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ESMA publishes updated Q&A on prospectus issues
The European Securities and Markets Authority (ESMA) has published an updated version of its Q&A on the EU prospectus regime. The Q&A promotes common supervisory approaches and practices in the application of the Prospectus Directive and its implementing measures.

Luxembourg Budget 2015: corporate tax measures
The Luxembourg Minister of Finance recently presented the budget for 2015 which demonstrates that Luxembourg is committed to a transparent tax ruling practice and to the arm’s length principle. The budget will be discussed in parliament and may still change.

New: online foreclosure in the Netherlands
The Dutch rules on foreclosure auctions of real estate will change on 1 January 2015. The main change is that online auctions will become allowed.

Proposals further tighten remuneration in financial sector
 Eleven amendments have been submitted to the Dutch bill on the remuneration policy in the financial sector which intend to even further tighten the rules on remuneration.

Scope for automatic exchange of information extended
The scope for the mandatory automatic exchange of information between tax administrations has been extended by the Council of the EU.

Settlement cycle on by Luxembourg Stock Exchange revisited
The Luxembourg Stock Exchange has recently shortened its new standard settlement to T+2 in line with the requirements of the Central Securities Depositary European Regulation.

Workshop remuneration rules for financial institutions
Kris de Schutter and Louis Hubert of Loyens & Loeff will host a workshop in Luxembourg on remuneration in the financial sector on 9 December 2014. The workshop will focus on developing remuneration policies compliant with new EU regulations.

More info? Contact your regular Loyens & Loeff advisor or FIT@loyensloeff.com / +31 20 578 50 69.
All sukuk welcome!

Vassiliyan Zanev and Arnaud Barchman of Loyens & Loeff explain what Luxembourg has been doing to make it the EU Islamic finance hub.

They explain why Luxembourg is widely recognised as one of the European centres for Islamic finance and point out the advantages of listing and trading sukuk in Luxembourg. In particular, they detail the Luxembourg regulatory framework for listings as well as the recent sovereign sukuk issuance by the Luxembourg state. The authors also elaborate on why shariah-compliant securitisation and structured finance transactions have been implemented in Luxembourg and the expected opportunities of Islamic finance for Luxembourg.

You can find the article here.
Class actions introduced in the Netherlands?

In a recent internet consultation on the class action bill, financial institutions express their concern and fear that the implementation of a class action system in the Netherlands will trigger blackmail settlements like in the US.

Based on the bill, it becomes possible for a claim vehicle to obtain monetary damages in a collective action by going through the following five steps:

**Step 1.** The court will determine the *locus standi* of the claim vehicle to bring a collective action for monetary damages

**Step 2.** The court will judge whether the defendant acted tortuous/wrongfully/in breach of its obligations. If the court judges the actions of the defendant to be an act of tort, wrongful or a breach of obligations, parties will start settlement negotiations in order to come to a collective settlement

**Step 3.** If parties fail to reach a settlement (step 2), parties will (again) try to reach a settlement under supervision of the court

**Step 4.** If parties fail to reach a settlement under supervision of the court (step 3), the court will order parties to submit their respective settlement proposals to the court. Where applicable, parties will make for another settlement attempt, possibly under supervision of a mediator

**Step 5.** If parties fail to reach a settlement following the submission of their respective settlement proposals to the court (step 4), the court will decide on an arrangement for the collective compensation of damages. This arrangement for the collective compensation of damages will be binding upon the parties to the proceedings. Third parties can become bound by the for the collective compensation of damages by way of an opt-in system.

The bill is still under review (the consultation for the bill was recently re-opened).

You can find the bill [here](#) (in Dutch, English translation available at the end of page).
Crowdfunding in Belgium

Koen Panis of Loyens & Loeff spoke on crowdfunding and the current regulations at CrowdTuesday, an event for the crowdfunding industry. Koen’s presentation focused on regulatory developments in Belgium and France.

The new Belgian government promises in its coalition agreement to further stimulate crowdfunding. No new measures are announced yet. The current maximum amount an individual is allowed to invest is likely to stay limited at EUR 1,000 under a prospectus exemption of EUR 300,000 per project. Too strict, according to experts, since the “average” investment in Belgium’s neighbouring countries is about EUR 1,000 per individual.

In 2013, Belgian companies and associations collected only EUR 1,100,000 or about ten cents per Belgian through crowdfunding. This is twenty times less than the Netherlands where EUR 32,000,000 was raised and only a fraction of the EUR 679,000,000, or about ten euro per resident, collected in the United Kingdom. Roughly 80 projects raised funds through crowdfunding in Belgium in 2013, each raising on average EUR 6,400. You can find more background here (in Dutch).

Belgian entrepreneurs and financial institutions are currently lobbying for a level playing field. The market awaits further actions of the new cabinet.
EBA clarifies certain CRD IV requirements

The European Banking Authority (EBA) clarified who is responsible for providing remuneration data for subsidiaries that are sold.

Significant subsidiaries of EU parent institutions, EU parent financial holding companies or EU parent mixed holding companies and those subsidiaries which are of material significance for their local market need to disclose the information on an individual or sub-consolidated basis.

If a subsidiary ‘ab’ of group ‘A’ is sold to group ‘B’ in April, figures for the year before (assuming that the financial is equal to the calendar year) will need to be reported by group ‘A’ including subsidiary ‘ab’ by the end of June to the competent authority (see Article 5.1 of the Guidelines). The following year the figure will be reported by group ‘B’ including subsidiary ‘ab’, assuming that both group A and B are included in the remuneration benchmarking exercise and that the subsidiary is included in the scope of consolidation of the relevant group.

You can find the EBA publication here.
EBA discloses probe into EU bankers allowances

The European Banking Authority (EBA) rendered an opinion related to whether fixed premiums granted over a limited time period should qualify as fixed or variable remuneration.

This is important to evaluate whether financial institutions comply with the bonus cap regulations (expected to be 20% in the Netherlands as of 2015, 50% in Belgium and in Luxembourg, based on the draft bill, the maximum variable remuneration is in principle set at 100% and exceptionally the cap could be increased up to 200%).

The EBA is of the view that ‘role-based allowances’ which are
• not predetermined
• not transparent to staff or
• not permanent (maintained over time for the specific role and organisational responsibilities), should be classified as variable remuneration and will therefore fall under the bonus cap regulations.

This will lead to a change in remuneration policies for a significant number of financial institutions, who should make all amendments on 31 December 2014 at the latest.

You can find the full text here.
Enforced sale securities not subject to prospectus obligation

The obligation to publish a prospectus prior to an offer of securities to the public is not applicable to an enforced sale of securities according to a ruling by the European Court of Justice.

On 17 September 2014, the European Court of Justice ruled that the obligation to publish a prospectus prior to any offer of securities to the public is not applicable to an enforced sale of securities. Besides significant practical difficulties (such as responsibility for the prospectus etc.), the European Court ruled that in an enforced sale the potential purchasers are aware that the sole purpose of the sale is to pay a debt of the holder of the securities in question and that it is carried out in the context of legal proceedings. This needs to be distinguished from the situation where the publication of a prospectus is aimed at providing investors with full and precise information on the issuer to enable them to evaluate the risks of the transaction. The obligation to publish a prospectus prior to an enforced sale of securities is liable to impede the achievement of the objectives of the enforcement proceedings, including that of swiftly satisfying the debt owed to the creditor. Accordingly, a sale of securities in the context of enforcement proceedings does not require an approved prospectus within the meaning of the Prospectus Directive.

You can find the court ruling here.
ESMA publishes updated Q&A on prospectus issues

The European Securities and Markets Authority (ESMA) has published an updated version of its Q&A on the EU prospectus regime. The Q&A promotes common supervisory approaches and practices in the application of the Prospectus Directive and its implementing measures.

The updated questions relate to (i) summaries in relation to proportionate disclosure regimes (Q82), (ii) format for the individual summary relating to several securities (Q91), (iii) presentation of selected historical key financial information in the summary (Q93), (iv) minimum information required in section D of Annex XXII of the Prospectus Regulation (Q94), and (v) inclusion of “extra” information in individual summaries (Q95).

You can find the ESMA Q&A here.
New: online foreclosure in the Netherlands

The Dutch rules on foreclosure auctions of real estate will change on 1 January 2015. The main change is that online auctions will become allowed.

The Dutch parliament has adopted the bill on the improvement of enforced sales of immovable goods which shall become effective on 1 January 2015. The objective is to maximise the proceeds of an enforcement sale of real estate. The main changes are:

- A foreclosure auction can be held online via a publicly accessible website – it is also possible to combine an online auction with a simultaneously held physical auction. Online auctions will not be allowed for ships
- The auction must be announced on a website – the advertisement does no longer have to be posted to the object or published in a local newspaper
- The sales conditions must be published at least 30 days prior to the auction (instead of 8 days)
- In case of an auction of residential property,
  - the auction costs payable by the buyer must be limited to transfer tax, VAT, notarial fees, Land Registry fees and costs of evacuation.
  - the risk only transfers to the buyer when the award has been filed with the Land Register
  - a mortgagee must invoke its right to terminate an existing lease agreement prior to the auction – limited exceptions apply
  - residents are obliged to cooperate with viewings of the property by potential bidders
- The mortgagee may only take control of the property if required for the auction with leave of the court – currently no court permission is required
- Also a creditor which has levied an enforcement attachment may ask court permission for a private sale – currently only the debtor or a mortgagee are allowed to do so

The current auction rules will remain applicable to auctions made public prior to 1 January 2015.

You can find the bill and the parliamentary history here (in Dutch).
Proposals further tighten remuneration in financial sector

Eleven amendments have been submitted to the Dutch bill on the remuneration policy in the financial sector which intend to even further tighten the rules on remuneration.

A bill on the remuneration policy in the financial sector was submitted to parliament in June 2014. Under this bill financial institutions would be required to cap variable remuneration at 20% of the fixed annual salary as of 2015. This provides for considerably tighter regulations than what is prescribed by the European directive.

On 2 October 2014 the following 11 amendments have been proposed:

• Financial institutions should be required to report the ratio between the highest paid and lowest paid employee.
• A financial institution which has been rescued from bankruptcy with staid aid and which has become a wholly owned subsidiary of the state, should fall under the scope of the Senior Officials in the Public and Semi-Public Sector (Standards for Remuneration) Act (Wet normering bezoldiging topfunctionarissen publieke en semipublieke sector).
• The amount of variable remuneration which is paid annually to natural persons who work under the responsibility of the company should be published.
• The bonus cap of 20% should apply on a collective as well as an individual basis; no exceptions should be made for persons working in the Netherlands.
• Narrow the gap in salary within financial institutions by setting a bandwidth for wages
• Prohibit bonuses when any form of staid aid has been imposed.
• Make sure that the aforementioned bonus prohibition does not only apply to individuals who determine the day-to-day policy of the financial institution, but also to the senior management.
• All financial institutions having a registered office in the Netherlands should fall under the scope of the bonus cap. Managers of investment institutions, UCITSs and investment firms that deal on their own account, are not to be excluded.
• The individual bonus cap of 20% shall also apply to employees that do not fall under the scope of a collective labour agreement.
• At least 50% of the variable pay should be based on non-financial criteria

The suggested amendments intend to even further tighten the rules on remuneration in financial institutions. We will closely follow any progress on this subject and keep you informed.
Scope for automatic exchange of information extended

The scope for the mandatory automatic exchange of information between tax administrations has been extended by the Council of the EU.

Member States agreed on a Commission proposal to apply a wide scope of automatic exchange within Europe, to mirror the global standard of automatic information exchange agreed by the G20. In practice this means that from 2017 Member State tax authorities will automatically exchange information with each other on most categories of income and capital held by private individuals and certain entities. Austria would be given an additional year to apply the new rules, but is committed to consult with industry to see if it would be possible for it to start applying this wide scope automatic exchange earlier than 2018.

You can find the EU Council press release here.
Settlement cycle on Luxembourg Stock Exchange revisited

The Luxembourg Stock Exchange has recently shortened its new standard settlement to T+2 in line with the requirements of the Central Securities Depositary European Regulation.

This new standard is in line with the requirements of the EU Regulation No 909/2014 on improving securities settlement in the European Union and on central securities depositories which aims at improving the safety and efficiency of transaction settlement notably by harmonizing European Union securities settlement standard cycles (which provides for an harmonized effective T+2 date as of 1 January 2015).
Workshop remuneration rules for financial institutions

Kris de Schutter and Louis Hubert of Loyens & Loeff will host a workshop in Luxembourg on remuneration in the financial sector on 9 December 2014. The workshop will focus on developing remuneration policies compliant with new EU regulations.

The workshop is held in French and English and is titled ‘Rémunérations dans le secteur financier: Comment mettre en place une politique de rémunération conforme à la circulaire 14/585 de la CSSF et aux recommandations de l’ESMA’.

You can find more information and can subscribe here.