

February 2017

*PwC Regulatory Update*



## 1

# Legislative/Government developments

## ASIC supervisory cost recovery levy bill 2017 and related bills

The Government has released *ASIC supervisory cost recovery levy bill 2017* for consultation, seeking feedback on the draft legislation to support the industry funding model to recover regulatory costs through annual levies and fees-for-service.

The three bills under consideration are:

- [\*ASIC Supervisory Cost Recovery Levy Bill 2017\*](#);
- [\*ASIC Supervisory Cost Recovery Levy \(Collection\) Bill 2017\*](#); and
- [\*ASIC Supervisory Cost Recovery Levy \(Consequential and Transitional\) Bill 2017\*](#).

Source: [Treasury](#)

## Amendment to terms of reference of the External Dispute Resolution Review

The Minister for Revenue and Financial Services has amended terms of reference for the review of the financial system's external dispute resolution and complaints framework to include:

- Recommendations on the design and merits of a compensation scheme of last resort; and
- Consideration of the merits and issues involved in providing access to redress for past disputes.

The Government has provided a three-month extension to the initial reporting date of end March 2017 to enable the Panel to consider and consult on the issues contained in the amended terms of reference.

Source: [Treasury](#)

## Increasing transparency of the beneficial ownership of companies

The Minister for Revenue and Financial Services has released a [consultation paper](#), *Increasing Transparency of the Beneficial Ownership of Companies*, seeking feedback on

- Increasing the transparency of the beneficial ownership of companies to better assist authorities to combat illicit activities;
- Information required to achieve the objective and how it should be collected, stored and kept up to date; and
- Expected compliance costs for affected parties.

Source: [Treasury](#)

## 1

# Legislative/Government developments

## Higher standards for financial advisers to commence

The Government has announced reforms to lift the professional, education and ethical standards of financial advisers. These reforms include:

- Compulsory education requirements for both new and existing financial advisers;
- Supervision requirements for new advisers;
- A code of ethics for the industry;
- An exam that will represent a common benchmark across the industry; and
- An ongoing professional development component.

The new requirements will commence on 1 January 2019 requiring new advisers to hold a relevant degree before they are eligible to commence the supervision year and sit the exam. Existing advisers will have two years, until 1 January 2021, to pass the exam and five years, until 1 January 2024, to reach a standard equivalent to a degree.

The Code of Ethics will commence on 1 January 2020, with all advisers being required to adhere to the code from that day forward.

The Government is also looking to implement an industry funding model for the standards body in future.

Source: [Minister for Revenue and Financial Services](#)

ABA [welcomes](#) the passage of financial adviser legislation.

AFMA also [welcomes](#) the introduction of the professional standards framework for advisers dealing with retail customers.

## Corporations Amendment (Life Insurance Remuneration Arrangements) Bill 2016

The Government has passed the Corporations Amendment (Life Insurance Remuneration Arrangements) Bill 2016 to address the high upfront life insurance commissions. The significant changes include:

- Phasing down the upfront commissions paid to advisers to a maximum of 60 per cent from 1 January 2020, along with the introduction of a maximum rate of 20 per cent for ongoing commissions; and
- Introduction of a two year commission 'clawback' period, which will clawback 100 per cent of an upfront commission in the first year and 60 per cent of an upfront commission in the second year in instances of a policy lapse.

The new requirements will commence on 1 January 2018. The reforms will apply to both personal and general financial advice as well as direct sales.

Source: [Minister for Revenue and Financial Services](#)

The FPA [welcomes](#) the passage of Corporations Amendment (Life Insurance Remuneration Arrangements) Bill 2016.

The FSC also [welcomes](#) the passage of the life insurance bill together with the professional standards of financial adviser legislation.

## 2

# What have the regulators been up to?

## APRA

Australian Prudential  
Regulation Authority

## ASIC

Australian Securities and  
Investments Commission

## ASX

Australian Securities  
Exchange

## AUSTRAC

Australian Transaction  
Reports and Analysis  
Centre

### APRA consults on proposed reporting requirements for the countercyclical capital buffer

APRA has released a letter to all locally incorporated authorised deposit-taking institutions (ADIs) other than purchased payment facilities providers, proposing to amend reporting standard, *Capital Adequacy*, to capture the ADI specific countercyclical capital buffer ratio. A [draft](#) of the revised reporting form is also available.

ADIs will not be required to report the breakdown of their private sector credit exposures, which will, continue to be subject to the disclosure requirements in prudential standard, *Public Disclosure*.

Submissions are due by 31 March 2017.

See [letter](#)

### APRA responds to submission on residential mortgage lending guidance

APRA has released a letter to all ADIs in response to consultation on the revised prudential practice guide related to reinforcing sound residential mortgage lending practices. The letter outlines APRA's response to issues raised in submissions to this consultation:

- Serviceability assessments; and
- Assessment and verification of income, living expenses and other debt commitments.

APRA has also released the final [prudential practice guide](#), *Residential Mortgage Lending*, summarising prudent lending practices in residential mortgage lending, including the need to address credit risk within the ADI's risk management framework, sound loan origination criteria, appropriate security valuation practices, the management of hardship loans and a robust stress-testing framework.

See [letter](#)

## 2

# What have the regulators been up to? (cont'd)

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### ASIC updates its guidance on fee disclosure statements and issues new guidance for registered liquidators

ASIC has released a [regulatory guide](#), *Fee disclosure statements*, explaining the fee disclosure statement (FDS) obligations of the *Corporations Act 2001* for persons who provide personal advice to retail clients under an ongoing fee arrangement.

The guide requires advice providers to provide the client with an annual FDS setting out information about the fees paid by the client, the services provided to the client and the services that the client was entitled to receive.

This obligation will ensure that the ongoing fees paid by the client are proportionate for the services they have received, or were entitled to receive.

The Australian Institute of Superannuation Trustees, the Association of Superannuation Funds of Australia and the Financial Services Council (FSC) has released a [guidance notice](#) to help funds comply with ASIC's fee disclosure requirements.

ASIC has released a [regulatory guide](#), *Registered liquidators: Registration, disciplinary actions and insurance requirements*, explaining how to apply for registration as a liquidator, including the requirements that must be met to become a registered liquidator.

This guide also explains:

- The renewal of registration process;
- The disciplinary and other actions a registered liquidator may be subject to; and
- Their policy on adequate and appropriate insurance.

See [media release](#)

### ASIC consults on remaking class order about reporting requirements for Australian financial services (AFS) licensees who are natural persons

ASIC has released a [consultation paper](#), *Remaking ASIC class order on reporting requirements for AFS licensees who are natural persons*, seeking feedback from AFS licensees on their proposal to remake the class order, *Reporting requirements under s989B*, into a single legislative [instrument](#).

The instrument grants relief to the licensees from the requirement to include in a profit and loss statement any revenues and expenses that do not relate to financial services businesses carried on by the licensees. Submissions are due by 20 March 2017.

See [media release](#)

## 2

# What have the regulators been up to? (cont'd)

## APRA

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## ASIC

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### ASIC publishes sixth report on corporate finance regulation

ASIC has published its sixth [report](#) on corporate finance regulation, *ASIC regulation of corporate finance: July to December 2016*. It highlights key statistical information, observations and work undertaken in regulating and overseeing fundraising, mergers and acquisitions transactions, corporate governance, and other general corporate finance areas for the period.

The report also discusses a number of regulatory initiatives undertaken by ASIC regarding the disclosure of financial information and business models in prospectuses, the marketing and due diligence practices of issuers conducting initial public offerings, and the adequacy of independent expert reports.

See [media release](#)

### The ASX consults on OTC rule and default management processes

ASX has released a [consultation paper](#), *ASX OTC Interest Rate Derivatives Clearing: Consultation on OTC Rule and Handbook amendments related to Default Management processes*, seeking feedback from Over The Counter (OTC) participants in relation to ASX's proposal to amend the default management framework to reflect feedback.

The amendments proposed relate to:

- Default Management Group (DMG) membership arrangements;
- Default Management Hedging;
- Regular DMG Meetings; and
- Default Management Auctions.

See [media release](#)

### AUSTRAC publishes draft rules relating to law enforcement operations

AUSTRAC has published [draft rules](#) providing an exemption allowing reporting entities to undertake actions in regard to a law enforcement operation which normally would amount to a breach of the *AML/CTF Act* and *AML/CTF Rules*.

Submissions are due by 16 March 2017.

See [media release](#)



# 3

## Industry bodies

### ABA

Australian Bankers'  
Association

### FSC

Financial Services Council

#### Code of Banking Practice review final report

Mr Phil Khoury has released the Code of Banking Practice review [final report](#). He also released a review [report](#) of the activities of the Code Compliance Monitoring Committee.

ABA Chief Executive Steven Münchenberg's response to the report is summarised below:

- The Code outlines how individual and small business customers can expect to be treated by their bank. Its review is an important part of a range of industry reforms to make banking better.
- There is a need for a new Code that better outlines banks' ongoing relationship with their customers, with a strong focus on ethical behaviour.
- Banks will use the recommendations to see how they can improve their commitments to customers.
- It was important the new Code was easily understood by customers.
- The industry will consider the 99 recommendations and work with stakeholders on the many complex, technical issues raised in the review, some of which are also the subject of Federal Government reviews.

ABA will provide a full response to the report in March and aim to release a new, enhanced Code by the end of 2017.

See [media release](#)

#### Further legislation to the Life Insurance Code of Practice unnecessary says the FSC

The Life Insurance Code of Practice aims to reduce upfront commissions to advisers and extend bans on other volume based payments. It becomes mandatory for FSC members on 1 July 2017.

FSC CEO Sally Loane's response to the Code is summarised below:

- Self-regulation can be implemented much faster than costly and time-consuming legislation. The Code has the capacity to evolve and change with consumer needs, and will deliver consumer benefits in a much more efficient and timely way than waiting for complex legislation.
- The life insurance industry has demonstrated it is committed to changes which benefit consumers.
- The Code will be continuously improved and developed. Further iterations of the Code will directly deal with other stakeholders in life insurance, including superannuation fund trustees.

See [media release](#)

## 4

# Overseas developments – Global

## BIS: Harmonisation of the Unique Transaction Identifier - technical guidance

The Committee on Payments and Market Infrastructure and the International Organisation of Securities Commissions have jointly released a [report](#), *Harmonisation of the Unique Transaction Identifier (UTIs)*, providing technical guidance to authorities to set rules on assigning uniform global UTIs to over-the-counter (OTC) derivatives transactions.

The guidance covers the following areas:

- The circumstances in which a UTI should be used;
- The impact that life cycle events should have on the UTI;
- Which entities should be responsible for generating UTIs;
- When UTIs should be generated; and
- The UTI's structure.

Source: [BIS](#)

## FSB: Consults on guidance for CCP resolution and resolution planning

The Financial Stability Board (FSB) has published a [consultation paper](#), *Guidance on Central Counterparty Resolution and Resolution Planning*, seeking feedback on the proposed guidance on particular aspects:

- The overall objectives of CCP resolution and resolution planning;
- The powers that resolution authorities should have to maintain the continuity of critical CCP functions, return the CCP to a matched book and address default and non-default losses;
- The potential indicators of circumstances that could lead to a determination to trigger resolution;
- The treatment of equity of existing CCP owners in resolution; and
- The application of the “no creditor worse off” safeguard and determination of the insolvency counterfactual.

Source: [FSB](#)



## 4

# Overseas developments – Europe

## EBA: Recent consultations

The European Banking Authority (EBA) has released a [consultation](#) on *draft guidelines on procedures for complaints of alleged infringements of the Payment Services Directive 2*, setting out requirements for the channels to be made available by competent authorities for the submission of complaints of alleged infringements of PSD2. Submissions are due by 16 May 2017.

The EBA has published a [consultation](#) on its *draft recommendation on the coverage of entities in banking group recovery plans*, defining common criteria to identify entities (subsidiaries and branches) that need to be covered in group recovery plans, and the extent of such coverage. Submissions are due by 2 June 2017.

The EBA has published a draft [Regulatory Technical Standards](#) on strong customer authentication and common and secure communication, paving the way for open and secure electronic payments for consumers under the PSD2.

Source: [EBA](#)

## EBA: Recent consultations

The Joint Committee of the three European Supervisory Authorities (ESAs) have published a [consultation](#) on draft *Regulatory Technical Standards* to help Member States determine when payment service providers and electronic money issuers should appoint a Central Contact Point to support the fight against money laundering and terrorist financing. Submissions are due by 5 May 2017.

Source: [EBA](#)

## EIOPA: Recent announcements

The European Insurance and Occupational Pensions Authority (EIOPA) has published a [decision](#) on the collaboration of the Insurance Supervisory Authorities from all the European Union Member States in line with the requirements laid down in the Solvency II Directive to strengthen and enhance the cooperation between the National Competent Authorities (NCAs). This is particularly in relation to cross-border activities through information and data exchange in areas such as authorisations, recovery plans and complaints-handling systems, using the centralised database managed by EIOPA.

Source: [EIOPA](#)

## 4

# Overseas developments – UK

## FCA: Recent consultation and discussion papers

The Financial Conduct Authority (FCA) has published a [discussion paper](#), *Illiquid assets and open-ended investment funds*, seeking feedback on the practice of investing in illiquid assets through open-ended funds and the challenges this can pose to managers and investors. Submissions are due by 8 May 2017.

The FCA has published a [discussion paper](#), *Review of the Effectiveness of Primary Markets: The UK Primary Markets Landscape*, seeking feedback on how the UK primary capital markets can most effectively meet the needs of issuers and investors. Submissions are due by 14 May 2017.

The FCA has released a [consultation paper](#), *Reforming the availability of information in the UK equity IPO process*, proposing a package of measures to reform the availability of information during the UK equity initial public offering (IPO) process. Submissions are due by 1 June 2017.

Source: [FCA](#)

## PRA: Recent policy statement and consultation

The Prudential Regulation Authority (PRA) has published a [policy statement](#), *Amendments to the PRA's rules on loan to income ratios in mortgage lending*, providing feedback in response to consultation on amendments to the PRA's rules on loan to income (LTI) ratios in mortgage lending (LTI flow limit) and setting out the final rules for the LTI flow limit to operate on a four-quarter rolling basis.

The PRA has published a [consultation paper](#), *Refining the PRA's Pillar 2A capital framework*, proposing to refine its Pillar 2A approach for firms using the standardised approach for credit risk.

The PRA may exercise its supervisory judgement to adjust a firm's Pillar 2A add-ons, as assessed by applying the PRA's methodologies, to ensure that the total amount of capital required does not exceed the amount necessary to ensure a sound management and coverage of its risks. Submissions are due by 31 May 2017.

Source: [PRA](#)

## 4

# Overseas developments – US

## OCC: Recent announcements

The Federal Reserve Board (FRB) and the Office of the Comptroller of the Currency (OCC) have released [guidance](#) regarding initial examinations of OCC-supervised institutions for compliance with certain provisions of the interagency rule establishing initial and variation margin requirements for non-cleared swaps.

The guidance addresses the OCC's expectations for national bank swap dealers to comply with minimum variation margin requirements which became applicable on 1 March 2017.

Source: [OCC](#)

## SEC: Recent announcements

The Securities and Exchange Commission (SEC) has adopted [amendments](#) requiring registrants that file statements and reports subject to Item 601 of Regulation S-K, or that file Forms F-10 or 20-F, to include a hyperlink to each exhibit listed in the exhibit index of these filings. The amendments also require that registrants submit all such filings in HyperText Markup Language (HTML) format. The final rules will take effect on 1 September 2017.

The SEC has [proposed](#) to require the use of the Inline XBRL format for the submission of operating company financial statement information and mutual fund risk/return summaries. This aims to improve the data's quality to benefit investors, other market participants, and other data users, and to over time decrease the cost of preparing the data for submission to the Commission.

Source: [SEC](#)

## SEC: Recent announcements

The SEC has issued a [guidance update](#) for investment advisers with suggestions on meeting disclosure, suitability and compliance obligations under the *Investment Advisers Act of 1940*. The SEC has also issued an [Investor Bulletin](#), providing individual investors with information they may need to make informed decisions if they consider using robo-advisers.

Robo-advisers are registered investment advisers that use computer algorithms to provide investment advisory services online with often limited human interaction.

The SEC and the North American Securities Administrators Association (NASAA) has signed an information sharing [agreement](#) to facilitate intrastate crowdfunding offerings and regional offerings.

Source: [SEC](#)

## 4

# Overseas developments – Asia

## Hong Kong: SFC proposes to standardise rules for prescribing professional investors

The Securities and Futures Commission (SFC) has published a [consultation paper](#) on proposed amendments to the *Securities and Futures (Professional Investor) Rules* (PI rules) seeking feedback on the proposed amendments:

- Allowing the portfolio held in joint account(s) with persons other than associates and investment vehicle(s) owned by individuals to be counted in ascertaining if the individuals meet the monetary threshold to qualify as professional investors;
- Expanding the definition of corporations as professional investors; and
- Allowing alternative forms of evidence demonstrating qualification as a professional investor.

Submissions are due by 3 April 2017.

Source: [SFC](#)

## Singapore: Recent consultations

The Monetary Authority of Singapore (MAS) has published a [consultation paper](#), *Proposed Regulatory Regime for Managers of Venture Capital Funds*, seeking feedback on the simplified authorisation process and regulatory framework for managers of venture capital funds. The requirements for base capital and risk based capital will be removed, and there will be no requirement for independent valuation, internal audits and submission to MAS of audited financial statements. Submissions are due by 15 March 2017.

The MAS has published a [consultation paper](#), *Amendments to Banking Regulations and Banking (Corporate Governance) Regulations*, seeking feedback on the proposed amendments to the regulations to require banks to seek MAS' approval prior to establishing or relocating any place of business to conduct money-changing or remittance business. MAS will be issuing a new regulation on banks' risk management.

Source: [MAS](#)

## Singapore: Recent announcements

The MAS has [announced](#) the formation of a new Data Analytics Group (DAG). DAG will comprise of three units: Data Governance & Architecture Office, Specialist Analytics & Visualisation Office, and Supervisory Technology Office.

The MAS has [formed](#) a Corporate Governance Council (Council) to review the Code of Corporate Governance (CG Code). The Council will consider how the “comply-or-explain” regime under the CG Code can be made more effective. The Council will also propose mechanisms to monitor the progress made by the listed companies in strengthening their corporate governance practices.

The MAS has announced [regulatory changes](#) to strengthen the resilience of finance companies and enhance their ability to provide financing to small and medium sized enterprises.

- Relaxation of business restrictions with enhanced prudential standards; and
- Liberalisation of shareholding policy.

Source: [MAS](#)

## 5

## PwC publications

### PwC Hong Kong: Turning regulatory change to your advantage

Asia is no exception to the wave of regulatory change insurers across the globe have been facing after the financial crisis. This change has a big impact on insurers' balance sheets, risk management, and ways of selling products.

PwC Hong Kong has published a report, *Turning regulatory change to your advantage*. A few examples of current regulator driven initiatives to strengthen risk and capital management include:

- Hong Kong is planning its first Risk Based Capital (RBC) quantitative impact study for 2017.
- The Indian regulator has recently instituted a "Committee on RBC Approach and Market Consistent Valuation of Liabilities", four years after 2012's consultation paper on RBC.
- Japan's FSA is considering implementing a more economic capital-based regime.

See [publication](#)

### PwC: The power to perform - human capital 2020 and beyond

In the face of political upheaval, fast-shifting customer expectations, and technological and regulatory disruption, the question is no longer whether financial services (FS) is being transformed, but how quickly, how to keep pace, and how to deliver strong business results in this new environment.

PwC has published a report, *The power to perform: Human capital 2020 and beyond*, focusing on how these developments are shaping a new people agenda, and setting out how FS organisations can proactively manage human capital to ensure they remain relevant and competitive.

See [publication](#)

### PwC: Embracing possibility, boosting innovation

PwC has published a report, *Embracing possibility, boosting innovation*, based on PwC's 20th CEO Survey where 95 insurance CEOs participated from 39 countries.

Insurance is the industry most affected by disruptive change based on the percentage of CEOs who are 'extremely concerned' about the threats to growth from over-regulation, the speed of technological change, changing customer behaviour, and competition from new market entrants.

But insurance CEOs are also among the readiest to embrace disruptive change:

- 67% see creativity and innovation as very important to their organisations; and
- 61% are exploring the benefits of humans and machines working together.

See [publication](#)

## 5

## *PwC publications (cont'd)*

### **PwC US: DOL fiduciary rule - beyond the headlines**

The Trump administration has issued a Presidential Memorandum instructing the Department of Labor (DOL) to re-examine its fiduciary rule, but did not specifically recommend a delay as many expected. Under the rule, investment advice given to an employee benefit plan or an individual retirement investor is considered fiduciary advice and therefore must be in the “best interest” of the investor.

Although the DOL is still likely to delay the April 10 2017 compliance date, we still expect the industry to move toward a fiduciary standard not only due to continued consumer demand for transparency, but also as many firms realize the importance of removing conflicts of interest between advisers and retirement investors.

PwC US has released a regulatory brief, *DOL fiduciary rule: Beyond the headlines*, analysing the effects of a delay on the DOL’s fiduciary duty rule, describes steps that the industry has already taken to comply, and offers our view on how firms should proceed.

See [publication](#)

### **PwC US: Sanctions - will the Trump administration stay the course?**

During the campaign, President Trump discussed reversing many Obama administration sanctions policies, including those relating to Iran, Russia, and Cuba. However, we believe that making significant changes to these policies is easier said than done.

Several of the Obama administration’s sanctions policies, such as those involving Iran and Russia, were part of multilateral action, so the Trump administration will find it difficult to back out of these international commitments. Additionally, making any changes to the recent easing of sanctions on Cuba, Myanmar, and Sudan will be a low priority for the new administration.

PwC US has published a report, *Sanctions: Will the Trump administration stay the course?*, providing perspective on what to expect in the sanctions landscape this year.

See [publication](#)



# 6

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