



## From the Co-Chairs



Dear members,

Welcome to the May IBA Banking Law Committee e-bulletin, edited by our Publications Officer, Gregorio Consoli of Chiomenti, Italy. As usual, the e-bulletin collects together several interesting articles from a number of jurisdictions, illustrating changes and developments in the financial sector.

This e-bulletin has been published to coincide with the start of the 36th IBA International Financial Law Conference, taking place in Berlin from 15 to 17 May 2019. The conference is organised by the IBA Banking Law and Securities Law Committees.

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## Articles by the co-chairs

### **The ICO is dead, long live the ICO**

*by Louise Browning, Slaughter and May, London*

Cryptocurrencies. Tokens. ICOs. The buzzwords of the moment. But what exactly are they and what is causing

### **Mongolia: Law on recapitalisation of commercial banks with public funds**

*by Zoljargal Dashnyam and Enkhsaruul Jargalsaikhan, DB & GTS LLP, Ulaanbaatar*

The asset quality review of Mongolian commercial banks has revealed a system-wide capital shortfall equal to 1.9

market commentators to speculate that their time is up? From the infamous attack on The DAO to the struggle with legal categorisation of tokens, it is no surprise that the market for ICOs has started to decline. Will security token offerings now become the norm and how will cyber-utopians react to this clear move towards a more regulated and industry-compliant asset class?

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per cent of Mongolian GDP as of the third quarter of 2017. On 22 June 2018, the Banking Sector Stability Law was enacted by the Parliament as one of the measures addressing the re-capitalisation of the banks with capital shortfall. Notwithstanding the generality of its title, the Banking Sector Stability Law is solely focused on enabling the re-capitalisation of commercial banks with public funds.

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### **Investment by global banks: a pathway to economic growth and foreign markets for Myanmar?**

*by Nishant Choudhary and Bhawna Bakshi, DFDL, Myanmar*

Any reform aiming to increase foreign investment in a country can only be accomplished when there is uniformity between the legal provisions and the practices followed by the regulatory authorities. Adherence to legacy legislation and erroneous interpretation of the new laws would erode the objective of the reforms, leading Myanmar off the path toward greater development and progress.

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### **Crypto-assets: the regulatory response**

*by Josh Hogan and Imelda Higgins, McCann Fitzgerald, Dublin*

Regulators have adopted contrasting approaches to the regulation of crypto-assets. Some have introduced bespoke rules either for all crypto-assets or for the subset of them that do not fall within their existing regulatory framework. Others have focused on considering the extent to which crypto-assets fall within the scope of their framework for financial services. This article provides an overview of crypto-assets as well as the ways in which some legislators are approaching their regulation.

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### **New changes to the Italian securitisation legal framework**

*by Francesco Dialti, CBA Studio Legale, Milan*

### **Recent regulatory improvements in the Brazilian payment industry**

*by Jose Luiz Homem de Mello, Tatiana Guazzelli, Thomaz Braga de Arruda and Maria Fernanda Ponte Muricy, Pinheiro Neto Advogados, São Paulo*

The 2018 Budget Law introduced a number of changes to the Italian Securitisation Law, setting out the possibility for securitisation SPVs to lend to micro-enterprises having a balance sheet total higher than ???2m, and introducing the securitisations of receivables arising from the ownership of real estate assets (as well as registered movable assets, such as automotive, and rights in rem or personal rights over such assets).

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This article aims to address the recent regulatory changes related to the Brazilian payment industry, more specifically, in connection with the so-called 'anticipation of receivables', which is a very typical and important transaction of the Brazilian payment market. The new rules have been enacted by the National Monetary Council and the Central Bank of Brazil as part of their efforts to foster competition and efficiency of the payment industry in Brazil.

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### **The rise of NPLs: restructuring and distressed investing in Asia**

*by Kok Chee Wai, Allen & Gledhill, Singapore*

The article reports on a session on NPLs co-chaired by the Banking Law Committee and the Securities Law Committee, held at the 3rd IBA Asia-based International Financial Law Conference, 8-9 March 2018.

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### **Australia: 'Ipso facto' update**

*by Leigh Schulz and Stefan Vujacic, MinterEllison, Melbourne*

From 1 July 2018, new laws came into effect in Australia which affect the ability of parties to enforce certain contractual rights. In essence, subject to some broad exemptions, the ipso facto reforms seek to introduce a more robust corporate rescue framework by imposing a stay on the rights of a party to terminate or modify the operation of a contract upon the occurrence of a prescribed insolvency-related trigger event.

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### **ESMA issues draft standards and documents relating to 'securitisation repositories' under the Securitisation Regulation**

*by Salvatore Sardo and Luigi Martinotti, Chiomenti, Milan*

### **Portuguese REITS: a new solution for investing in real estate**

*by Alexandra Courela and Rodrigo Formigal, Abreu Advogados, Lisbon*

The European Securities and Markets Authority (ESMA) recently issued some key documents relating to securitisation repositories under the Securitisation Regulation. It issued draft regulatory and implementing technical standards (respectively 'RTS' and 'ITS') setting out the information to be provided by an entity applying to register as a securitisation repository. ESMA also issued to the European Commission a Final Report of the Technical Advice on fees for securitisation repositories.

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Important changes are expected to take place during 2019 in the Portuguese real estate investment sector. The introduction of a similar REIT-type vehicle marks the entry of Portugal into the REITs international market and this new solution for investing in real estate is expected to draw investors' attention due to its various key attributes.

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### **Legal perspectives for open banking in Brazil**

*by Bruno Balduccini, José Luiz Homem de Mello, Fernando Mirandez Del Nero Gomes, Leonardo Baptista Rodrigues Cruz, Alessandra Carolina Rossi Martins and Ana Cristina do Val Fausto, Pinheiro Neto Advogados, São Paulo*

This article aims to address the legal perspectives for open banking in Brazil, especially the envisaged regulatory model, which is being discussed by the Brazilian Central Bank with the market.

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