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Welcome to our latest edition of McDermott International Legal Highlights.

This issue explores a number of key themes, from data protection and cybersecurity to an in-depth look at the ICC rules. A significant subject, which we consider comprehensively is the new policies and regulations through which different countries are encouraging direct investment from beyond their shores.

As always, we welcome any thoughts, comments and queries and hope this update proves an enjoyable and informative read.

Jacques Buhart
Partner
Paris, Brussels
McDermott Will & Emery

Privacy Shield Implementation and How-To Kit from McDermott Will & Emery

Mark E. Schreiber (Boston), Michael G. Morgan (Los Angeles), Ann Killilea (Boston) and Amy Pimentel (Boston)

Japanese companies may have European branches or subsidiaries that send personal data to the US or that may be accessed by entities in the US, including customer, employee or marketing information. A cross-border data transfer mechanism is necessary to accomplish this, to comply with EU data protection laws and rules.

What is the Privacy Shield?

The EU-US Privacy Shield Framework was designed by the US Department of Commerce and the European Commission to provide companies on both sides of the Atlantic with a mechanism to comply with European Union data protection requirements when transferring EU Personal Data from the European Union to the United States. More than 2,200 organizations have already self-certified under the Privacy Shield, and we anticipate that the number will continue to increase.

As of August 1, 2016, the US-EU Privacy Shield replaced the defunct Safe Harbor for data transfers from the European Union to the United States.

Some organizations have adopted different approaches in addressing Privacy Shield requirements, often wrestling with how to achieve compliance. Others have turned to mechanisms such as EU Model Clauses or even adopting a wait-and-see non-compliant posture.

EU "Personal Data" is defined quite broadly and means any information relating to an identified or identifiable natural person. Examples of personal data are name, identification number, location data, an online identifier or to one or more factors specific to his/her physical, physiological, genetic, mental, economic, cultural or social identity.

The Privacy Shield Principles lay out a set of requirements governing participating organizations' use and treatment of EU Personal Data received from the European Union under its Framework. It also sets forth the access and recourse mechanisms that participants must provide to individuals in the European Union. Once an organization publicly commits to comply with the Privacy Shield Principles, that commitment is enforceable under US law – with possible US Department of Commerce audits. It also mandates a third-party vendor management system so that the organization conforms its contracts with third-party processors and third-party controllers to the new onward transfer requirements.

What is the Privacy Shield How-To Kit?

The Privacy Shield How-To Kit was created by McDermott Will & Emery to help organizations prepare for and self-certify compliance with the EU-US Privacy Shield Framework.

The How-To Kit is intended for use by previously Safe Harbor-certified organizations and those that are not yet certified.

- For organizations that previously were Safe Harbor certified, this How-To Kit contains tools to help perform a gap analysis between an organization's current policies and practices, and the heightened requirements of the new Privacy Shield. This exercise will help the organization identify the specific compliance steps that must be taken prior to self-certifying.
- For organizations not previously Safe Harbor-certified, the Privacy Shield How-To Kit outlines the necessary steps to assess preparedness and create a Privacy Shield compliance program from the outset.

Certifying under Privacy Shield by using this How-To Kit may also give organizations a head start in preparing for compliance with the EU General Data Protection Regulation (GDPR). The GDPR will become applicable in May 2018 and will apply to US companies providing goods and services to the European market.

What Does the Privacy Shield How-To Kit Contain?

The Privacy Shield How-To Kit includes model documents, explains implementation strategies and sets forth a roadmap for enrolling in the Privacy Shield. It also contains practical templates an organization can use to assess its readiness to self-certify compliance with the Privacy Shield Principles, including a data inventory, a vendor due diligence questionnaire and models of vendor template contractual provisions.

The How-To Kit contains the following documents and templates that will help an organization assess and advance its current compliance status with Privacy Shield requirements:

- The **Privacy Shield Work Plan** will help an organization track and document its progress toward compliance with each Privacy Shield principle;
- The **Privacy Shield Data Inventory** is a tool to assess the organization's EU Personal Data collection activities that fall within the scope of Privacy Shield;
- The **Privacy Shield Privacy Policy Checklist** is to be read alongside the organization's Privacy Policy to ensure that it contains all of the required elements;
- The **Third-Party Due Diligence Questionnaire** will help an organization gather necessary information about its current third party vendor arrangements;
- The **Vendor Template Provisions** are a guide for revising and supplementing an organization's

vendor contracts to bring these contracts into compliance with Privacy Shield;

- **Guidance on Independent Recourse Mechanisms** will assist an organization in choosing third-party independent recourse mechanism required under the Recourse, Enforcement and Liability Principle; and
- **Additional Resources** about Privacy Shield explain certain Privacy Shield principles and Department of Commerce guidance.

Privacy Shield certification planning and use of this How-To Kit may be done under attorney-client privilege. Counsel should be involved in the preparations for certification.

This How-To Kit may also be used as guidance to certify under the Swiss-US Privacy Shield Framework, as the principles under both frameworks include similar requirements. There are slight differences between the frameworks and the organization must consider these differences prior to certification.

McDermott's Privacy Shield preparedness team remains available to assist in your organization's Privacy Shield certification

China Issues New Policies to Attract Foreign Investments

David Dai (Shanghai) and Shawn Shen

Making use of foreign investment has long been recognized by the Chinese government as an important part of China's fundamental national policy of opening-up and economic reform, which has played a positive role in developing China's economy, and deepening reforms. China's economy is deeply integrated into the world economy, and the country is facing new challenges and opportunities in the form of foreign investment and maintaining a positive balance of its foreign capital reserves. These challenges are compounded by new trends in global trans-national investment and industrial transfer, as demonstrated by the relocation of some labor-intensive manufacturing plants from China to neighboring Southeastern Asia countries and the US home-manufacturing campaign advocated by the new Trump Administration. A further consideration must be China's "new normal" in economic development, characterized by mid-to-high economic growth rates and a shift from production and investment to service, consumption and innovation.

With a view to creating a favorable business and regulatory environment to attract foreign investment, the Chinese central government has recently launched a series of new policies and initiatives.

China's State Council's Circular No. 5

On January 12, 2017, China's State Council released the "Notice of the State Council on Several Measures for Opening Wider to the Outside World and Making Active Use of Foreign Investment" (**Circular No. 5**), proposing 20 initiatives intended to revitalize the use of foreign capital, create an excellent business environment and optimize government services. These measures include:

- Revising the "Catalogue for the Guidance of Foreign Investment Industries" and relevant policies and regulations as well as lifting restrictions on foreign investment in the service industry, manufacturing industry, mining industry and other sectors;
- Revising the current "Catalogue of Priority Industries for Foreign Investments" in the Midwest region by expanding the scope of encouraged industries in the Midwest and Northeast regions;
- Enhancing IP protections for foreign invested enterprises in China and offering national treatment to foreign invested enterprises in government procurement projects;
- Allowing local government to specify incentive policies to attract investors and prioritizing substantial land use by offering discounted land premiums to foreign investors;
- Promoting the full adoption of the model of pre-entry national treatment plus negative list approach in foreign investment management, and simplifying the procedures for both the establishment of foreign invested enterprises and managing foreign investment projects.

Proposed Revisions to the 2015 Foreign Investment Industry Guidance Catalogue (National FDI Catalogue)

In December 2016, the National Development and Reform Commission (**NDRC**) and the Ministry of Commerce (**MOC**) requested public comments on the "Amendment Draft of Catalogue of Industries for Guiding Foreign Investment" (**Draft Amendment**). According to the Draft Amendment, the number of restricted industries for foreign investment was reduced from 93 to 62, but some industries such as the financial services industry remain tightly regulated. Circular No. 5 affirms the relaxation of the restrictions as reflected in the Draft Amendments and calls for further liberalization of certain restrictive industries, including:

- Relaxing restrictions on the market entry of foreign investment in banking, financial institutions, securities companies, securities investment fund management companies, futures companies, insurance institutions and insurance intermediaries;
- Relaxing previous restrictions for foreign investment in oil shale, oil sands, shale gas and other fields of unconventional oil and gas as well as mineral resources;
- Liberalizing restrictions on the market entry of foreign investment in accounting and audit, architectural design, rating services and other related fields;
- Promoting the orderly opening-up of telecommunications, culture, education, transportation and other related fields;
- Eliminating restrictions on the market entry of foreign investment in the manufacturing of rail transport equipment, motorcycle manufacturing, fuel ethanol production, oil and fat processing and other fields;
- Encouraging investment in high-end manufacturing, smart manufacturing, and green manufacturing as well as production-oriented services such as industrial design and innovation, engineering consulting, modern logistics, inspection, testing and certification related to the "Made in China 2025 Strategy";
- Supporting foreign investors to participate in infrastructure construction, including projects of energy, transportation, water conservancy, environmental protection, municipal public works, etc., by way of concession operations. Providing concessions to foreign investors to encourage large-scale infrastructure construction projects within the energy, transportation, water conservation and environmental protection.
- Supporting foreign investment in research and development centers, enterprise technology centers, post-doctoral research stations.

On June 28, 2017, MOC and NDRC jointly released "Catalogue of Industries for Guiding Foreign Investment (2017 Catalogue) which will become effective on July 28, 2017. The 2017 Catalogue makes minor changes to the Draft Amendment and officially confirms the liberalizations as called for by the Circular No.5.

Catalogue of Priority Industries for Foreign Investment in the Central and Western Region (CWR FDI Catalogue)

On February 20, 2017, the NDRC and MOC jointly released the revised "Catalogue of Priority Industries for Foreign Investments in the Central and Western Region" (2017 CWR FDI Catalogue), which came into effect on March 20, 2017.

The 2017 CWR FDI Catalogue added 173 new industrial priorities, expanding the list to a total of 639priorities. In addition, it removed 34 items and modified 84 items from the previous 2013 version of the CWR FDI Catalogue. The major changes in the 2017 CWR FDI Catalogue include the following:

- Supporting the integrated development of electronics and pharmaceuticals in some provinces, by prioritizing glass substrate, integrated circuit manufacturing, smart phones, tablet computers, and bio-pharmaceuticals;
- Encouraging agricultural innovation and enhancing the modernization of agricultural operations, e.g., the processing of organic food in Heilongjiang Province or developing standardized vegetable bases in the Inner Mongolia Autonomous Region;

- Prioritizing engineering reconnaissance, graphic design and logistics in certain provinces to promote services industries. In addition, refining and upgrading the consumer services industry, by prioritizing tourism and leisure, culture and sports in certain provinces;
- Prioritizing the development of urban parking facilities, electronic car charging facilities and road freight station facilities to promote the development of transportation and logistics networks;
- Prioritizing export-oriented textile, clothing, and furniture businesses to promote new export-oriented industrial clusters in provinces with labor advantages.

Unlike the National FDI Catalogue which categorizes foreign investments as either "encouraged" projects which will receive tax incentives, and "restricted" and "prohibited" projects which will not, the foreign investment priorities listed in the CWR FDI Catalogue are all eligible for applicable preferential policies, as long as these foreign investments are carried out in the prescribed areas.

Special Management Measures for the Market Entry of Foreign Investment in Pilot Free Trade Zones (Negative List)-2017 Version

On June 5, 2017, China's State Council's office published the Special Administrative Measures (Negative List) on Foreign Investment Access to the Pilot Free Trade Zones (the **2017 Negative List**). Compared with the previous version released in April 2015 (the 2015 Negative List), the 2017 Negative List, which will come into effect on July 10, 2017, significantly reduces the range of industries and activities in which foreign investment is either restricted or prohibited in China's Pilot Free Trade Zones (**FTZ**s).

The "negative list" is an innovative approach recently adopted by the Chinese government to attracting foreign investment in the FTZs, an important step towards opening the Chinese market to foreign investment. Under the negative list approach, if an industry or activity is not explicitly restricted or prohibited by its inclusion in the negative list, foreign investors may freely invest in said industry and receive national treatment in the same manner as Chinese investors.

When the negative list was first introduced for China's first FTZ in Shanghai in 2013, the number of listed restricted industries and activities disappointed many foreign investors. The long Negative List was reduced from 190 to 139 in 2014, and further reduced to 122 by the 2015 Negative List. The 2017 Negative List makes further significant cuts and the total restricted industries listed are reduced to 95.

Restrictions removed from the list mainly pertain to the manufacturing and service sectors. For example, the 2017 Negative List removed previous requirements that electronic automobile manufacturers must use their own trademarks and possess their own intellectual properties, licensed inventions, and patents; and that manufacturing of rail transportation equipment should be confined to equity joint ventures or contractual joint venture cooperation. In the service sectors, the minimum operational requirements for foreign invested banks to engage in RMB services have also been removed.

A complete list of the 2017 Negative List may be obtained here (in Chinese). It is also expected that the current negative list approach being tested in the FTZs may eventually be applied across the entire country.

Conclusion

In a nutshell, the Circular No. 5, the 2017 Catalogue, the 2017 CWR FDI Catalogue and the 2017 Negative List indicate China's determination to further build an investment-friendly environment for foreign investors so as to enhance its ability to compete in the global arena. It is also expected that a series of supporting documents and measures will be developed and introduced in the near future.

The Emergency Arbitrator Provisions in the ICC Arbitration Rules

Jacob Grierson (Paris)

The ICC's current version of the rules of arbitration ("2017 ICC Rules"), which came into effect on March 1, 2017, include "Emergency Arbitrator Provisions" (in Article 29 and Appendix V) providing for urgent interim measures by a so-called "emergency arbitrator."[1] Such measures, which include preserving the status quo and conserving evidence, can be ordered by the emergency arbitrator in circumstances where the full arbitral tribunal has not been constituted and is therefore not itself empowered to order such measures. These provisions render ICC arbitration more attractive than certain other forms of arbitration as they avoid potential vacuums of jurisdiction.

Applicability of the Emergency Arbitrator Provisions

The Emergency Arbitrator Provisions provide an "opt-out" system; if the Parties do not exclude them, they will automatically apply. This contrasts with the ICC's Pre-Arbitral Referee Procedure, the ICC's long existing (but little used) system for obtaining pre-arbitral interim relief, which applies only where the parties have agreed to it.

Nevertheless, there are certain cases where the Emergency Arbitrator Provisions will not apply:

- Where the arbitration agreement was concluded before 1 January 2012.[2]
- Where the parties have agreed to opt out.
- Where the parties have agreed to another pre-arbitral interim measures procedure (e.g., the Pre-Arbitral Referee Procedure).

In addition, the Emergency Arbitrator Provisions only apply to parties that are signatories of the arbitration agreement, or successors to such signatories. Accordingly, they cannot, for example, be invoked against an affiliated company of a signatory of the arbitration agreement, even if the affiliated company might otherwise be brought into the arbitration on the basis of the "group of companies" theory.

The Procedure

Where the Emergency Arbitrator Provisions do apply, the procedure will essentially be as follows:

- The President of the ICC Court will appoint an emergency arbitrator within two days of an Application being made, so long as the file in the underlying arbitration has not yet been transmitted to the arbitral tribunal.
- The emergency arbitrator will likely be an experienced ICC arbitrator and will need to be independent of the parties.[3] The emergency arbitrator will not be allowed to sit as a member of the arbitral tribunal that will go on to decide the substantive dispute.
- The emergency arbitrator will establish a procedural timetable within two days of the appointment, the terms of which will depend on the urgency of the measures requested, but which must in any case allow for a decision to be taken (in the form of an "Order") and communicated to the parties within 15 days of the appointment.

Interim measures will in theory, therefore, be obtained within 17 days of their being requested, or sometimes more quickly, depending on the circumstances.

Cost of Emergency Arbitrator Proceedings

The ICC will generally levy a flat fee of US$ 40,000 for any application under the Emergency Arbitrator Provisions. US$ 10,000 covers the ICC's administrative expenses, and US$ 30,000 covers the emergency arbitrator's fees and expenses. There is a provision for the costs to be increased by the President of the ICC Court if proven necessary in light of "the nature of the case and nature and amount of work performed by the emergency arbitrator, the Court, the President and the Secretariat." However, this has not yet happened in practice.

[1] These Emergency Arbitrator Provisions were introduced for the first time in the 2012 version of the ICC Rules. Since then, we understand that there have been over 50 applications for emergency arbitrators.

[2] This contrasts to the rest of the 2017 ICC Rules, which apply to any arbitration commenced on or after March 1, 2017. Another exception is in respect of the Expedited Procedure Provisions, which apply only when the arbitration agreement was concluded before March 1, 2017.

[3] There is a specific mechanism, with brief (three-day) time limits, which will allows either party to challenge the appointment before the ICC Court.

At the end of the proceedings, the emergency arbitrator will fix the costs of the proceedings (i.e., the flat fee plus any increase, plus the reasonable legal and other costs incurred by the parties) and decide which of the parties should bear them.

Effect of an Order

The emergency arbitrator's Order binds the parties, who are required under the Rules to comply with it. However, in the event that a party fails to comply, enforcement under the New York Convention will likely not be possible, given that an Order is not an "award" and may in any case not satisfy the requirement of "finality" for enforcement under that Convention (being an **interim** order). It may nonetheless be enforceable under other provisions of certain national laws (e.g., that of Singapore).[4] In any event, a party against whom an Order is made would be unwise to fail to comply, unless it is adopting a policy of total default. An arbitral tribunal is likely to take a dim view of a party ignoring an emergency arbitrator's Order and will most likely award damages to compensate the other party.

Because the Order is not an "award" and because it is of an interim nature, it will likely be difficult to challenge before national courts. However, parties should bear in mind that the arbitral tribunal, once constituted, is expressly empowered to "modify, terminate or annul" the Order whenever it chooses to do so. Accordingly, a party aggrieved by an emergency arbitrator's Order will be able to request a review by the arbitral tribunal relatively quickly.

If the Order is not modified, terminated or annulled, it will (with some exceptions) remain in force until the arbitral tribunal's final award is rendered. The exceptions are:

- Where the applicant fails to follow up the Application by filing a Request for Arbitration within 10 days from the date of filing.
- Where the ICC Court accepts a challenge against the emergency arbitrator.
- Where the arbitration is terminated before the rendering of a final award.

The Alternative: Applying to National Courts

The 2017 ICC Rules specifically preserve the parties' right to apply to national courts for interim measures.[5] The question therefore arises, which is the better option for a party seeking urgent relief during the period before the arbitral tribunal is constituted: applying to the emergency arbitrator; or applying to national courts?

The advantages of the emergency arbitrator procedure are that:

- It may sometimes be the only alternative, as in certain jurisdictions national courts may not be empowered to grant interim relief.
- It may be cheaper than proceedings before national courts.
- It avoids the need for multiple applications by multiple counsel in different jurisdictions.
- It may be more confidential than national court proceedings.
- It avoids the need to rely on national courts which may not be considered sufficiently independent.

The advantages of national courts are that:

- They will, in appropriate circumstances, accept ex parte applications (i.e., applications of which the other side is not informed until after the relief has been granted), which is a solution that is not available to the emergency arbitrator. This may be crucial, for example, in the case of a freezing order, where the benefit may well be lost unless the element of surprise is maintained.
- Their orders are more easily enforced than an emergency arbitrator's Order.
- Their orders may be subject to appeal, unlike the emergency arbitrator's Order.

The emergency arbitrator provisions will be the primary choice for most parties seeking urgent interim measures before the arbitral tribunal has been constituted. Nevertheless, there will always be some cases where national courts will remain preferable (e.g., where ex parte relief is needed). The ICC Rules have rightly left open the possibility for parties to choose between the two

[4] The 2012 International Arbitration Act of Singapore includes emergency arbitrators within the definition of arbitral tribunal.

[5] In certain jurisdictions, however, the fact that an emergency arbitrator is available may make it more difficult to apply to a national court for interim measures: e.g., the English High Court's judgment in Gerald Metals v Timis & Ors [2016] EWHC 2327.

alternatives[6], and we would in most cases recommend that parties to ICC arbitration clauses give themselves the same flexibility by not opting out of the Emergency Arbitrator Provisions

New Italian Rules Allowing Direct Lending and Purchasing of Claims by EU Alternative Investment Funds

Emidio Cacciapuoti (Milan), Piero Carbone (London), Giancarlo Castorino (Milan), Giovanni Nicchiniello (Milan) and Ettore Scandale (Milan)

Law Decree 14 February 2016, No. 18 (as converted by Law 8 April 2016, No. 49) expressly allows EU Alternative Investment Funds (“**EU AIFs**”) to carry out, under certain conditions, direct lending and purchasing of claims in Italy. On 23 December 2016, the Bank of Italy issued rules which implemented the new regulation concerning collective asset management activity (“**Bank of Italy Regulation**”).

The above-mentioned rules have been introduced with the aim of providing Italian companies with new financing instruments to facilitate access to credit. The new rules follow previous legislative measures concerning (i) the facilitation of the issuance of bonds by private companies, and (ii) the possibility for Italian insurance companies, securitization companies and AIFs to perform direct lending.

Therefore, direct lending and purchasing of claims in Italy might represent an opportunity for existing and/or newly-formed EU AIFs to create new lines of business.

The Consolidated Financial ACT

Article 46 of Legislative Decree 24 February 1998, No. 58 (the “**Consolidated Financial Act**”) sets out several conditions that govern how EU AIFs invest in credit to Italian entities. These conditions cover direct lending and the purchase of claims and can be summarized as follows:

- the EU AIF must be authorized to invest in loans by the relevant authority in its home Member State;
- the EU AIF must be structured as a closed-end fund and its operational system be equivalent to the operational system of an Italian AIF investing in loans;
- the risk management rules applicable to the EU AIF according to its home Member State law and regulations (including provisions governing leverage thresholds) must be equivalent to those applicable to Italian AIFs permitted to invest in loans.

According to Article 46, Paragraph 2 of the Consolidated Financial Act, managers of EU AIFs intending to operate in Italy are required to file a prior notice with the Bank of Italy.

Moreover, to ensure sound and prudent management of such funds, the Bank of Italy may require the addition of the EU AIF to the Italian central credit register (Centrale Rischi), a system operated by the Bank of Italy which collects data supplied by banks and financial intermediaries on the credit they grant to their customers. Pursuant to Article 46, Paragraph 3 of the Consolidated Financial Act, the Bank of Italy may also require participation in the Centrale Rischi by banks or financial intermediaries duly authorized to operate in Italy.

The Bank of Italy Regulations

The new rules set forth by Title VI, Chapter V of the Bank of Italy Regulation

- restate the conditions provided for by Article 46 of the Consolidated Financial Act , and
- detail the requirements of the prior notice procedure applicable to EU AIFs intending to start their operation in Italy.

As far as the prior notice procedure is concerned, Article 2.2, Chapter V, Title VI of the Bank of Italy Regulation provides that the prior notice of intention to offer loans in Italy must be sent at least 60 days before the commencement of operations, and must contain the following:

- the name, registered office and directorate-general of the EU AIF’s manager;
- the name of the EU AIF, or the relevant sub-fund that intends to operate in Italy;

[6] *Ibid* 4 above

- the personal and legal capacity of the signatory of the communication;
- a statement released by the relevant authority in the EU AIF's home Member State confirming authorization in the Member State and that the fund manager is authorized to manage the EU AIF;
- a legal opinion or statement provided by the relevant authority in the EU AIF's home Member State confirming the ability of the EU AIF to originate loans;
- a copy of the management rules/by-laws of the EU AIF and those governing its manager, along with a statement from the home Member State's relevant authority confirming the validity of these documents;
- alternatively (i) a declaration signed by the legal representative of the EU AIF's manager, setting out the AIF's home Member State's rules on risk mitigation and diversification, including thresholds on leverage (these provisions must be considered equivalent to provisions applicable to Italian AIFs and a legal opinion to that effect must also be supplied), or (ii) a statement released by the relevant authority in the home Member State that it is actively supervising the conduct of the AIF manager with the rules on risk mitigation and diversification in mind;
- a copy of the most recent annual report, and half-year report if available;
- a note outlining the operational scheme of the EU AIF, with particular reference to rules governing the subscription and redemption of units/shares, and the scope and investment policy. The note must state whether or not the AIF manager has signed, or intends to sign, side letters with investors of the EU AIF and, if so, their content must be disclosed.[7]

Please also note that an EU AIF that has already been authorized to invest in loans in Italy, and intends to subsequently commence operations in respect to a different sub-fund, does not need to re-submit data or information previously sent to the Bank of Italy.

[1] Once the Bank of Italy has reviewed all the documentation, and any necessary amendments or additions have been made, the Italian Authority has 60 days to notify the fund if it has failed to meet the requirements. Unless this express notification of failure is sent within a 60 day time period, the EU AIF is entitled to start lending in Italy.

Tax Considerations

The Italian government also introduced new and important changes to the tax regime applicable to financing transactions executed by, *inter alia*, EU and Italian AIFs which now benefit from significant tax reforms summarized below:

- application of the "*sostitutiva*" tax regime which is considered a key requirement for real estate finance transactions. Hence, medium and long term loans (i.e. having a maturity date longer than 18 months) granted by EU AIFs may benefit, upon option, from an umbrella tax regime of 0.25% on the advanced amount of the loan which replaces ordinary and higher taxes such as stamp duties, property and mortgage taxes (the latter being not lower than 3% of the secured obligations); the same regime is applicable in the event that EU AIFs purchase the relevant receivables); and
- disapplication[8] of the ordinary withholding tax to be levied by Italian borrowers on facilities interests paid to foreign creditors equal to 26%.[9]

Accordingly, cross-border financing (as well as purchasing of receivables, including portfolios of credits, securitization transactions, acquisition on the secondary market and syndication activities) will be rendered freer for a greater number of entities and will be more cost efficient at the same time, augmenting the competitiveness of the Italian market and making negotiations of the relevant agreements easier and less burdensome (e.g., no need to agree on gross-up basket).

[2]Provided that Italian law and regulations on lending capability are respected.

[3] Or such other percentage as determined by any applicable bilateral tax treaty - if any - entered into by and between Italy and the relevant country.

AUTHORS

For more information, please contact your regular McDermott lawyer, or:

Mark Schreiber
+1 617 535 3982
mschreiber@mwe.com

Michael Morgan
+1 310 551 9366
mmorgan@mwe.com

Ann Killilea
+1 617 535 3933
akillilea@mwe.com

Amy Pimental
+1 617 535 3948
apimental@mwe.com

David Dai
+86 21 6105 0517
ddai@mwechinalaw.com

Shawn Shen
+86 21 6105 0949
shshen@mwe.com

Jacob Grierson
+33 1 81 69 15 07
jgrierson@mwe.com

Emidio Cacciapuoti
+39 02 36575701
ecacciapuoti@mwe.com

Piero Carbone
+44 020 7577 6973
pcarbone@mwe.com

Giancarlo Castorino
+39 02 36575701
gcastorino@mwe.com

Giovanni Nicchiniello
+39 02 36575701
gnicciniello@mwe.com

Ettore Scandale
+39 02 36575701
escandale@mwe.com

If you have questions, suggestions or comments about this newsletter, please contact us here.

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McDERMOTT INTERNATIONAL HIGHLIGHTS

GLOBAL PRIVACY & CYBERSECURITY COMPLIANCE STRATEGIES SERIES - PART TWO: ASIA AND THE REST OF THE WORLD

The webcast will focus on issues arising under data protection laws in China, Japan, South Korea and elsewhere around the world, including best practices for compliance.

MCDERMOTT WELCOMES NEW DATA PROTECTION PARTNER IN PARIS

Romain Perray has arrived in our Paris office to strengthen the Firm's global Data Privacy and Cybersecurity capabilities throughout its offices in Europe.

POINTS TO COMPLY WITH THE EU GENERAL DATA PROTECTION REGULATION

Wilko van Weert and **Mai Muto** contributed to the series entitled "Points to comply with the EU General Data Protection Regulation" on Shoji Homu Portal.

PUBLIC ANNOUNCEMENTS OF FUTURE PRICE INTENTIONS UNDER EU COMPETITION LAW

Wilko van Weert and **Mai Muto** provided an insightful assessment of future price intentions under EU competition law.

54TH INSTITUTE OF BUSINESS LAW AND COMPARATIVE LAW POLITICS GRADUATE SCHOOLS FOR LAW AND POLITICS

Jacques Buhart spoke on "Global Developments in the Latest Competition Law and Policy" at the University of Tokyo.

BREXIT - LEGAL IMPLICATIONS

Martin Lambe and **Mai Muto** have outlined some of the main legal implications of Brexit according to different models, including the EEA model.

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