a report, *Crypto-asset markets: Potential channels for future financial stability implications*, detailing key findings on their assessment of the potential implications of crypto-assets for financial stability. The report includes an assessment of the primary risks presented by crypto-assets and their markets, such as:

- Low liquidity;
- The use of leverage;
- Market risks from volatility; and
- Operational risks.

Source: FSB

4 Overseas developments – Europe

EBA: Recent consultations

The Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA – ESAs) issued a consultation paper on their proposal to amend the Implementing Regulations on the mapping of credit assessments of External Credit Assessment Institutions (ECAIs) for credit risk. The amendments reflect the outcomes of a monitoring exercise on the adequacy of existing mappings, specifically changes to the Credit Quality Steps (CQS) allocation for two ECAIs and the introduction of new credit rating scales for ten ECAIs.

Submissions are due by 31 December 2018.

Source: EBA

EBA: Recent guidelines

The European Banking Authority (EBA) has published final guidelines on the management of non-performing and forborne exposures. The guidelines have been developed in accordance with the European Council Action Plan and aim to ensure that credit institutions have adequate prudential tools and frameworks in place to effectively manage their non-performing exposures (NPEs) and to achieve a substantial reduction to their balance sheets.

Source: EBA

4 *Overseas developments – UK*

FCA: Recent consultations

The Financial Conduct Authority (FCA) is consulting on new rules and guidance to reduce the potential harm for investors in funds that hold illiquid assets, particularly under stressed market conditions.

The FCA has published two consultation papers, outlining its proposal in the event of the UK leaving the European Union (EU) on 29 March 2019. The two consultation papers focus on:

- Amendments to the FCA Handbook and Binding Technical Standards resulting from leaving the EU, and the FCA's approach after Brexit to EU non-legislative material; and
- The Temporary Permissions Regime, which will permit EEA firms and funds passporting into the UK to continue operating in the jurisdiction for a limited period after Brexit while they seek full UK authorisation.

Source: FCA

BoE: Recent consultations

The Bank of England (BoE) has published a consultation paper setting out a proposal to fix deficiencies in the onshoring of legislation related to Financial Market Infrastructures (FMI), including fixing deficiencies in FMI-related binding technical standards and the Bank's rules for FMIs.

Submissions are due by 2 January 2019.

The BoE has released a consultation paper, setting out the general approach to ensure there is a functioning legal framework when the UK exits from the EU. The *European Union (Withdrawal) Act 2018* converts directly applicable EU law into UK law and preserves domestic law that relates to EU membership.

Submissions are due by 2 January 2019.

Source: Bank of England

PRA: Recent consultations

The BoE and Prudential Regulation Authority (PRA) have released a joint consultation paper setting out the general approach to be taken to ensure a functioning legal framework when the UK leaves the EU. This includes changes to relevant onshored Binding Technical Standards (BTS), rules for FMIs, and the PRA Rulebook.

Submissions are due by 2 January 2019.

The PRA has published a consultation paper on a proposal to:

- Delay terminating the existing 'daily flows' and 'enhanced mismatch' liquidity reports (FSA047 and FSA048) for six months; and
- Reduce the frequency of the FSA047 and FSA048 reports to align with the PRA110 report in cases where it would otherwise differ. The proposed change would become effective from Monday 1 July 2019.

Submissions are due by 12 November 2018.

Source: Bank of England

4

Overseas developments – US

CFTC: Recent consultations

The Commodity Futures Trading Commission (CFTC) is seeking feedback on a proposal to streamline regulations for Commodity Pool Operators (CPOs) and Commodity Trading Advisors (CTAs) through proposed rules that would simplify regulatory obligations for CPOs and CTAs by:

- Codifying long-standing staff advisories and no-action letter relief in the Part 4 regulations; and
- Streamlining registration requirements for CPOs that operate in multiple jurisdictions.

Submissions are due by 17 December 2018.

Source: CFTC

OCC: Recent consultations

The Office of the Comptroller of the Currency (OCC) is consulting on a proposed rule that would establish four categories of standards and apply tailored capital and liquidity requirements for banking organisations with an excess of $100 billion in total consolidated assets. The proposal was developed jointly by the OCC, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation.

Submissions are due by 22 January 2019.

Source: OCC

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency are inviting public comment on a joint proposal that would implement a new approach for calculating the exposure amount of derivative contracts under the agencies' capital rule. The proposed approach, called the standardised approach for counterparty risk (SA-CCR), would supplant the current exposure methodology (CEM) as an additional methodology for calculating advanced approached total risk-weighted assets under the capital rule.

SEC: Recent consultations

The Securities and Exchange Commission (SEC) is requesting further comments to their consultant paper on proposed new rules and amendments that would establish capital and margin requirements for security-based swap dealers (SBDSs) and major security-based swap participants (MSBSPs) that do not have a prudential regulator.

Submissions are due by 19 November 2018.

The SEC is proposing rule and form amendments that are aimed at helping investors make informed investment decisions regarding variable annuity and variable life insurance contracts. The proposal would modernise disclosures by using a layered approach designed to provide investors with key information relating to the contract's terms, benefits, and risks in a succinct and more reader-friendly presentation, with access to more detailed information available online and electronically or in paper form on request.

Source: SEC

4 Overseas developments – Asia

HK: Recent announcements

The Securities and Futures Commission (SFC) has issued guidance on the regulatory standards expected of virtual asset portfolio managers and fund distributors. The SFC is also exploring a conceptual framework for the potential regulation of virtual asset trading platform operators.

The SFC and FCA have entered into a Memorandum of Understanding (MoU) on Mutual Recognition of Funds, which will enable eligible Hong Kong public funds and United Kingdom retail funds to be distributed in each other's market through a streamlined process. The MoU also establishes:

- A framework for exchange of information; and
- Regular dialogue and regulatory cooperation in regards to the cross-border offerings of eligible Hong Kong public funds and United Kingdom retail funds.

Source: SFC

HK: Recent announcements

The SFC has issued consultation conclusions on proposed Guidelines for Online Distribution and Advisory Platforms, which include additional protective measures applicable to the distribution of complex products on online platforms. The SFC received eight written submissions during the consultation period. In response to the public consultation the SFC has decided to apply the additional measures to the offline sale of complex products, whilst clarifying some aspects of their implementation.

The SFC has issued consultation conclusions on proposals to amend its Guideline on Anti-Money Laundering and Counter-Terrorist Financing (AML/CFT). Under the revised AML/CFT Guidelines:

- The categories of politically exposed persons (PEPs) will be expanded to include international organisation PEPs who are persons entrusted with a prominent function by an international organisation.
- The enhanced scrutiny for foreign PEPs will be extended to domestic PEPs and international organisation PEPs where their business relationships with a firm are assessed to be of high risk.

Source: SFC

Singapore: Recent consultations

The Monetary Authority of Singapore (MAS) has issued guidelines to facilitate the provision of digital advisory services in Singapore and refine the licensing and business conduct requirements under the *Securities and Futures Act (SFA)* and *Financial Advisers Act (FAA)*. Under the guidelines:

- Digital advisers that seek to offer fund management services to retail investors, will be eligible for licensing even if they do not meet the SFA corporate track record requirements; and
- Digital advisers will be exempt from the FAA requirement to collect the full suite of financial information of a client on meeting risk mitigation related measures.

The MAS and the Financial Services Authority of the Republic of Indonesia, Otoritas Jasa Keuangan (OJK) have signed a Memorandum of Understanding (MoU) to strengthen cooperation in FinTech and foster innovation in financial services between Indonesia and Singapore. The MOU will facilitate information sharing on emerging FinTech market trends and developments, and promote joint innovation projects between both countries.

Source: MAS

5 PwC publications

PwC: Basel III - Credit Risk Standardised Approach (CR-SA)

PwC HK has released a report, *Basel III - Credit Risk Standardised Approach,* detailing the timeline, key changes and expected impact of the revised standardised approach for credit risk.

As credit risk comprises the largest share of most banks' total risk weighted assets (RWA), small changes to the risk weighting of credit risk exposures will have a substantial impact on a bank's capital requirements. This is applicable to both banks that apply the standardised approach and those using internal ratings based (IRB) approach. The newly introduced capital floor limits the RWA advantage of the IRB approach to 27.5% (floor: 72.5%), when fully phased-in. Consequently, all banks need to be aware of the changes to the standardised approach for credit risk, and adjust their business strategy, process and pricing accordingly.

See publication

PWC HK: FMCC newsletter series - Have you got your ducks in a row?

With the Revised Fund Manager Code of Conduct (FMCC) coming into effect from 17 November 2018 PwC HK has published a newsletter series; *FMCC newsletter series - Have you got your ducks in a row?*, outlining the areas that will present the greatest challenges for industry players, and highlighting some key considerations fund managers should take into account in their compliance journey.

See publication

PwC HK: Asset & wealth management tax highlights - Asia Pacific

In the latest edition of asset and wealth management tax highlights for the Asia Pacific region, PwC HK has highlighted industry and tax developments from Australia, China, Hong Kong and India, which may impact asset and wealth management businesses.

In Australia, legislation on integrity measures related to stapled structures, withholding tax concessions for foreign superannuation funds, and access of foreign investors to tax concessions under the doctrine of sovereign immunity were introduced to Parliament in September.

In China the Standing Committee of the State Council proposed a three-year exemption from Corporate Income Tax (CIT) and Value Added Tax on interest income derived by foreign investors from their investment in China bond markets. Details of exemption rules and mechanism are expected to be addressed when the Ministry of Finance and State Administration of Taxation issue detailed regulations.

See publication

5 PwC publications

PwC HK: IFRS 17 will affect how reinsurers conduct business

PwC HK has released a report; *IFRS 17 will affect how reinsurers conduct business,* which considers IFRS from the perspective of reinsurers, particularly the implications specific to the reinsurance industry and why the effort required to understand these challenges should not be discounted.

See publication

PWC HK: The HK Open-Ended Fund Company Regime at a glance

PwC HK has published a report; *The HK open-ended fund company regime at a glance*, which looks at open-ended fund companies in light of the launch of the OFC regime in Hong Kong, particularly:

- What is an open-ended fund company (OFC)?
- What can it be used for?; and
- What is the structure of an OFC?

See publication

PwC UK: 2019 Internal Audit Planning

PwC has released a report, *2019 Internal Audit Planning: Insurance and Asset & Wealth Management*, providing PwC's view on the market issues impacting the insurance and asset and wealth management sectors in 2019, collated through experiences and the insights of subject matter experts.

See publication

5 PwC publications

PwC US: Machine learning in the cloud

PwC US has released a report; *Machine learning in the cloud: A sound policy for property and casualty insurers*, providing its perspective as to how predictive analytics and machine learning (ML) technology are critical to future success.

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*, looking at the top digital developments influencing financial services. Following its introduction in 2008, robo-advisory technology has created new opportunities, particularly be expanding wealth services to younger clients.

See publication

PwC US: Rediscovering alternative assets in changing times

Alternative assets are well known as an attractive way to diversify and enhance returns, but as market conditions change and investment options shift, investors and asset managers may look to re-examine their approach and question longstanding assumptions. PwC examines the fundamentals behind this transformation and the changes across the following asset classes:

- Private Equity;
- Real Estate;
- Infrastructure;
- Hedge Funds; and
- Credit/Private Debt.

See publication

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