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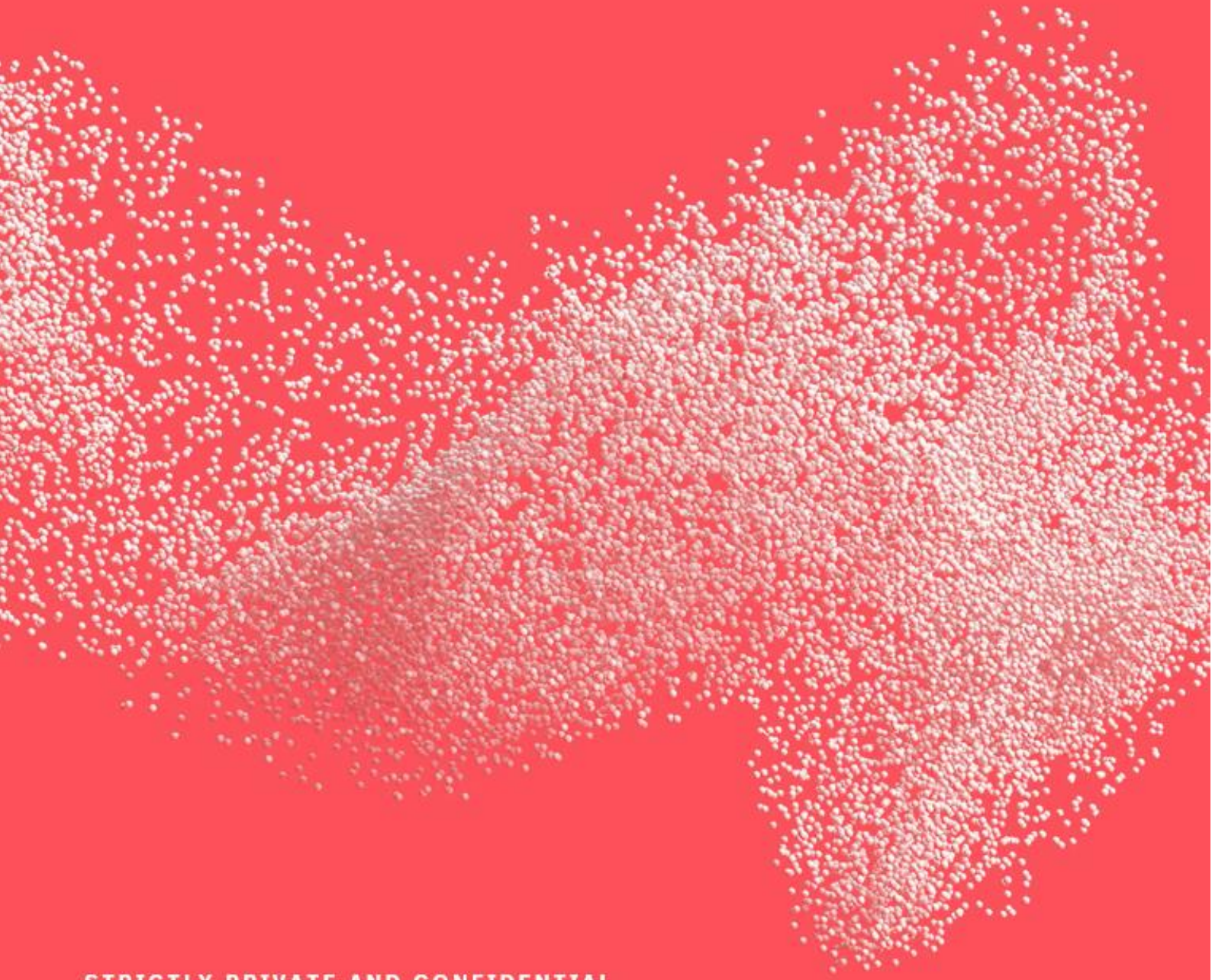
Legal Headwinds Rider

Quarterly Report – Q2 2020

MAY 2020



STRICTLY PRIVATE AND CONFIDENTIAL

Contents

China Entries

Asset Allocation Manager Regime in China

On 29 August 2018, the Asset Management Association of China (AMAC) issued a Q&A XV in relation to private fund registration and filing issues.

This sets out criteria by which an application institution or registered private fund manager may apply to become a "private asset allocation fund manager", a new category of private fund manager which complements the existing three categories (private equity and venture capital (PE/VC); securities investment; and others).

With the release of Q&A XV, existing private fund managers may choose to be converted into new Asset Allocation Managers or to launch a new private asset allocation fund provided certain criteria are met (for more detail see article on our website).

Asset Allocation Funds, unlike PE/VC or securities investment funds, may to invest in multiple types of underlying assets, including various types of private funds, pu+blic funds or other asset management products filed with AMAC, by way of adopting primarily a fund of funds structure.

Asset management industry (PRC) – super guidance

(a) PBOC, CSRC and SAFE Guiding Opinions

On 27 April 2018, the People's Bank of China (PBOC), China Securities Regulatory Commission (CSRC) and State Administration of Foreign Exchange (SAFE) issued "Guiding Opinions on Regulating the Asset Management Business of Financial Institutions" (Guiding Opinions) to introduce a unified standard applicable across China's asset management industry.

The Guiding Opinions cover two key themes, (a) preventing financial systemic risks and (b) serving the real economy.

They address the following key issues affecting the asset management industry:

i. clarifying the definition of an asset management business

ii. preventing multi-layered structuring of asset management products

iii. preventing non-financial institutions (e.g. private fund managers) from launching asset management products unless otherwise provided for in relevant regulations

iv. providing a unified standard for qualified investors and

v. restricting financial institutions' ability to participate in "cash pooling" activities.

The Guiding Opinions also clarify two major issues in relation to private funds:

i. a privately raised asset management product may invest into a private fund, as long as the product is not already composed of two or more layers and

ii. a private fund manager may provide investment advice to licensed financial institutions as an investment advisor.

(b) PBOC clarificatory notice

On 20 July 2018, the PBOC released the "Notice of the General Office of the People's Bank of China on Further Clarifying the Matters Related to the Guiding Opinions for Regulating Asset Management Business of Financial Institutions" (Notice).

The Notice confirms that:

i. retail funds may also invest in non-standard debt assets, provided such investments are in compliance with requirements for debt asset investments

ii. financial institutions may now use existing products to invest in new assets, so long as the overall scale of such old products is controlled with a maturity date of no later than the end of 2020 and

iii. retail funds of more than six months maturity may now be valued using an amortized cost method and cash management products issued by financial institutions may be valued using a "amortized cost-plus shadow pricing" method.

(c) Additional guidance

Further rules were launched from September 2018 to December 2018 to supplement the Guiding Opinions, including

i. Measures for Supervision and Administration of Wealth Management Business of Commercial Banks of 28 September 2018 (the "Wealth Management Measures for Banks")

ii. Measures for Administration of Wealth Management Subsidiaries of Commercial Banks of 02 December 2018 (the "Wealth Management Measures for Subsidiaries of Banks")

iii. Administrative Measures on the Private Business of Securities and Futures Institutions and

iv. Administrative Provisions on the Operation of Private Asset Management Plans of Securities and Futures Institutions on 22 October 2018 (collectively, points (iii) and (iv) are termed the "Securities and Futures Measures")

The Guiding Opinions will overhaul the operation of "channel businesses", which will have a significant impact on more than half of China's RMB 100 trillion (US$16 trillion) in assets under management.

The Guiding Opinions is, though, very high level and the implementing level still leaves room for regulatory arbitrage.

The Wealth Management Measures for Banks prescribe that wealth management assets of banks may not directly invest in products issued or managed by an institution established "without the authorisation of the financial supervision and regulation department and financial license". Since private fund managers (PFMs) are not strictly authorised/licensed financial institutions, this has been interpreted as a prohibition on wealth management assets of banks directly investing in the PFMs' product

The Wealth Management Measures for Subsidiaries of Banks indicate that wealth management assets privately raised by subsidiaries may invest into a private fund managed by eligible PFMs.

The Securities and Futures Measures, on the other hand, provide that asset management plans (AMP), i.e. asset management products launched by securities and futures companies, may invest into, among others, other asset management products issued by institutions "under the supervision of the financial supervision and administration institutions of the State Council". This loosely defined scope has triggered questions among PFMs. Most PFMs are under the supervision of the Asset Management Association of China

(AMAC), which is a self-regulatory body designated by the CSRC for regulating and supervising PFMs). Accordingly, the question becomes whether AMAC is a financial supervision and administration institution and may, therefore, qualify the private fund managed by the PFMs under the scope above.

The prevailing interpretation in the market is that, when the Securities and Futures Measures are read together with the Guiding Opinions, the CSRC indicates that private funds may, indeed, be qualified investment targets for the AMPs.

(For more information, please see our article published on the website)

China's banking and insurance authority's twelve measures to further open up the financial sector

On 1 May 2019, the Chair of the China Banking and Insurance Regulatory Commission (CBIRC) unveiled twelve measures to further the opening up of the financial sector in China.

Its proposed measures focus primarily on the relaxation of entry requirements and restrictions on the business scope of the banking and insurance industries by upholding the overarching principle of equal treatment between domestic and foreign parties.

More specifically, the measures

i. diversify the channels and methods by which foreign investors can access the financial sector in China
ii. add to the types of foreign institutions which are permitted to invest in, or incorporate, relevant companies in China
iii. remove certain quantitative requirements on shareholdings by foreign investors
iv. remove, to a certain extent, the restrictions on the permitted proportion of shareholdings by a foreign institution
v. broaden the business scope of foreign-invested financial institutions to make this consistent with that applicable to corresponding financial institutions which are wholly owned by domestic investors.

(for more information, please see our article published on the website).

Chinese Supreme Court's Commitment to Strengthen Investor Protection - the National Civil Commercial Trial Work Meeting Minutes

On 11 November 2019, the Supreme Court of China (the Court) issued the National Civil Commercial Trial Work Meeting Minutes (Meeting Minutes).

A Meeting Minute is a summary of principles to which the Supreme Court will refer when deciding issues in relation to commercial legislation and regulation.

The Court's principal decisions are:

i. the suitability obligation is defined as the obligation on managers or distributors of financial products to ensure that the recommendation or solicitation they have made to investors is suitable taking into account the characteristic of the investor
ii. the manager and distributor are jointly and severally liable for the negligent performance of the investor suitability assessment

iii. whether the suitability obligation has been discharged should be evaluated on a hybrid standard (the **objective** standard under a 'reasonable person' test and a **subjective** standard, taking into account the specifics of the financial product and the characteristics of the investor) and
iv. once an investor has proved that it purchased a financial product and suffered loss, the burden of proof will move to the manager to prove that the suitability obligation was properly performed.

The Meeting Minutes also set out three key principles that the Court would adopt in deciding disputes between investors and the managers and/or distributors

i. the premise that, where the seller has fulfilled its obligations, the buyer should bear the responsibility
ii. the protection of financial consumers and
iii. Courts should be encouraged to refer to rules issued by financial regulators.

(for more information, please see our article published in the website)

CSRC confirms it will launch new measures to boost the asset management industry in China

On 13 June 2019, the Chair of the China Securities Regulatory Commission (CSRC) announced that it will facilitate / roll out nine measures (the Measures) aimed at further opening up the capital market in China.

The Measures introduce comprehensive reforms to the areas of establishment, capital raising and trading and are expected to greatly benefit foreign market players.

Of particular relevance to the asset management industry are those Measures which

- confirm that the CSRC will facilitate the reform of QFII / RQFII rules
- allow foreign shareholders to hold stakes in more than one fund management company and
- relax the restrictions imposed on the ability of PFM funds to trade through Stock Connect.

Other new Measures include

- setting reasonable qualification requirements for controlling shareholder of a securities company (particularly the requirement on net assets)
- relaxing access restrictions on foreign banks for lending or financing and operating custodial business for securities investment funds in China
- implementing a comprehensive reform for the full circulation of H-shares
- continuing to open up futures markets and expand the scope of permitted asset classes for trading
- considering the increased opening up of the exchange bond market to foreign players and the expansion of the channels to enable foreign institutional investors to access the exchange bond market and
- considering the formulation of administrative measures regarding exchange panda bonds in order to facilitate bond issuance by foreign institutions.

(For more information, please see our article published on the website)

CSRC Rules on engaging Hong Kong investment advisors

On June 2018, the China Securities Regulatory Commission (CSRC) released the "Interim Provisions on the Use of Hong Kong Investment Advisory Services by Operators of Securities Funds" (Interim Provisions).

These, for the first time, allow a Hong Kong (HK) regulated entity (HK Advisor) to provide research reports and investment advice to a mainland asset management company

Under the Interim Provisions

- mutual fund management companies (FMCs) and securities firms are the only two types of asset management company allowed to delegate such functions to a HK Advisor
- an FMC or securities firm that wishes to retain a HK Advisor to provide investment advisory services to such fund product must file additional information with its local CSRC office in respect of the HK Advisor
- the HK Advisor must also file its basic information with the Asset Management Association of China (AMAC) before it is allowed to enter into an investment advisory arrangement with the FMC or securities firm.

It has yet to be determined exactly which AMAC department will be in charge of this filing procedure.

(for more information, please see our article published on the website)

CSRC's revised timeline sheds lights on new directions for joint venture foreign asset managers in China

On 11 October 2019, the China Securities Regulatory Commission (CSRC) revealed that the limit on foreign ownership of different types of entity will be removed as follows:

i. 1 January 2020 for futures companies – 1 January 2020

ii. 1 April 2020 for mutual fund management companies (FMCs)

iii. 1 December 2020 for securities companies.

The revised timeline is one year ahead of the original plans.

Most foreign asset managers are still expected to choose to restructure and establish joint venture (JV) FMCs with Chinese partners because of their client base. Key commercial considerations in restricting the JV include:

i. insisting on the put or call option in the JV agreement – this stands as a last resort to resolve a deadlock situation. Foreign asset managers can exercise a put option (selling all equity interest in the JV) or a call option (buying the equity interest from the other party)

ii. inserting a non-competition clause – the parties agree

a. not to establish or acquire a controlling stake in another JV engaging in business which competes with the original JV without notifying the other party and granting it a right to participate and

b. not to solicit or entice away any employees, officers or agents of the foreign asset manager

iii. control/governance right – reserving a power of veto on important matters and

iv. due diligence – ascertaining whether the licensing, registration, data, compliance, employment and other relevant aspects of all funds held by the management companies conform to the PRC regulations.

Employment - Labour contract templates

On November 25 2019, the National Human Resources and Social Security Bureau issued templates for labour contracts and labour dispatch contracts,

The templates are general examples of contracts covering requirements under the Labor Contract Law. While their use is not mandatory, companies can use them for reference and, if they wish, revise them based on their needs.

Employment - Dongguan Intermediate Court publishes meeting minutes on labour dispute arbitration and litigation

On October 10 2019, the Dongguan Intermediate Court's published meeting minutes. These clarify several issues in connection with labour dispute arbitration and litigation in Dongguan. Companies in Dongguan should be aware of these minor technical adjustments. This is a reminder more generally to always check local requirements in addition to national level laws and regulations

The issues covered in the minutes include:

i. The basis for calculating severance payments

Certain "non-standard" salary items, such as salary reduction during sick leave or salary during maternity leave, are to be excluded from the severance calculation.

However, remuneration paid based on cycles longer than one month (for example, quarterly, half-yearly or annual bonuses, or a 13th month salary) must be included in the severance calculation

ii. The date of termination

In end of employment certificates, reference letters or similar documents, an employee's termination date may be referred to in a more generic way, rather than the exact date, such as "at the end of [month]"

iii. Double Salary Paid for No Written Labour Contract

Where an employee has worked for longer than one month before signing a written contract and agrees to backdate the effect of the labour contract to cover the period since actual commencement, that agreement will be binding in terms of the overall duration and effectiveness of the contract.

Accordingly, the company is not required to pay double salary for the period from the end of the first month of actual employment to the date on which the contract is signed (which would otherwise apply).

Employment - Interim measures for the administration of the list of seriously dishonest parties in the social insurance field

The National Human Resources and Social Security Bureau issued the Interim Measures for the establishment of a list of seriously dishonest parties in the social insurance field.

Companies that continue not to register for social insurance contributions after receiving administrative punishment or that provide false information in the registration will be placed on this list.

Companies need to be aware of the situations listed in the interim measures.

The list is public; accordingly, companies placed on it may suffer reputational damage.

Employment - Updated minimum monthly / hourly salary

a) Minimum monthly salary

On 19 November 2019, the People's Government of Qinghai Province increased the minimum monthly salary (minimum wage) of Qinghai Province from RMB1,500 to RMB 1,700 with effect from 1 January 2020.

As of November 2019, the minimum monthly salary in the provinces of Shanghai, Beijing, Guangdong, Tianjin, Jiangsu, and Zhejiang now exceeds RMB2,000.

The minimum monthly salary remains the highest in Shanghai, at RMB2,480

b) Minimum hourly salary

In Qinghai, the minimum hourly salary remains at RMB15.2.

The minimum hourly salary is now above RMB20 in Beijing, Shanghai, Tianjin, and Guangdong.

The minimum hourly salary is highest in Beijing, at RMB 24.

Salary paid by a company to an employee cannot be less than the minimum monthly / hourly salary and the calculation of severance pay may be increased based on the adjustment of minimum monthly / hourly salary.

Employment - Interim Measures for participation in social insurance by residents of HK, Macao and Taiwan

From 1 January 2020, all residents of HK, Macao and Taiwan (HMT) that are employed by enterprises registered in mainland China must participate in all five kinds of social insurance (pension, medical, unemployment, work-related injury and maternity).

Companies must register for social insurance for their employees who are HMT residents, by providing their valid certificates, labour contracts and other required materials

When HMT residents participating in the basic pension insurance for employees have reached the statutory retirement age but have made payments for less than 15 contribution years, they may extend the payment to the full 15 years.

For those who have participated in the insurance funds before the implementation of the Social Insurance Law, but have still paid for less than 15 years after the extension of the payment for another 5 years, they may pay the reminder in one lump to complete the full 15 years

The national level regulation is going to require the employer to contribute to all types of social insurance for their HMT employees. Previously there was some flexibility to choose. Companies will need to keep an eye on implementation in their specific location to ensure that they do this before any stipulated deadline.

Employment - State Council issues Opinions on Further Stabilising Employment

On 24 November 2019, the State Council issued Opinions on Further Stabilizing Employment, which further standardises procedures for layoffs by enterprises.

For enterprises that intend to make economically related layoffs, the Opinions provide guidance in

- formulating and implementing an employee settlement plan in accordance with the law and regulations
- explaining the relevant situation to the union or all employees 30 days in advance
- paying economic compensation in accordance with the law and regulations and
- paying employees' outstanding salary and social insurance premiums.

This new legislation seems intended to emphasise the key existing requirements in relation to termination due to financial performance / for economic reasons. While none of the specific requirements is new, companies should be aware that layoffs are sensitive and difficult to implement.

The new legislation underlines that companies must strictly follow all relevant steps and requirements in order to successfully implement layoffs of this kind

Foreign Investment Law

On 15 March 2019, the National People's Congress (NPC) passed the Foreign Investment Law (the FIL). The FIL came into effect on 01 January 2020.

At the same time, the NPC abolished the three laws (the Three Foreign Investment Laws) currently governing foreign investment in China, namely

- the Law on Sino-Foreign Equity Joint Ventures
- the Law on Wholly Foreign-Owned Enterprises and
- the Law on Sino-Foreign Co-operative Joint Ventures.

The FIL brings in a number of key changes, including

i. embodying equal treatment between foreign investors and domestic investors
ii. enhancing protection given to foreign investors and
iii. unifying the laws applicable to foreign investors, namely either Company Law or Enterprise Law of the PRC, instead of the previous Three Foreign Investment Laws.

With respect to legality of the variable interest entity (VIE) structure, the FIL has removed the concept of "effective control" (which was included in the 2015 draft). While this may be

interpreted as an acquiescence for operation of VIE structure in the grey area, the FIL leaves room for the Chinese Government to enact, in the future, new laws or regulations negating use of VIE structure

Relaxation of the PFM WFOE regime

The rules of the Asset Management Association of China (AMAC) previously stipulated that the ultimate foreign controller of an institution applying for a licence as a private fund manager (PFM WFOE) must be a licensed financial institution in its country of domicile

In early July 2018, AMAC released a revised 2018 version of its WFOE guidelines, which states that AMAC would only review foreign control at direct controller level rather than whole ownership structure.

On 17 July 2019, the PRC and UK Governments published Policy Outcomes of the 10th UK-China Economic and Financial Dialogue. These noted that the Chinese government "welcomes eligible foreign managers to convert their PFM WFOEs into an FMC [fund management company for public fund businesses]".

On 9 August 2019, AMAC published an announcement noting that it would welcome PFM WFOEs entering the Chinese public find industry.

QFII/RQFII rules

On 15 June 2018, the State Council introduced a list of reform directives aimed at further opening up relevant industries to foreign investors.

One of the more immediate effects is the overhaul of the rules governing the Qualified Foreign Institutional Investor (QFII) and the Renminbi Qualified Foreign Institutional Investor (RQFII) regimes

On 12 June 2018, the State Administration of Foreign Exchange (SAFE) and the People's Bank of China (PBOC) published a number of new provisions which would implement changes referred to in the State Council's directives

The new reforms primarily cover three points:

i. removal of the monthly fund repatriation limit of 20% of the previous year's total onshore assets
ii. cancellation of three-month principal lock-up periods and
iii. allowing QFII/RQFII participants to perform foreign exchange hedging with onshore investments.

The new rules largely harmonise rules governing the QFII and RQFII schemes, although there are still variations in terms of eligible institutions and currencies.

On 31 January 2019, the China Securities Regulatory Commissions (CSRC) published a consultation paper on the QFII and RQFII schemes, focussing on the following five points:

i. consolidation of separate QFII and RQFII measures and provisions
ii. relaxation of qualification requirements and streamlining of the review process
iii. expansion of the scope of investment
iv. optimisation of the management of custodians and

v. enhancement of ongoing supervision provisions.

On 10 September 2019, SAFE announced the abolition of restrictions on the investment quota of QFII/ RQFII to further the opening up of financial markets. QFII and RQFII are no longer required to apply for quotas and QFII and RQFII who have previously been granted a quota will no longer be limited to it.

Following the abolition of quota restrictions, the procedure for QFII and RQFII to invest in Chinese securities market involves making a SAFE registration with assistance from a domestic custodian bank to go through relevant registration procedures. The SAFE registration will be used to open a special fund account in the custodian bank and handle follow-up remittance of funds and exchange business.

Singapore Entries

Payment Services Act - Notices and guidelines relating to regulated payment services

On 5 July 2019, the Monetary Authority of Singapore (MAS) published a consultation paper, seeking comments on its proposals for a series of Notices and amendments to existing Guidelines issued under the Payment Services Act 2019 (the Act).

The consultation paper included proposals in relation to

- reporting requirements, technology risk management and cyber hygiene
- conduct requirements as well as a related exchange rate provision in the Payment Services Regulations
- disclosure and communication requirements
- amendments to guidelines that will apply to persons regulated under the Act, as well as requirements under a proposed Payment Services (Saving and Transitional) Regulations.

The consultation period closed on 5 August 2019.

On 5 December 2019, the MAS provided its Response to Feedback Received.

The relevant notices and guidelines have now been officially issued.

Payment Services Act

On 28 January 2020, the Payment Services Act 2019 (the Act) came into force (with the exception of certain provisions setting out related amendments to other Acts).

The Act will primarily regulate payment services - the Payment Systems (Oversight) Act and Money-changing and Remittance Businesses Act have been repealed.

Payment Services Regulations

On 10 April 2019, the Monetary Authority of Singapore (MAS) published a consultation paper setting out the following three proposed Regulations and one proposed Order, to be prescribed under the Payment Services Act 2019:

- Payment Services Regulations
- Payment Services (Exemptions for a limited period of time) Regulations
- Payment Services (Singapore Dollar Cheque Clearing System and Inter-Bank GIRO System) Regulations
- Payment Services (Designated Payment Systems) Order

The consultation period closed on 10 May 2019.

On 5 December 2019, the MAS provided its Response to Feedback Received.

The relevant notices and guidelines have now been officially issued.

Proposed amendments to the Payment Services Act

On 23 December 2019, the Monetary Authority of Singapore (MAS) published a consultation paper, seeking comments on proposed amendments to the Payment Services Act 2019 (which came into force on 28 January 2020) to, amongst other things:

i. fully align its provisions with the recent enhancements to the Financial Action Task Force Standards and
ii. include entities that conduct certain businesses which would fall within the scope of the Payment Services Act and regulate them to address money laundering and terrorism financing risks.

The consultation period closed on 28 January 2020 and a response from MAS is expected in 2020.

Proposed Regulatory Approach for Derivatives Contracts on Payment Tokens

On 20 November 2019, the Monetary Authority of Singapore (MAS) published a consultation paper, seeking comments on its proposed regulatory approach under the Securities and Futures Act for derivatives contracts that reference payment tokens as underlying assets.

The consultation period closed on 20 December 2019 and a response from MAS is expected in 2020.

Proposed updates to the Fair Consideration Framework

On 1 January 2020, the Minister for Manpower (MOM) announced plans to update the Fair Consideration Framework (FCF), a regime intended specifically to target discrimination against local workers.

The updates are intended to enhance the FCF regime's deterrence against any form of workplace discrimination.

Further details were set out in two speeches given by the Minister on 14 January 2020 and on 3 March 2020 and included plans to strengthen the penalty framework by

- Increasing the debarment period from Hiring New Foreign Workers

Employers in breach of workplace discrimination rules or the Tripartite Guidelines on Fair Employment Practices will now not be permitted to apply for new work passes for at least 12 months. This is an increase from the previous minimum of 6 months. 'More egregious' cases may face a maximum debarment period of 24 months.

- Extending debarment to the renewal of work passes

While the debarment has previously applied only to new work pass applications, it has now been extended to renewal of existing foreign workers' work passes. Since these are generally of 1 to 3 years' duration:

- a debarment of 12 months would mean that between a third and a half of the work passes could not be renewed and the firm could not hire foreign workers.

- a debarment of 24 months would mean that no work passes could be renewed and the firm could not hire foreign workers

As a result, foreign employees could lose their right to work and stay in Singapore, while employers would have to hire locals to continue their operations in Singapore.

- Prosecuting employers and key personnel

The MOM will prosecute employers and key personnel who make false declarations that they have considered all candidates fairly under the Employment of Foreign Manpower Act. If convicted, employers and key personnel could face imprisonment of up to 2 years and/or a fine of up to SGD 20,000.

- Increase salary threshold for exemption from advertisement requirement

One of the requirements under the FCF is that prior to making an application for an Employment Pass (an "EP"), the company must advertise the position on MyCareersFuture.sg for at least 14 days. One exemption from this requirement is where the monthly salary for the vacancy exceeds SGD 15,000. From 1 May 2020, this monthly salary threshold will be increased to SGD 20,000. This increase will lead to employers having to advertise for an increased number of roles before an EP can be sought on behalf of an overseas applicant

- Enhance oversight of compliance with the FCF

The MOM will proactively identify companies which do not properly consider local applicants for employment vacancies; employers in breach of the requirements risk being placed on the FCF Watchlist and subject to increased monitoring. The Minister also reminded employers not to treat the advertising requirements as a tick box / paper exercise. The MOM will, for example, reject a particular EP application if it finds that a foreign candidate had been pre-selected or if it felt that local applicants had not been fairly considered. The employer may, in some instances, be banned from hiring foreign workers.

- Increase minimum salary for Employment Pass (EP) applications

The qualifying monthly salary for new EP applicants will be increased from SGD 3,600 to SGD 3,900, with effect from 1 May 2020, an increase which will also apply to EP renewals submitted from 1 May 2021 onwards. The Minister has also stated that the MOM will raise the salary criterion for older and more experienced EP candidates in tandem (although has not yet stated what this figure would be). This means that for a company bringing in an older and more experienced foreign professional, the MOM will expect to see a monthly salary which is significantly higher than SGD 3,900 before an EP is issued.

Scope of E-money and Digital Payment Tokens

On 23 December 2019, the Monetary Authority of Singapore (MAS) published a consultation paper, seeking comments on the scope of money, e-money and digital payment tokens (DPT) and the regulation of payment services based on these emerging forms of payment.

In view of recent innovations that have led to the emergence of new payment instruments that could potentially challenge the prevailing concept of money

Although the Payment Services Act 2019 (the Act) established definitions of e-money and DPT, recent innovations have led to the emergence of new payment instruments that it considers could potentially challenge the prevailing concept of money.

Accordingly, the MAS is reviewing its approach to e-money and DPT in light of the potential for certain stablecoins to become more widely used yet not fall neatly into existing definitions

of payment instruments. The consultation paper seeks views from on the understanding of money, e-money and DPTs, including features that distinguish these forms of payments from each other. The MAS also seeks views on the regulatory treatment of e-money based payment services, and DPT services, including on whether the existing definitions of e-money and DPT in the Act remain relevant.

The consultation period closed on 28 January 2020 and a response from MAS is expected in 2020.

The MAS noted that If appropriate, it may consider further changes to its regulatory regime in light of responses received to the consultation paper.

SGX-ST Review of the Tools Used to Deal with Market Manipulation Risk

The Singapore Exchange (SGX-ST) published a consultation paper seeking comments on its proposal to remove the minimum trading price (MTP) framework

The purpose of the MTP framework, when proposed in 2014, was to reduce the risks of potential manipulation and excessive speculation on the market.

Companies are identified as being susceptible to manipulation if:

- their 6-month volume weighted average price (VWAP) is below S$0.20 and
- their 6-month average daily market capitalisation is below S$40 million.

To reduce the risk of manipulation, such companies are placed on the MTP watch-list and are expected to improve their share price and market capitalisation within 3 years or be delisted.

However, the SGX-ST has since developed other approaches and enhanced its tools in addressing manipulation risks and, accordingly, it is now proposing to remove the MTP framework

In addition, the SGX-ST is seeking to change its administration of the financial watch-list. Companies on the financial watch-list are expected to improve their financial performance and fundamentals before they are allowed to exit

The public consultation closed on 27 December 2019 and SGX-ST is currently reviewing responses.

Singapore Variable Capital Companies - framework

On 15 January 2020, Singapore launched the Variable Capital Company (“VCC”) framework, providing a new corporate vehicle for funds. Funds can now be incorporated or redomiciled in Singapore as VCCs under the Variable Capital Companies Act 2018. Funds can be formed using a VCC regardless of whether they are closed-ended or open-ended, or whether they adopt a standalone structure or an umbrella structure with multiple sub-funds.

Upon commencement of operation of the VCC framework, the first VCCs were successfully incorporated in Singapore on 15th January 2020.

More information is available here

Hong Kong Entries

Anti-Money Laundering ("AML") and Counter-Terrorist Financing ("CTF")

Amendments to the Hong Kong Anti-Money Laundering (AML) and Counter-Financing of Terrorism (CTF) Guideline, renamed the "Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (for Licensed Corporations)" (the Guideline), came into effect on 01 November 2018.

Key amendments included:

i. expanding the types of politically exposed persons (PEPs) to include customers who have been entrusted with a prominent function by an international organisation and

ii. flexibility in customer due diligence processes through a risk-based approach (RBA).

On 16 April 2019, Hong Kong's Securities and Futures Commission (SFC) posted an updated AML / CTF Self-Assessment Checklist for Licenced Corporations (LCs) and Associated Entities (AEs) to assess compliance with key AML / CTF requirements

On 14 June 2019, the Hong Kong Monetary Authority (HKMA) released its key observations on the application of AML and CTF measures by Authorised Institutions (AIs) when on-boarding customers of Small and Medium-sized Enterprises (SMEs).

Key HKMA suggestions for improvement include:

i. customer risk assessments - being able to distinguish legitimate from fraudulent SMEs through taking steps to understand each customer's business rather than simply matching customer details against a set of red flag indicators

ii. customer due diligence - ensuring that measures are proportionate to the risk level of the customer

iii. implementation and training - providing adequate training to front-line staff to support the exercise of discretion and judgment in the application of the RBA and

iv. use of technology - utilising appropriate technology solutions to promote efficiency.

On 19 July 2019, the HKMA issued a money laundering and terrorist financing risk assessment report (the Report) for the stored value facility (SVF) sector. The Report notes that the SVF sector carries a medium level of money laundering / terrorist financing risk and identifies a number of areas for further action. The assessment and recommendations in the Report will be incorporated into an enhanced framework for SVF account management, and appropriate amendments will be made to the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Stored Value Facility Licensees).

On 4 September 2019, the HKMA issued separate circulars to AIs and SVF licensees about the Mutual Evaluation Report of Hong Kong published by the Financial Action Task Force and the Asia Pacific Group on Money Laundering. The Report assessed the compliance and effectiveness of Hong Kong's AML and CTF regime against international standards. Major themes from the Report, highlighted by the HKMA, include:

i. continuing efforts to review and update understanding of AML and CTF risks

ii. improving the quality and timeliness in suspicious transaction reporting and

iii. focussing efforts in areas of greatest potential to address AML and CTF risks, continuing to develop information-sharing approach and using technology to combat AML and CTF risks.

Banking - Culture Reform

On 19 December 2018, the Hong Kong Monetary Authority (HKMA) issued a circular announcing supervisory measures designed to assess progress made by authorised institutions (AIs) in complying with the HKMA's Bank Culture Reform initiative announced in a circular in March 2017

Specifically, three supervisory measures were announced:

i. AIs were required to conduct self-assessments on their governance arrangements and policies and procedures covering corporate culture implemented following the March 2017 circular

ii. the HKMA will conduct focus reviews of chosen AIs' practices in relation to bank culture through site visits or off-site reviews and

iii. the HKMA will begin to undertake "culture dialogues" with senior management and/or board members of AIs responsible for bank culture to gather insights and lessons learned.

The HKMA has decided to roll out self-assessments in phases – as a result, 30 systemically important AIs in Hong Kong will be expected to complete their self-assessments within six months of being instructed to do so. Other institutions not covered in this first phase are expected to "reflect on their insights, lessons learned and issues encountered in their culture enhancement initiatives"

As for focus reviews and culture dialogues, the HKMA will notify AIs of their obligations in relation to these on an ad-hoc basis.In a speech given in January 2020 by Alan Au, HKMA Executive Director of Banking Conduct, the HKMA plans to enhance its supervision of banking culture by:

i. sharing details of the HKMA's observations from the review of self-assessments;

ii. commencing focussed reviews into certain key areas of bank culture;

i.iii. continuing its dialogues and engagement with AIs on the effectiveness of culture enhancement efforts.

Banking law - amendments

On 15 November 2019, the HKMA issued a circular announcing that the negative vetting of the Banking (Liquidity) (Amendment) Rules 2019 (BLAR) had expired.

The BLAR amends the Banking (Liquidity) Rules and is intended to bring the Hong Kong regulatory regime into line with international standards.

The key changes are to:

i. recognise Basel-compliant listed ordinary shares and triple-B rated marketable debt securities as "level 2B assets" and "liquefiable assets" under the Liquidity Coverage Ratio and the Liquidity Maintenance Ratio respectively and

ii. implement a required funding requirement on total derivative liabilities under the Net Stable Funding Ratio and the Core Funding Ratio.

The BLAR came into effect on 01 January 2020.

Cross-border supervision cooperation (Mainland)

The Securities and Futures Commission (SFC) has signed memoranda of understanding (MoU) with

the China Banking and Insurance Regulatory Commission (08 June 2018) and

the China Securities Regulatory Commission (CSRC) (03 December 2018).

The memoranda relate to the cooperation and exchange of information in connection with the supervision and oversight of regulated entities that operate on a cross-boundary basis in Hong Kong and the Mainland.

In June 2019, the SFC and CSRC reached an agreement on a co-operative framework to facilitate coordinated investigations into cases of mutual concern and explored ways to further strengthen cross-border enforcement cooperation, including:

a notification mechanism for cases involving companies listed both in Hong Kong and on the Mainland

an evidence sharing mechanism under the IOSCO Multilateral Memorandum of Understanding and

organising thematic joint training and case study workshops to share investigation technique and experiences.

On 03 July 2019, the SFC entered into a tripartite MoU with (a) the CSRC and (b) the Ministry of Finance of the People's Republic of China (MOF), under which the CSRC and MOF will facilitate the SFC's access to audit working papers created by Hong Kong accounting firms and kept in the Mainland in connection with the SFC's investigations into Hong Kong-listed Mainland companies and their related entities or persons.

Employment - Taxation of separation payments

On 14 November 2019, the Hong Kong Court of Final Appeal (CFA) provided clarification as to the taxation of separation payments; it affirmed (in Commissioner of Inland Revenue v Poon Cho Ming John [2019] HKEC 3679U that income chargeable to salaries tax is not confined to income earned in the course of employment and includes payments made in return for acting as or being an employee. Payments made "for something else", on the other hand, are not taxable

In this case, the CFA was asked to determine whether the following were chargeable to salaries tax

(i) a sum paid in lieu of a discretionary bonus under a separation agreement (the Sum) and

(ii) a gain derived from the exercise of share options which was accelerated pursuant to the separation agreement (the Gain).

The CFA stressed that the substance of the payment should be looked at, rather than the form. In relation to both the Sum and the Gain, the separation agreement abrogated whatever rights the employee might have had under his contract of employment and he acquiesced in such abrogation in return for what was given to him to make him leave the company quietly.

More specifically, with reference to the Sum, the employer's financial results and the employee's performance (which were both matters of substance for bonuses) were not considered in the calculation.

As to the Gain, the employer was not under any liability to accelerate any vesting and the employee had no right to any acceleration of vesting. Both payments were not made to award the employee's past services (and clearly could not be for future services), but for "something else" (i.e., to make him go quietly), and thus not taxable.

Employment - Statutory Maternity Leave

The Employment (Amendment) Bill 2019 was gazetted on 27 December 2019. This bill seeks to extend the statutory maternity leave period from 10 to 14 weeks, with calculation of statutory maternity leave pay for additional four weeks remaining unchanged (using four-fifths of the employee's average daily wages).

This is subject to a statutory cap of HK$36,822 per employee

It is also proposed that employers may apply for reimbursement of additional four weeks' pay from Government.

The Government further proposes certain technical amendments, including:

i. aligning the definition of 'miscarriage' in the Employment Ordinance with the prevailing medical definition and practices adopted in other legislation (i.e., from "before 28 weeks" to "before 24 weeks" of pregnancy), to grant (where other required conditions are met) an employee statutory maternity leave where she suffers a miscarriage in or after the 24th week of pregnancy and

entitling an employee to sickness allowance where she has attended a medical examination in relation to pregnancy provided she is able to produce a certificate of attendance (rather than requiring a medical certificate).

Employment - Occupational Retirement Schemes

The Occupational Retirement Schemes (Amendment) Bill 2019 (the Bill) was gazetted on 4 April 2019.

The Bill is primarily aimed at preventing the misuse of Occupational Retirement Schemes Ordinance ("ORSO") schemes as an investment vehicle open to members who are not employees.

Its key proposals are:

i. to require all ORSO schemes to satisfy a new "employment-based criterion", namely that membership must be limited to

a. employees (including former employees)

b. transferred individuals (in the case of company amalgamation, restructuring, joint ventures or similar business transactions) and

c. the beneficiaries of deceased members

ii. to abolish the existing criterion for granting ORSO exemption certificates to schemes with a high proportion of employees who are not permanent Hong Kong residents and

iii. to increase powers of inspection, investigation and enforcement of the regulator, Mandatory Provident Fund Schemes Authority.

Employment - Anti-Discrimination

The Hong Kong Government introduced the Discrimination Legislation (Miscellaneous Amendments) Bill 2018 (the Amendments Bill) to the Legislative Council.

The Amendments Bill seeks to introduce changes to anti-discrimination laws in Hong Kong, following Equal Opportunities Commission's recommendations in light of its review of the four anti-discrimination ordinances

The proposed amendments include:

i. protection from discrimination on the grounds of breastfeeding

ii. prohibiting discrimination and harassment on the grounds of imputed race

iii. expanding protection from discrimination and harassment by association with a race

iv. broadening the scope of harassment protection and

v. removing the prerequisite for proof of intention to discriminate before awarding damages for indirect discrimination claims under the Sex Discrimination Ordinance, Family Status Discrimination Ordinance and Race Discrimination Ordinance.

Employment - Mandatory Provident Fund - contributions

Employers and employees are required to each contribute 5% of employees' relevant income for the Mandatory Provident Fund (MPF).

Currently, an employee who is paid monthly is exempted from making MPF contributions if he/she earns less than HK$7,100 per month (although the employer is still obliged to contribute).

MPF contribution is capped at HK$1,500 for each of the employer and employee (i.e., HK$3,000 in total), if a monthly-paid employee earns more than HK$30,000 per month.

The Mandatory Provident Fund Scheme Authority has proposed to Government that thresholds should be adjusted so that

i. the exemption income threshold would change from HK$7,100 to HK$8,250 per month and

ii. the maximum income level would increase

a. from HK$30,000 to HK$39,000 as a first stage and

to HK$48,000 two years later.

Employment - Mandatory Provident Fund – offsetting severance or long service payments

Currently, employers have the option of offsetting a departing employee's severance payment or long service payment against the value of the employer's contribution to the employee's Mandatory Provident Fund scheme

On 29 March 2018, the Hong Kong Government put forward a preliminary proposal setting out the basis of abolishing this offsetting arrangement and suggested providing financial subsidy to employers to assist with the transition.

On 10 October 2018, following a consideration of views expressed by various stakeholders, the Chief Executive announced in her 2018 Policy Address that the Government would provide a total subsidy of HK$29.3 billion to employers over a 25-year period. This represents a substantial increase from the preliminary proposal of HK$17.2 billion over 12 years.

The calculation of severance and long-service payments will remain unchanged at two-thirds of an employee's monthly wages (capped at $15,000) multiplied by number of years of service, capped at HK$390,000.

Employment - Reciprocal Recognition of Judgments between Mainland China and Hong Kong

The Arrangement on Reciprocal Recognition of Judgments on Civil and Commercial Matters by Courts of Mainland China (PRC) and of the Hong Kong Special Administrative Region (the Arrangement) was signed in January 2019.

Currently, reciprocal rights in effect with respect to enforcing Hong Kong judgments in the PRC do not apply to employment-related judgments.

The Arrangement will alter that and extend position significantly. Specifically, the Arrangement, when effective, will apply to matters of a civil and commercial nature and cover both monetary and non-monetary relief, but not interim relief

This development means that it may be possible, in future, to enforce a Hong Kong employment-related final judgment in the PRC.

No date has yet been set as to when the new regime will become effective.

Online and offline distribution of complex products

On 28 March 2018, following industry consultation, the Securities and Futures Commission of Hong Kong (the SFC) issued Guidelines on Online Distribution and Advisory Platforms (the Guidelines).

The Guidelines require an intermediary to:

i. ensure that a transaction in a complex product is suitable for the client in all circumstances, irrespective of whether a solicitation or recommendation is made and

ii. provide the client with information and warning statements about complex products.

On 04 October 2018, the SFC further announced that, under a new paragraph 5.5 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Para 5.5), additional protective measures will also apply to the sale of complex products in an offline environment.

The Guidelines and Para 5.5 became effective on 06 July 2019.

Following this effective date, additional protection must be provided to investors when purchasing complex products without solicitation or recommendation.

Authorised Institutions were required to implement the requirements applicable to online and offline platforms by 23 August 2019.

OTC derivatives - regulation

In April 2019, the Hong Kong Monetary Authority and the Securities and Futures Commission of Hong Kong (the SFC) issued a joint consultation on further enhancements to the OTC derivatives regulatory regime.

Specifically, three new measures were proposed, namely to:

i. mandate the use of Unique Transaction Identifiers for the reporting obligation

ii. revise the list of designated jurisdictions for the masking relief of the reporting obligation and

iii. update the list of Financial Services Providers under the clearing obligation.

Consultation conclusions were published in respect of (iii) above on 28 June 2019. A revised list of Financial Services Provides was gazetted on 22 November 2019 and became effective on 01 January 2020

On 18 December 2019, the SFC published its consultation conclusions on proposals to impose margin requirements for non-centrally cleared OTC derivatives.

An LC which is a contracting party to a non-centrally cleared OTC derivative transaction entered into with a “covered entity”, as defined in the Code of Conduct, will be required to exchange margin with the counterparty if the notional amount of its outstanding non-centrally cleared OTC derivatives exceeds specified thresholds.

Consequential amendments will be made to the Code of Conduct.

Uncertificated securities market – consultation

On 28 January 2019, the Securities and Futures Commission of Hong Kong (the SFC), the Hong Kong Exchanges and the Clearing Limited and Federation of Share Registrars Limited issued a joint consultation paper proposing a revised operational model for implementing an uncertificated, digitised securities market in Hong Kong.

The new model will allow listed securities and listed shares to be transferred wholly electronically.

Paper certificates will be phased out and market participants will be encouraged to communicate wholly electronically

Changes will also allow investors to hold securities in their own name, rather than through a nominee (as is the usual practice currently) – this will give investors a direct relationship with securities issuers and, in consequence, better legal protection of their rights as holders of securities. For example, voting rights will be easier to exercise.

Issuers, in turn, will benefit from greater transparency as to the real owners of their securities.

The consultation period closed on 27 April 2019.

Netherlands Entries

Amendment to the Exemptions Regulation under the Financial Supervision Act

An exemption to the requirement to hold a license for providing consumer credit may be available to a firm that is transferee of claims under a consumer credit agreement where:

i. the firm has not concluded the relevant consumer credit agreement (but the initial credit provider has); and
ii. the initial credit provider continues to execute and administer the relevant consumer credit agreement.

Anti-Money laundering - implementation of MLD IV requirement on beneficial ownership

This act implements the requirement for entities to obtain and hold adequate, accurate and current information on their beneficial ownership

Anti-Money laundering - amendment of the Money Laundering and Terrorist Financing (Prevention) Act

The proposed amendment to the Money Laundering and Terrorist Financing (Prevention) Act includes

i. a registration requirement for providers of exchange services between virtual currencies and fiat currencies;
ii. a registration requirement for custodian wallet providers;
iii. the requirement that policymakers of providers listed under (i) and (ii) are proper and fit for the performance of their tasks;
iv. the requirement that the formal and factual control structure of providers listed under (i) and (ii) is not opaque;
v. the requirement that the providers listed under (i) and (ii) have sound and controlled operational practices; and
vi. the requirement to apply additional measures with respect to transactions relating to high-risk third countries.

Anti-Money laundering - amendment of the Implementation Decree Money Laundering and Terrorist Financing (Prevention) Act

The amendments relate to further details relating to requirements applicable to

- providers of exchange services between virtual currencies and fiat currencies and
- custodian wallet providers

including:

- information to be provided upon registration;
- applicable standards for assessment of board members (fitness and propriety); and
- requirement to have in place a conflict of interest policy.

The consultation period closed on 24 October 2019.

Anti-Money laundering - amendment to the Financial Supervision Act (implementation of the Banking Data Portal Act)

The Banking Data Portal Act imposes on parties that offer a payment account (with a Dutch IBAN-number) the obligation to connect to a banking data reference portal

Anti-Money laundering - amendment to the Money Laundering and Terrorist Financing (Prevention) Act.

i. The amendment includes: a ban on cash payments above EUR 3,000;
ii. requirement for institutions to enquire at previous service provider of the relevant client on integrity risks; and
iii. a measure enabling institutions to outsource monitoring of transactions and to exchange data more easily, to extent required for monitoring of transactions.

Anti-Money laundering - General Guideline on the Money Laundering and Terrorist Financing (Prevention Act).

On 22 December 2019 the Dutch Ministry of Finance issued a consultation paper, seeking views on its proposals to amend the General Guideline on the Money Laundering and Terrorist Financing (Prevention Act).

In particular, the consultation paper examines:

i. underlying principles of the Money Laundering and Terrorist Financing (Prevention) Act (Wwft)
ii. the scope of the Wwft
iii. risk-management
iv. customer due diligence (more specifically, the scope of the requirement to perform customer due diligence, the timing, content and outsourcing thereof and the reporting of customer due diligence are discussed;
v. high-risk third countries
vi. transaction reporting
vii. politically exposed persons (PEPs) and
viii. data protection.

Financial Supervision Amendment Act 2021

Part of an annual review of the FSA and related legislation for general amendment, updates and clean-up.

The 2021 Amendment Act includes a requirement that the Dutch National Bank, when calibrating the assessment of financial soundness of applicant of a declaration of no objection which applies to all group companies, must also assess the financial soundness of those group companies intending to obtain (or expand) a qualified holding (or exercising any influence) in the relevant target company.

Remuneration Policy (Financial Enterprises) Act Amendment

The Minister of Finance has proposed amendments to the Remuneration Policy (Financial Enterprises) Act, including the following measures with respect to fixed pay:

i. a requirement on the retention, for a period of five years, of shares or components of fixed pay whose value depends on the market value of the financial firm
ii. a requirement that the remuneration policy of a financial firm prescribes the way in which the remuneration of management and employees relates to the social function of firm and
iii. an exemption to tighten the bonus cap applicable to employees who are not subject to a collective labour agreement.

Risk weighting of mortgage loans

The amendment includes the requirement that banks are subject to the obligation to use internal models to apply a minimum floor to their risk weighting of domestic loan portfolios.

Furthermore, it elaborates on the requirements to calculate such minimum floor.

The legal basis for this amendment is provided for in article 458(2)(d) CRR, which allows Member State to implement draft national measures with respect to, amongst others, risk weighting for targeting asset bubbles in the residential and commercial property sector.

Shareholder Reporting Requirement Act

The amendment would include lowering, to 2%, the threshold for triggering reporting requirements with respect to substantial shareholdings and short positions.

The consultation period ended on 4 July 2019.

Shareholder Rights Directive II

On 1 December 2019, the law implementing Shareholder Rights Directive II into Dutch law entered into force, excluding provisions subject to transitional law.

Ireland Entries

AML Directives 4+5

Ireland's European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 implement Article 30 of the AMLD4 into Irish law and require all Irish companies, as well as industrial and provident societies, to maintain a register of their beneficial owners.

Entities have been required to report this information to the central register since 22 June 2019.

AML Directives 4+5

Ireland's EU (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2019 implement Article 31 of the AMLD4 into Irish law and require all Irish trustees to maintain a register of trust beneficial ownership.

Further information is available here.

Credit Servicing

"Credit servicing" includes:

- ownership of loans
- the determination of the overall strategy for the management and administration of a portfolio of credit agreements and
- the maintenance of control over key decisions relating to such portfolio.

Credit Reporting

The Central Credit Register is a database of personal and credit information on loans of EUR 500 or greater.

Further information is available here.

In scope activities now include the following:

i. credit cards
ii. overdrafts
iii. personal loans
iv. mortgages
v. business loans
vi. moneylender loans
vii. loans from local authorities
viii. hire purchase (HP) agreements
ix. Personal Contract Plans (PCP) and similar types of finance.

Lenders considering application for HP and PCP must also consult the Register.

Fitness + Probity - Individual Accountability Framework

The Central Bank's proposed Individual Accountability Framework is set out in the report on the behaviour and culture of the Irish retail banks. and contains four elements:

i. Enforceable Conduct Standards

ii. Senior Executive Accountability Regime (**SEAR**)

iii. Enhancements to the current Fitness & Probity Regime; and

iv. Unified Enforcement Process.

The proposals represent a significant extension of existing fitness and probity regime in Ireland.

The relevant legislation is expected in the first half of 2020.