FIS Horizons 2020

Contents

Embracing Change

We regularly hear from clients and colleagues alike that there has never been a more challenging time to be operating in the financial institutions sector. Across the world, market volatility, trade wars, populism, digitalisation, environmental issues and regulation are bringing about a new era of change. The question is, how do we address – and even embrace – this change and how do we make the most of the opportunities that change brings?

More than 10 years after the collapse of Lehman, regulators are continuing their work to make the financial world a safer place. In this edition we look at some of the developments – from the move away from IBOR to risk-free reference rates and the potential litigation risk that follows, to the increasing challenges financial institutions face in meeting compliance requirements ranging from AML and sanctions, to diversity and culture. Keeping track of change can be difficult; our Regulatory, Compliance and Investigation Solutions tool has been designed to help clients keep on top of their compliance risks.

Following the theme of convergence and divergence, we look at the new EU Directive on preventative restructuring frameworks which is part of the EU capital markets union, and at some of the issues Brexit raises for financial institutions. We also discuss some of the encouraging signs that markets are opening up - from PSD2 in the EU to open banking in Asia-Pacific and the new Foreign Investment Law in China.

Sustainable and impact finance is a fast growing area as regulators and the financial institutions sector react to climate change. Law, regulation, policy and practice and market recommendations on a national level and EU level look set to increase.

Technology and innovation continue to shape the sector, with regulators encouraging innovation both from FinTechs and from the more traditional banking sector. We're also witnessing the development and increasing usage of cryptocurrencies. Whether these developments will bring new levels of regulation remains to be seen but certainly there is clear evidence that regulators are starting to think hard about these topics. Whatever the outcome, the new technologies being developed and used in our business will shape all our futures.

Here we've collected a global snapshot of topics on the horizon which we think will help shape your next 12 months. You will also find lawyers associated with each topic, please contact them if you want to discuss anything further.

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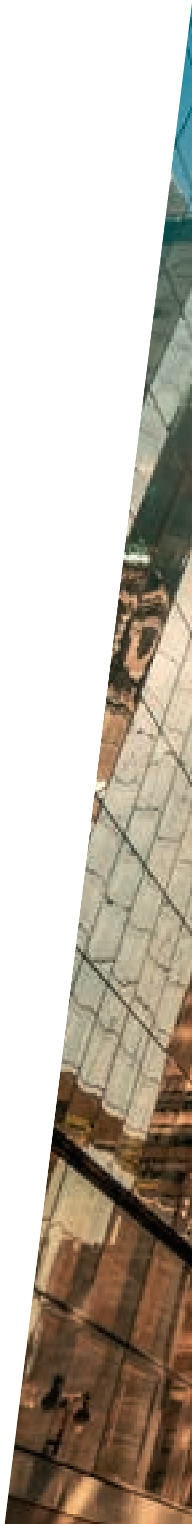

Chapter 1

Derisking the World

Litigation risk makes for a bumpy ride from LIBOR to risk free rates

Financial institutions continue to prepare for the anticipated cessation of the publication of the London Interbank Offered Rate (LIBOR) benchmark after the end of 2021 and its replacement with "risk-free" overnight rates, including reformed SONIA (for sterling) and the new SOFR rate (for U.S. dollars). Transitioning affected financial products to the new rates and amending legacy books is a massive project for any sizable institution. And despite even diligent efforts to meet that challenge, there is growing recognition that the transition will not be perfect, so that legacy instruments will pose significant litigation risk for the financial industry.

Although industry organizations, including the UK's Loan Market Association (LMA), the U.S. Federal Reserve's alternative reference rates committee (ARRC), the International Swaps and Derivatives Association (ISDA) and the Association for Financial Markets in Europe (AFME), are developing various forms of model wording to guide parties' efforts to revise documentation, some legacy agreements will not be amended easily (or at all). This is particularly likely where consents to amendment are difficult to obtain – e.g., for those syndicated loans that require unanimous lender consent to implement the relevant changes and for many bond issuances. The transition will also be more complicated for multi-currency financial products.

Much of the potential litigation risk revolves around fallback mechanisms in unamended legacy financial instruments that survive beyond the anticipated December 2021 LIBOR cessation date. Many fallbacks, particularly in agreements that predated the July 2017 "Future of LIBOR" speech by the CEO of the UK Financial Conduct Authority (FCA), are designed only for a temporary unavailability of the benchmark rate and do not anticipate a cessation of LIBOR at all. For instance, legacy floating rate notes and bonds as well as syndicated loan documents often provide for the polling of "reference banks" for their cost of funds as a fallback. As a practical matter, "polling" provisions may prove difficult or impossible to implement. Some legacy floating rate instruments provide for the last published LIBOR to be a backstop (and in other cases, no fallback is provided); in these scenarios, a floating rate instrument could be effectively converted to a fixed rate instrument based on the last applicable LIBOR to be published pre-cessation. In the case of European syndicated loans, ultimate fall back is often to the actual cost of funds of the lenders. In addition to being difficult for lenders and agents to administer, concerns have been raised about exactly how those quotations should be treated for the purposes of calculating the rate to be charged to the borrower, not least because non-bank lenders do not fund themselves on the interbank market. All of these uncertainties are fertile ground for litigation.

Nor is litigation risk limited to commercial loans and securities. Particularly in the U.S., LIBOR is often used as a benchmark for consumer finance. In the U.S. mortgage market alone, it is estimated that over 2.8 million outstanding adjustable-rate mortgages (ARMs) (worth more than $1 trillion) require interest payments based on LIBOR. In addition, a significant number of student loans and reverse mortgages are also linked to LIBOR. Most ARMs allow for the substitution of a new index based on comparable information if the original index is no longer available. But such mortgages typically do not specify how to define an acceptable substitute or what it means for LIBOR to be unavailable. If a shift away from LIBOR-based interest calculation increases the interest required to be paid by consumers, lenders could not only face lawsuits brought by consumers but may also face regulatory and enforcement scrutiny by agencies tasked with protecting consumers (e.g., the U.S. Consumer Financial Protection Bureau and state Attorneys General and banking departments).

Efforts to modify ARM mortgage agreements are complicated by the fact that many of these loans have been securitized and are now owned by a web of investors. This problem is mirrored in

other securitizations including collateralized loan obligations (CLOs), which often have complex structures with multiple classes of debt, whose respective holders have differing entitlements to payment and priority; trustees and servicers and other agents also typically play important roles. Amendments may thus be difficult to implement.

Other litigation risks, unrelated to the challenge of amending instruments to include workable fallback provisions, include:

- The risk of interest rate mis-matches which could arise where a mandatory interest rate hedge, and its related loan, transition at different times or to different rates, or where a securitized investment agreement (i.e. CLO or mortgage-backed security) transitions at a different time or to a different interest rate than the underlying interest obligations.
- Risks related to implementing credit spread adjustments to reflect the difference between the LIBOR and the new "risk free" rates and in the methodology of calculating compounded risk free rates.

In addition to the work already taking place to transition to the new "risk-free" rates, financial institutions aiming to minimize litigation risks related to LIBOR cessation should inventory their LIBOR-linked products with a view to identifying potential "problem areas" and implement a robust process to address such areas and engage with affected borrowers. If not already underway, institutions should certainly commence this process as soon as possible.

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The EU preventative restructuring framework – harmony or discord?

In 2014 the European Commission decided that a harmonised approach to restructuring proceedings was required to reduce the build-up of non-performing loans in EU banks, improve returns to creditors and encourage inward investment. It was also a key milestone in the capital markets union plan. The EU Directive on preventative restructuring frameworks, on discharge of debt and disqualifications and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt (the **Directive**) was finally agreed on 20 June 2019.

Unlike the Recast Insolvency Regulation which provides an operational framework for cross-border insolvencies but doesn't alter national insolvency laws, the Directive will require Member States to make substantive changes to their national restructuring and insolvency laws, and has to be implemented by 17 July 2021. The Directive lays down rules on:

- Preventative restructuring frameworks;
- Procedures leading to a discharge of debt incurred by insolvent entrepreneurs; and
- Measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt.

This summary focusses on the preventative restructuring framework.

The Framework

Member States must provide debtors with access to a preventative restructuring framework (**PRF**) when there is a likelihood of insolvency. Debtors can then use the PRF to restructure and return to viability. Non-viable or insolvent debtors must be excluded from the process.

During the process, debtors will remain in control of their assets and the day to day operation of their business. Supervision by an insolvency practitioner (**IP**) will be decided on a case by case basis, although Member States can provide that the appointment of an IP is mandatory in certain circumstances. This move to a more Chapter 11 style "debtor in possession" process will be a significant change for a number of EU jurisdictions.

The stay

The debtor can apply to court for a stay of enforcement actions, covering both secured and unsecured claims. The stay will last for four months but Member States can allow courts to extend the stay to up to 12 months.

National laws requiring a debtor to open insolvency proceedings must be suspended during the stay. Member States can specify that the suspension will not apply if the debtor is cashflow insolvent, but the court must be able to decide to keep the stay in place if the opening of insolvency proceedings would not be in the general interests of creditors.

Creditors covered by the stay cannot withhold performance or terminate, accelerate or in any other way modify essential executory contracts necessary for the day to day operation of the business for non-payment of debts that existed prior to the stay. Creditors are also unable to withhold performance or terminate contracts solely by reason of the opening of the PRF or the stay.

Restructuring plans

As part of the PRF, the debtor can put forward a restructuring plan. The plan will be voted on by the affected parties who have to be split into classes which reflect commonality of interest based on verifiable criteria. Member States can choose to exclude equity holders from the classes. However, as a minimum, secured and unsecured creditors have to be put into separate classes.

The plan will be adopted if approved by at least 50% by value of each class. Member States can increase that percentage but to no more than 75%.

The plan has to be confirmed by the court in certain circumstances, including where the plan affects the claims or interests of dissenting affected parties. Where court confirmation is required, certain tests have to be met, including the "best interests of creditors test" where a value challenge is brought. This requires no dissenting creditor to be worse off than it would be if normal ranking of liquidation priorities under national law were applied either in the event of liquidation or in the event of the next-best-alternative scenario if the restructuring plan were not confirmed.

Even where there are dissenting creditors, the court can still confirm the plan using a cross-class cram down mechanism. The mechanism can only be used if (a) the plan meets the best interests of creditors test, (b) the plan has been approved by either a majority of the voting classes including a secured or senior class of creditors or by at least one class of affected or impaired creditors (excluding equity and any class which would be out of the money on a liquidation), and (c) dissenting creditors are treated at least as favourably as any other class of the same rank and more favourably than any junior class.

Plans which are approved or confirmed by the court are binding on all affected parties, but they can be appealed.

Protections are given to new and interim financing so that on any subsequent insolvency the financing can't be declared void, voidable or unenforceable. Member States can limit this protection to financing provided for a restructuring plan which is approved. They can also provide that such financing is given priority on any subsequent insolvency – although it is not clear whether this means the financing will rank ahead of secured debt.

Comment

Although the Directive is a welcome attempt to make restructuring in the EU a more predictable and faster process, the extent to which we end up with a harmonised approach has to be questioned:

- No attempt is made to harmonise the test for insolvency which will continue to be judged as a matter of national law. This can differ significantly from jurisdiction to jurisdiction;
- Member States are given a number of options in the way in which they implement the requirements, with some of the optionality being in significant areas such as the restructuring plan voting requirements.

The view from the UK: if Brexit happens before 17 July 2021 (as currently appears likely), the UK will be under no obligation to implement the Directive. However, many of the features of the Directive are mirrored in the 2016 corporate insolvency reform proposals and the UK may choose to bring in these reforms to remain an attractive place to restructure.

The view from Italy: On 10 January 2019, the Italian Government enacted the new Business Distress and Insolvency Code, which was drawn up taking into account the (then draft) Directive. The Italian Code is now more harmonized with the EU principles and in line with the Directive.

The Code will enter into force on 15 August 2020. Moreover, following a parliamentary enquiry on 8 March 2019, the Italian Government has received the authority to amend the Code, in order to eventually overcome certain persistent inconsistencies with the Directive's principles before the deadline for the transposition of the Directive.

The view from France: French law has already developed a strong culture of prevention with several tools and proceedings that comply with the Directive. However, French law will have to review its voting process on the plan to introduce separate classes of creditors (as opposed to the existing larger creditors' committees), the cross-class cram down and the "best interest of creditors'" test that requires a liquidation value test of the business as a going concern, today unknown in France. A recent Law enables the Government to transpose the Directive by Order (and not by Law) to accelerate and simplify the transposition process.

The view from Germany: The implementation of the Directive will be especially beneficial to Germany, one of the few remaining EU jurisdictions without pre-insolvency restructuring proceedings. Although Germany currently allows debtor-in-possession proceedings, these proceedings are only available once a debtor files for insolvency, as is the so-called protective shield proceeding. However, German insolvency law already includes a number of the features

of the PRF (such as the unenforceability of certain termination rights, the stay of individual enforcement actions and the concept of an insolvency or restructuring plan). The challenge for the German legislator will be to ensure the new process fits neatly with the existing insolvency proceedings.

The view from the Netherlands: On 5 July 2019 – only nine days after the publication of the Directive – the Netherlands Ministry of Justice published draft legislation addressing the PRF. This draft legislation was already being prepared for other purposes but prior to it being published it was updated to bring it in line with the relevant provisions of the Directive. Separate legislation will be published in due course implementing the Directive. A special feature of the proposed law is that it provides for both public and private pre-insolvency restructuring proceedings. The European Commission will be requested to bring the public proceedings within the scope of the EuInsVO (Annex A).

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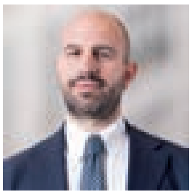

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Proposed EU regulation and directive on European crowdfunding service providers

Crowdfunding is a growing alternative form of financing that connects those who can give, lend or invest money directly with those needing financing for a specific project. In March 2018, the European Commission presented a proposal for a regulation on crowdfunding service providers.

Currently, access to finance remains a sticking point for companies, which find it difficult to expand their business. Crowdfunding can thus provide an alternative to unsecured bank lending.

The Commission has published a proposal for regulation to facilitate cross-border crowdfunding activity (the "Regulation"). This proposal is aimed at increasing access to finance for entrepreneurs, start-ups and small and medium enterprises (SMEs) in general. On the other hand, this draft regulation does not include consumers lending for non-business purposes.

Some Member States are implementing bespoke national frameworks to cater specifically for crowdfunding activities. This proposal for a European crowdfunding legal framework is not intended to interact with national bespoke regimes or existing licenses, but rather to provide crowdfunding service providers with the possibility to apply for an EU authorization that empowers them to scale up their operations throughout the Union under certain conditions.

The divergent frameworks, rules and interpretations of business models applied to crowdfunding service providers throughout the Union pose a barrier for crowdfunding platforms scaling their operations across the EU as their business models would have to be adjusted according to each jurisdiction.

Today, crowdfunding service providers wishing to offer their services in other Member States are allowed to do so, provided that they obtain a local licence and comply with that Member State's national crowdfunding regime. In practice, this means that a crowdfunding service provider has to comply simultaneously with several national regimes as well as adapt its business model if it wishes to offer services cross-border.

A stand-alone voluntary European crowdfunding regime would leave the tailored national crowdfunding frameworks unchanged, whilst providing an opportunity for platforms that want to scale their operations at a European level and conduct cross-border business. This would result in a rather swift and sizeable reduction

of market entry costs, since they would only be authorised once.

The proposal seeks to establish uniform rules on crowdfunding at EU level. It does not replace national rules on crowdfunding where they exist. If the provider chooses to apply the EU rules, authorization under the applicable national rules is withdrawn. Authorization granted under the Regulation would allow crowdfunding service providers to provide crowdfunding services under a passport across all Member States.

In addition, the Regulation provides for appropriate safeguards to minimize the risk of money laundering and terrorism. By addressing the obstacles to the functioning of the internal market in crowdfunding services, this Regulation aims to foster cross-border business funding.

Crowdfunding service providers should be given the option to apply for a single Union-wide authorization, in order to ensure their effective supervision.

The European Securities and Markets Authority (ESMA) should be responsible for granting the authorization to provide crowdfunding services. ESMA shall establish a register of all crowdfunding service providers.

On 26 June 2019, the European Council finally concluded its discussions on the European Crowdfunding Service Provider legislative proposal. This enables final discussions with the European Parliament.

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Anti-money laundering in the UK & U.S.: Looking ahead

UK

AML enforcement is high on the agenda of UK agencies and regulators. The FCA has again highlighted AML as one of its cross-sector priorities for this year. It has at least 60 ongoing AML investigations and its latest AML report indicates that it has “begun a small number of ongoing investigations into firms’ systems and controls where there may have been misconduct that might justify a criminal prosecution under the Money Laundering Regulations 2017”.

Where FCA specialist supervisors consider there are deficiencies in systems and controls we have seen a greater appetite to use early intervention powers to impose restrictions on firms onboarding of all new business or of certain types of higher risk business and a greater use of s166 skilled persons reviews whether formal or ‘voluntary’. We also notice a stronger emphasis on the need for a more joined up approach to AML, anti-bribery and corruption and market abuse systems and controls.

Our clients have kept us busy thinking about: proceeds of crime in the context of investments in the Canadian cannabis industry; how to satisfy the competing demands of appropriate Customer Due Diligence and the desire to provide a frictionless customer experience; AI and transaction monitoring and how AML obligations apply in practice to crypto businesses.

This summer has seen developments on the Suspicious Activity Reports (“SARs”) reform agenda, and we look forward to seeing the realisation of the recommendations from the Law Commission’s June 2019 report and the Government’s 3-year Economic Crime Plan. The proposals to issue clearer guidance on key statutory terms such as ‘suspicion’ and to replace the current SARs reporting website with sector-specific portals and intuitive fields for more targeted reporting, with better information available to firms to improve their own SARs reporting, are all welcome.

Assimilating the EU’s Supranational Risk Assessment (July 2019), FCA Thematic reviews and other guidance published this year, we highlight some key AML typologies and risks to focus on: laundering through capital markets, financial products offering anonymity and non-face-to-face business relationships generally, trade based money laundering, professional football with its complex organisation and investor citizenship and residency schemes.

Also, in the pipeline is the upcoming transposition of the EU’s 5th Money Laundering Directive (to be transposed by 20 January 2020). We note the Treasury’s recent Consultation Paper on this trailed the prospect of some gold plating of the Directive’s requirements. As well as some new ‘obliged entities’ including letting agents, art and antiques dealers and intermediaries, virtual currencies exchange platforms and wallet providers we will see the expansion of the UK’s trusts register and the introduction of a national register of bank account ownership.

U.S.

Across the Atlantic, anti-money laundering enforcement and scrutiny is also at high tide in the United States. Enforcement activity, civil and criminal, remains strong across all financial institution sectors, including banks and other depository institutions; securities brokers and dealers; money services businesses; and financial services industries. The Financial Crimes Enforcement Network (FinCEN), the U.S. government's lead AML regulator, has also paid particular attention (both in regulatory guidance and in enforcement) to the nascent cryptocurrency industry and the unique illicit finance risks in that sector.

In addition to enforcement from the federal government, many individual states (especially New York) have commenced their own enforcement actions and investigations. And many enforcement actions and settlements involved multiple agencies in parallel/joint activities (for simultaneous resolution) or successive actions, subjecting financial institutions to multiple fines or other penalties for the same underlying conduct. Finally, with an aim to increase accountability and enhance deterrence, both civil and criminal enforcement agencies in the AML space have been willing to consider individual liability for corporate officers, directors, and employees who participate in the underlying violations.

Certain (though not all) types of financial institutions – banks and credit union, mutual funds, securities brokers and dealers, futures commission merchants, and introducing brokers in commodities – are also continuing to build out their systems and programs to comply with the recent Customer Due Diligence Rule, which went into effect on May 11, 2018. Among other things, the new regulation requires covered financial institutions to determine the beneficial owners of legal entity customers.

In late 2018, the U.S. Department of the Treasury issued various documents and advisories related to money laundering/illicit finance risks, including the National Money Laundering Risk Assessment, the National Terror Finance Risk Assessment, and National Proliferation Finance Risk Assessment.

Most recently, in September 2019, FinCEN announced the creation of a new division, the Global Investigations Division, "responsible for implementing targeted investigation strategies" and especially focusing on foreign money laundering and terror finance threats. This new initiative, which replaces FinCEN's Office of Special Measures, suggests greater emphasis for FinCEN's use of its Section 311 authority and other unique authorities, and may signal more frequent use of FinCEN's actions to designate individuals, entities, and jurisdictions as areas of "primary money laundering concern."

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Chapter 2

Responsible Business

Regulatory, Compliance & Investigation Solutions (RC&I Solutions)

Private equity, debt funds and other asset fund managers face an ever increasing set of challenges from regulations and associated compliance risks. Failing to comply can lead to considerable reputational damage, financial penalties and in some cases, criminal action.

RC&I Solutions provides private equity, debt funds and other asset managers with a complete solution spanning sanctions and trade compliance, anti-bribery and corruption, anti-money laundering, cartels, environmental and health and safety, regulated activities, human rights, and data privacy and cybersecurity, delivered by a market-leading, multi-disciplinary team of lawyers.

Our team works with fund managers to understand their risk profile and business objectives, including those of their portfolio investments, to identify and deal with these risks, review or design compliance programmes and provide support if things go wrong.

For more information please take a look at our website which has more detailed information on how our team can help you with your regulatory and compliance programmes.

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Diversity and culture, and the FCA's approach to non-financial misconduct

Over recent months, the FCA has been sending out a clear message to the financial services industry: diversity is no longer a *"nice to have"* but a "commercial imperative" – and firms need to listen and act in order to meet these challenges.

This messaging is part of the FCA's on-going focus on culture within the financial services industry. Major strides have been made through introduction of the Senior Managers Regime and new rules on remuneration and incentives. However rules can only go so far, and increasingly the FCA's focus is on the steps firms need to take to *"create and maintain heathy cultures where people do the right thing and take responsibility for outcomes"*. In assessing a firm, the FCA pays close attention on four key drivers of behaviour - the firm's purpose, leadership style, approach to rewarding and managing people and governance.

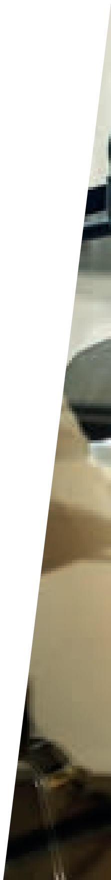
The recent focus on diversity and inclusion builds on this approach. As the regulator points out, diversity makes good business sense: it brings different thinking styles, unique perspectives to problem-solving, avoids group think and fosters innovation, all of which can positively impact the bottom line. And of course social justice requires that everyone should have a chance to develop and succeed according to their talents and ambitions, whatever their social background, gender, ethnicity or protected characteristics.

However the FCA goes further. Going forward, diversity and inclusion will be a key supervisory question for the FCA, for example in authorisation interviews, supervisory assessments and in consideration of what drives a firm's culture. An inclusive culture that values and encourages diversity is one that will have wider benefits for the organisation and for the stability of markets and outcomes for customers. Equally, a culture which tolerates serious personal misconduct, bullying, racism, sexual discrimination or sexual misconduct is a toxic work environment which discourages individuals from speaking up or challenging decisions; such a culture can lead to bad outcomes for customers, staff, stakeholders and the firm.

This does raise interesting questions as to what action the FCA can or should take in relation to diversity. To what extent is it right for a financial regulator to police non-financial misconduct? The FCA says it does intend to pursue non-financial misconduct using its new senior managers and conduct regime. No disciplinary proceedings have been brought by the FCA so far in relation to non-financial conduct issues, but clearly the FCA consider such matters as highly relevant to the fitness and propriety of senior individuals within firms: *"from our perspective, misconduct is misconduct, whether it is financial or non-financial"*.

Encouraging diversity is therefore something that firms need to take seriously, and will form a core part of the regulatory agenda in future. There are no easy fixes: in the FCA's words: *"deciding to incorporate, say, more women in your team, is not a silver bullet. Because if those women had similar upbringings, went to similar schools and had similar career paths, then it stands to reason that their thinking will be similar too"*. Instead firms need to be thinking of diversity in terms of *"varied life experiences – race, age, social background, sexual orientation, education, the list goes on…while strides have been made by some firms around, for example gender, industry is falling down when it comes to social mobility"*.

Firms therefore need to conduct a holistic review of their approach: for example, to re-consider their recruitment and retention strategies, set targets and establish ways to measure progress, review work methods, processes and structures, review training, consider the management of remuneration and promotion decisions, review the physical work environment to remove barriers - with all these initiatives being led with the appropriate "tone from the top" in terms of senior management commitment and communication.



With regard to addressing non-financial misconduct, consideration should be given, among other things, to issues like updating HR and compliance policies, training, and appropriate messaging about the expectations in relation to non-financial conduct and warnings to staff in relation to these issues. Again, key to the success of such strategies is senior level leadership and commitment.

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European strategy for Impact Financing – a brief overview

Impact Financing

Impact financing is the growing market phenomenon whereby investment and lending decisions are being driven partly (or even primarily) by considerations of the sustainability of the target enterprise and the impact that the investment is likely to have on given Environmental Social and Governance priorities and/or on the attainment of one or more of the UN Sustainable Development Goals. There are a lot of overlapping ideas and terminology but two central, mutually reinforcing, ideas emerge - that of reduced risk and a better world. Sustainability and in particular environmental concerns are increasingly relevant to the structuring drafting and regulation of finance transaction.

The EU Action Plan

"Sustainability is the theme of our time – and the financial system has a key role to play in delivering that set of ambitions" remains a key statement of the Final Report 2018 by the EU High-Level Expert Group on Sustainable Finance *("***HLEG***")*.

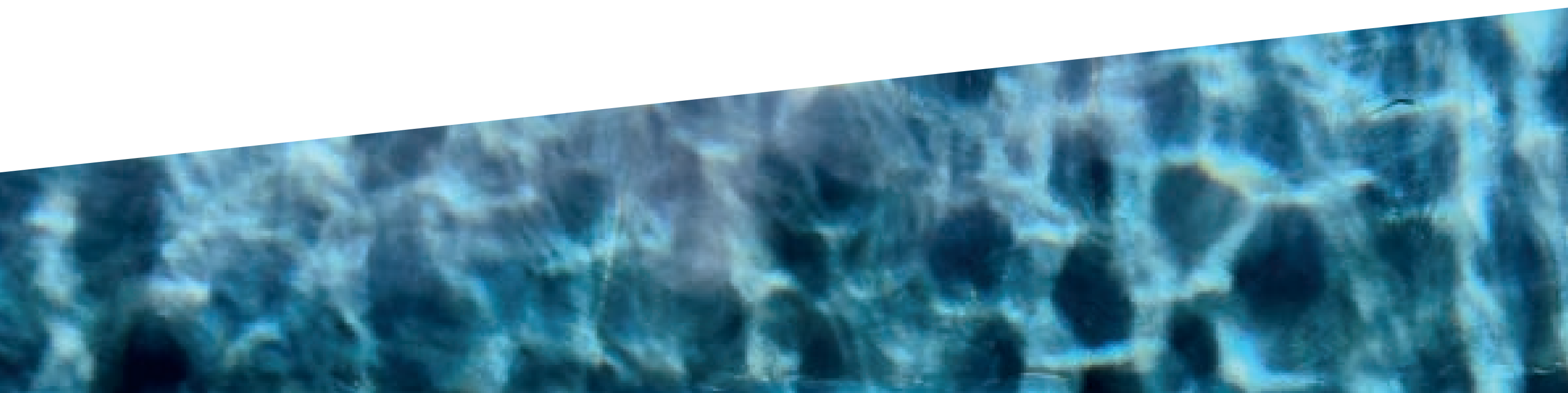
It has become increasingly evident that if key climate and sustainable development goals and policies (such as the United Nations Framework Convention on Climate Change, the Sustainable Development Goals and the Paris Agreement (to name a few)) are to be implemented and achieved this is not a task for the public sector alone. The EU has played a leading role in the development of these policies and goals, reflecting them in EU policies, identifying the challenges which remain and outlining the solutions required. The EU has identified that the private financial sector has a vital role to play not only in mobilising capital to deal with the identified significant shortfall of available capital but also in financing long term sustainable growth and contributing towards a low-carbon, climate resilient and circular economy.

In March 2018, the EU Commission, building on the HLEG's recommendations, published an action plan "Financing Sustainable Growth" which set out the EU's strategy for impact financing, its plan to align financial and global climate goals as required under the Paris Agreement and how it intends to contribute to achieving the UN 2030 Agenda for Sustainable Development (the "**EU Action Plan**").

The EU Action Plan has three main objectives aimed at reorienting capital flows towards sustainable investments to achieve sustainable inclusive growth, mainstreaming sustainability risk management and fostering transparency and long-termism in financial and economic activity.

In order to achieve these goals, the EU Action Plan sets out the following ten steps:

1. Establishing an EU classification system for sustainable activities (taxonomy)
2. Creating standards and labels for green financial products
3. Fostering investment in sustainable projects
4. Incorporating sustainability when providing financial advice
5. Developing sustainability benchmarks
6. Improving integration of sustainability factors in ratings and market research



7. Clarifying institutional investors' and asset managers' duties
8. Incorporating sustainability in prudential requirements
9. Strengthening sustainability disclosure and accounting rule-making
10. Fostering sustainable corporate governance culture and attenuating short-termism in capital markets

Implementation of the EU Action Plan

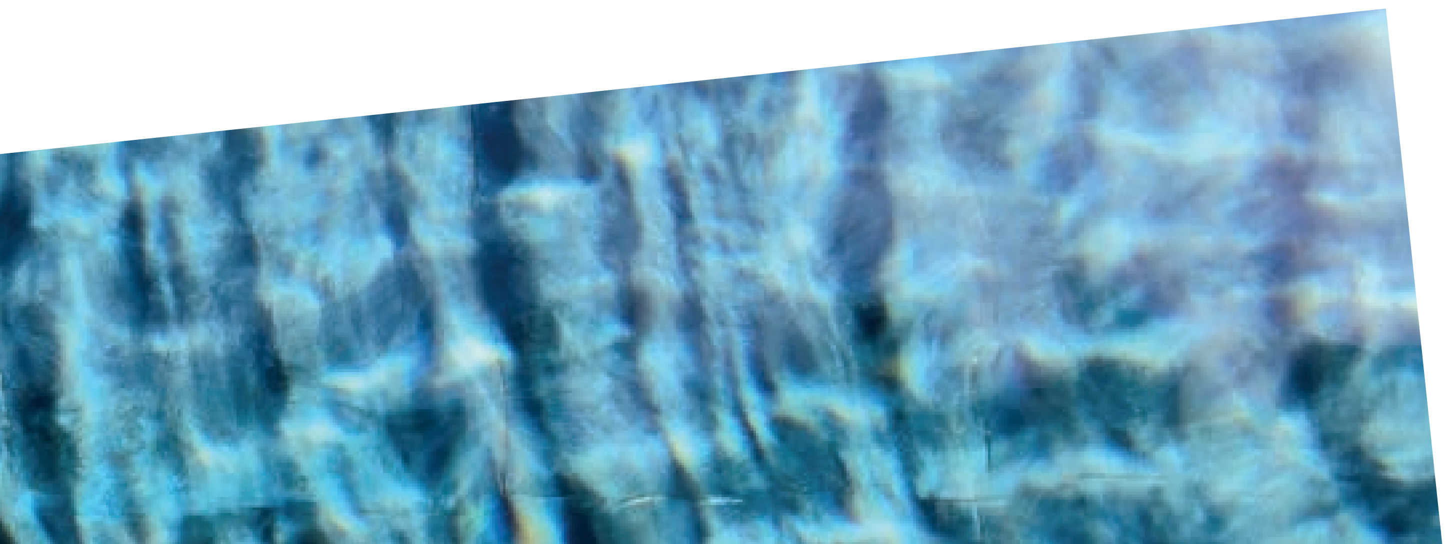
In May 2018, the European Commission implemented several key actions from the EU Action Plan including three proposals for regulations aimed at establishing a unified EU classification system of sustainable economic activities (taxonomy), improving disclosure requirements on how institutional investors integrate ESG factors into their risk processes and creating a new category of benchmarks which will help investors compare the carbon footprint of their investments. The timeframe for the implementation is extremely ambitious – the relevant delegated acts shall enter into force between 2021 and 2022.

The EU Action Plan also recognised the need for non-legislative as well as legislative actions (including possible amendments to IORP II, PEPP, Solvency II, MiFID II, UCITS, AIFMD, Shareholder Rights Directive, Non-Financial Reporting Directive, EuVECA and ELTIF). These are aimed at clarifying how finance parties (including asset managers, insurance companies, and investment or insurance advisors) should integrate sustainability risks and factors within their organisations and also consider risk assessment and management processes.

In June 2019, the European Commission published 3 new TEG reports (relating to taxonomy, EU Green Bond Standard and benchmarks and methodology) and published new guidelines on corporate climate-related information reporting providing companies with practical recommendations on how to report the impact their activities have on the climate and also the impact of climate change on their business. This guidance applies to approximately 6,000 EU-listed companies, banks and insurance companies required to disclose non-financial information under the Non-Financial Reporting Directive. The intention is that the corporate disclosure updates the non-binding guidelines relating to the Non-Financial Reporting Directive and The Green Bond Standard recommendations will form the basis of a future voluntary EU Green Bond Standard.

The EU has also sought opinions and advice from other international organisations in order to address action 10 (i.e. financing sustainable growth that aims at fostering sustainable corporate governance and attenuating short-termism in capital markets) including an opinion from EIOPA on sustainability within Solvency II and from ESMA and EBA on undue short-term pressure from the financial sector on corporations.

The European Parliament also endorsed legislation relating to a capital markets union in April 2019, which included regulations on disclosures relating to sustainable investments and sustainability risks.



Challenges

Despite the progress and the focus of governments, regulators and private businesses there are real challenges. Confusion around terminology remains and it is unclear whether the classification system being developed by the EU will be sufficient to address the issues facing this sector. Further clarity (which will need to find its way into law and regulation) is needed and consistency and alignment are required across asset classes and existing market-based practices.

Some of course are calling for a more radical approach. In particular, there is concern about in-grained short termism which may be incompatible with the long-termism required in order to achieve the goals behind the EU Action plan. That in turn may require an far greater alignment of financial and non-financial value creation-ideally across all asset classes (including conventional assets). Arguably that requires a radical adjustment of the traditional free market, profit-driven business model. Critics have asserted that the EU Action plan and TEG reports still leave investments open for "green-washing" leaving any identified underlying environmental concerns "un-impacted".

Conclusion

Impact Financing is becoming not just a matter of conviction but also a question of strategy and great strides have been made over the course of the last few years. Looking ahead, law, regulation, policy and practice and market recommendations on a national level and EU level look set to increase. This, combined with the continued shift in stakeholder demand and development of an impact financing eco-system, is likely to continue to challenge investors and financial institutions. Many investors and financial institutions have publicly committed to international goals and policies and as a result already sharpened their focus on the challenges arising from the impact financing sector. However, as Mark Carney has indicated:

> *"...the task is large, the window of opportunity is short and the stakes are existential."*

As a result of increasing legal and policy measures at an EU land national level, investors and financial institutions will continue to be required to assess, monitor, disclose and report the sustainability of their activities and the climate change risks posed to their business in preparation for these upcoming requirements. Increasingly, financial institutions may be judged by their sustainability strategy. How well do they manage the integration of ESG considerations into their investment decisions and deal cycles and into their approach to risk; and how good are their disclosure methodologies?

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> Sustainability is the theme of our time – and the financial system has a key role to play in delivering that set of ambitions
>
> *Final Report 2018, EU High-Level Expert Group on Sustainable Finance.*

Dos and don’ts when applying for a license as a financial institution

A licensing procedure is the art of bringing a previously unlicensed company into regulation and thereby further developing and promoting the operational success of the company. The challenges for a licensing procedure have recently been increased step by step by the supervisory authorities throughout Europe, thus significantly raising the thresholds for a successful license application. Legal advice helps the applying company to use these requirements to their advantage and to lower the obstacles; thus ensuring that the license, once it has been granted, is in fact a success factor for the company.

The most important element in applying for a license is to speak the language of the competent authority. It is essential to communicate as little as possible but as much as necessary. This is also appreciated by regulators as it contributes to the efficiency of the application process, in turn allowing the applicant to obtain the permission as quickly as possible. A procedure may be considered successful time-wise if the period between application and granting of the license is approximately six months. It is therefore particularly important to set the right priorities. The most relevant topics should be dealt with and submitted to the authority before tackling the less important issues. In this respect, we recommend submitting a preliminary inquiry to the authority regarding the reliability and professional suitability of the planned management board. If the authorities express doubts about the intended managing directors, it is time consuming to seek new managers with the necessary qualifications. The issue should, therefore, be addressed as soon as possible. The right leadership is key to the success of an application because, from the authorities’ point of view, it stands for the quality and sustainability of the documents to be submitted. As part of the preliminary inquiry, the business model must be described in detail, based upon which the correct permissions must be applied for. In our experience, the vast difference between a good and a mediocre application is already discernible at this preliminary inquiry stage.

When applying for permission, unlicensed companies have to deal with many new issues which may be challenging in themselves. These consist in developing a risk-based compliance system, appropriate risk management and an efficient organizational structure with clear competencies and procedures. We help companies tackle these challenges and use them to improve their business and, most importantly, reduce risk. As a result, investors are more willing to invest because regulation can significantly contribute to the sustainable success of the company. In other words, customers and investors actually appreciate the security provided by ongoing internal and external regulatory control.
The prerequisite for this success is that a sustainable business plan has been developed, which is a key factor for the success and viability of the company. Therefore, in our experience with start-ups, it makes sense to test the business model using fronting solutions, i.e. the cooperation with a license holder who provides the liability and regulatory framework, which is a tried and tested business model in Germany and in all other EU member states. Passporting allows licensed (fronting) banks and other financial institutions to expand their business on a European level. A fronting solution may, in our experience, outperform a sandbox as offered in some EU member states, as the entire regulatory set of rules will eventually need to be complied with. The cost for this compliance entails will hence also eventually incur. The advantage of a fronting solution is that the company need not start from scratch, but can bring in already existing business relationships, which significantly shortens both the route to market and to breaking even, which in turn virtually excludes the uncertainty on the part of those involved and the

associated financial risks of failure. In addition, the company has already learned how a regulated business works. With sound preparation, it does not come as a surprise when customers must be identified as part of a KYC or contracts must be in writing in compliance with regulatory rules. As a result, there are fewer unknowns on the road to establishing a successful business model and a successful (own) licensing procedure.

1 Business Case
keep it short and simple!

The license allows you to develop exciting new products for customers. However, if these new ideas are all introduced during the licensing procedure, it may be challenging to describe all products in sufficient detail and coherence. As a result, regulators might raise additional questions and the ensuing clarifications take time. From our experience, it is usually more efficient to focus on a few structured core products (maybe and ideally just one). This applies both to the business case as well as to compliance and risk management.

2 Shareholders and Senior Management
get their buy-in early on in the process

If there are shareholders and senior management (e.g. global group management), it makes sense to discuss how they must be involved early on in the process. After all, it may be necessary to get their approval. Regulators might require guarantees concerning own funds and future funding. Equally important, it may be necessary that a qualifying holdings procedure with regard to shareholders and senior group management is completed, which may require personal information from shareholders and senior management. In some cases, it makes sense to review shareholder agreements and other corporate documents to see if there are any red flags from a regulatory perspective (e.g. group guarantees which may affect eligibility of own funds).

3 Organizational Aspects
know your team

Becoming licensed means that the organization of a licensed entity has to be established. Policies and procedures for the license must be developed and implemented. External advice can help you with the initial process design. However, it will be a daily requirement to ensure regulatory compliance. The employees with a function of the licensed entity must be up to the task and have sufficient time and resources available to them. Ideally, the entire team is already involved in the license application.

4 Resources and timing
be realistic

Depending on your products and team, the license application may be more or less complex. Preparing a license application takes some time and effort as the business model has to be developed and contracts, policies and procedures have to be drafted. From our experience, time invested in a thorough license application pays off eventually as the actual licensing procedure is more efficient. Rushing into the license application will typically cause regulators to ask more questions which then have to be addressed during the licensing procedure and may even affect the business plan (e.g. requirements to implement certain compliance checks).

5 Documentation
document your decisions and regulatory set-up

Last but not least and irrespective of your eventual licensing application, documenting your regulatory assessment which led to the conclusion that a regulatory license is required (or may indeed not be required) makes sense for a number of reasons. First, the assessment can be used for the license application (e.g. to describe the business model). Second, it also helps to convince current and potential investors who prefer a well-documented regulatory setup.

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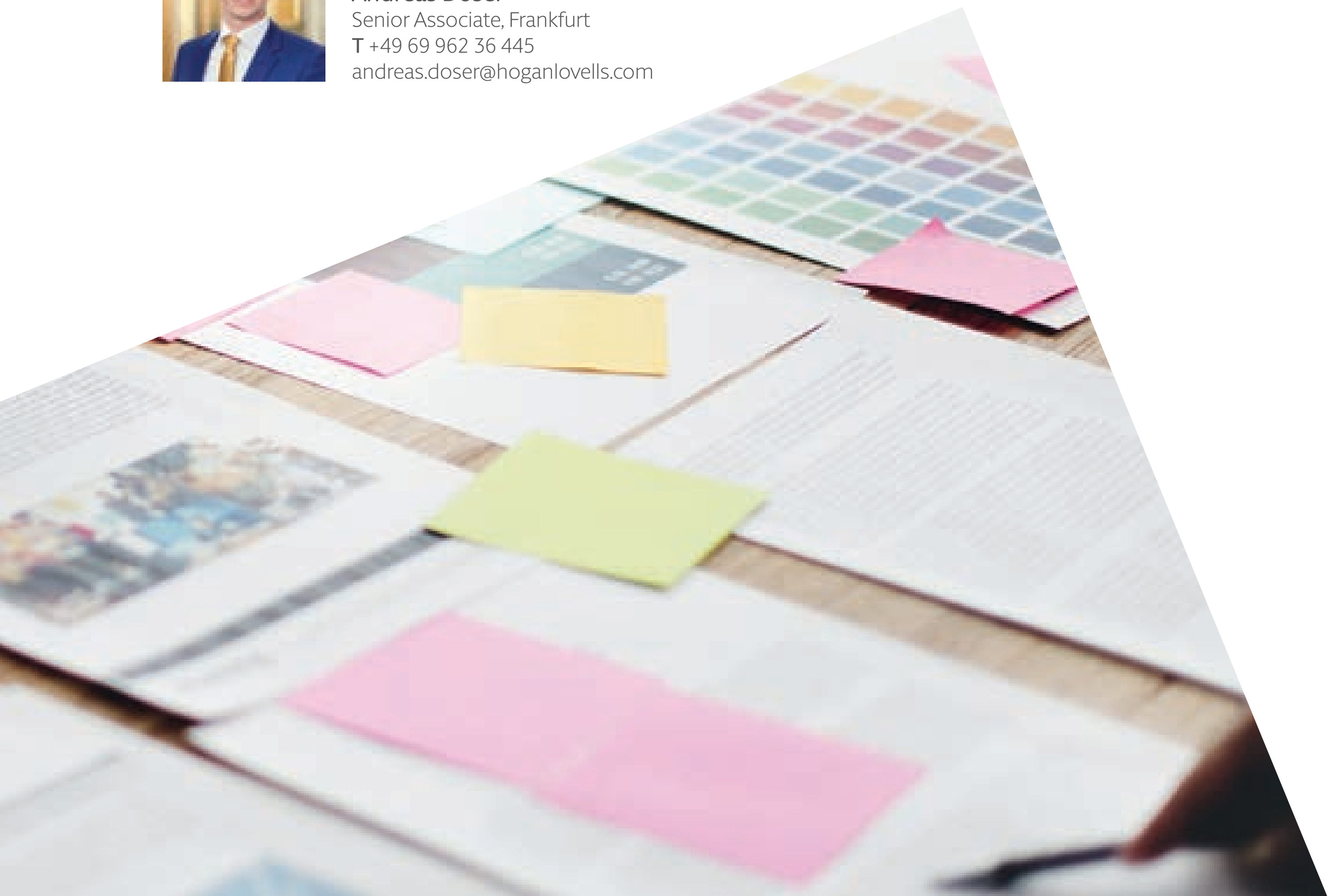

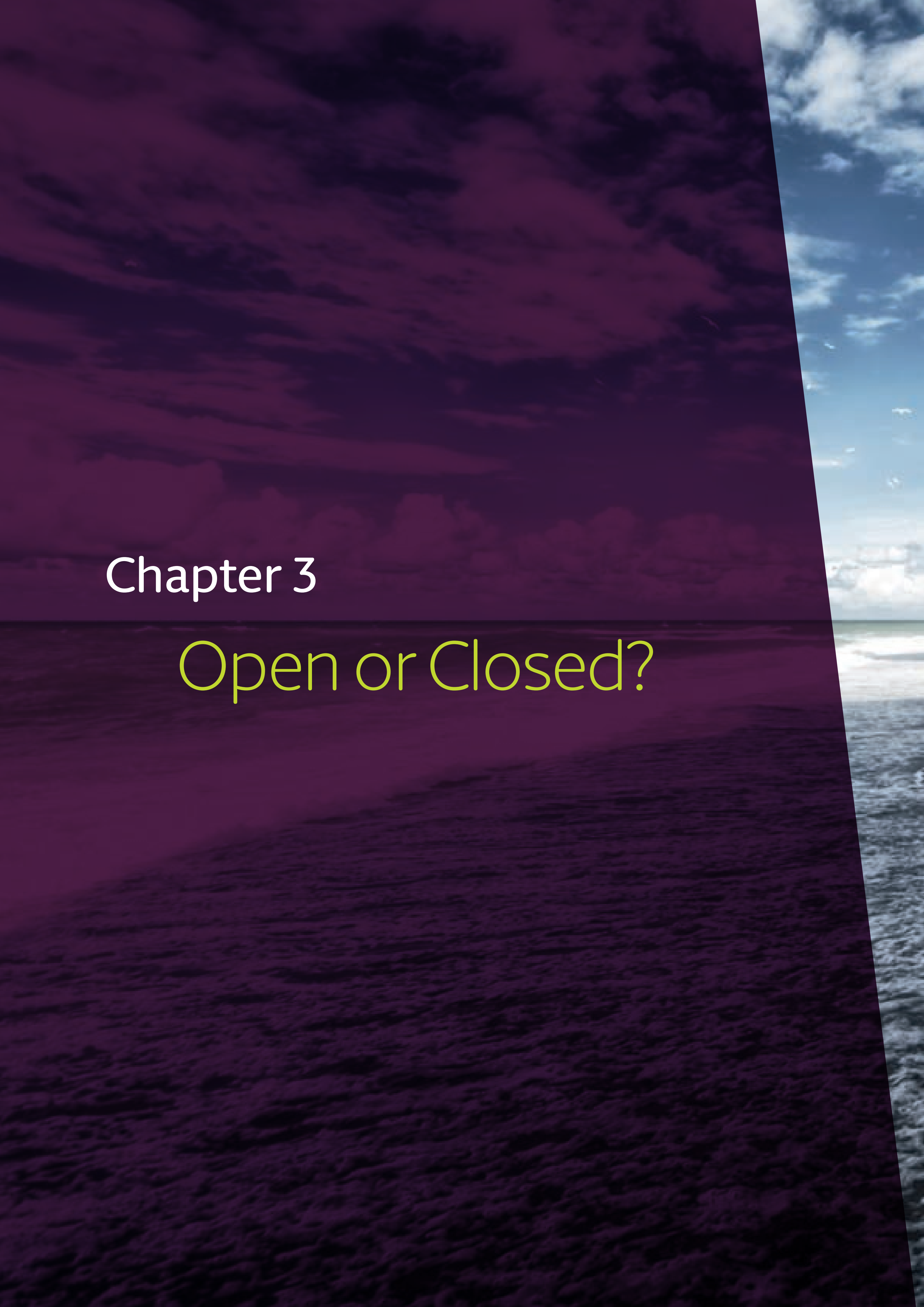

Chapter 3

Open or Closed?

Listening when sanctions regulators speak

Maintaining a robust sanctions compliance program requires vigilance and responsiveness to updated standards set by regulators. Compliance expectations may be discerned from enforcement action notices, and regulator statements can be a particularly rich source for understanding the areas of importance to regulators.

On 2 May 2019, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) issued "A Framework for OFAC Compliance Commitments" (the "Framework"). On 1 February 2019, the UK Foreign & Commonwealth Office issued sanctions guidance in the event of a no deal Brexit. For entities subject to the jurisdictions of these regulators, the information contained in these pronouncements should inform sanctions compliance efforts.

OFAC's Framework describes five "essential components" of an effective sanctions compliance program (SCP):

1. Management commitment;
2. Risk assessment;
3. Internal controls;
4. Testing and auditing; and
5. Training.

U.S. government expectations regarding effective SCPs should serve as a starting point for organizations looking to reassess or enhance their SCP. Having been identified by OFAC as "essential", the failure to fully animate any of these components would be a serious omission that could have significant consequences in the event of a sanctions violation.

The Framework also highlights "root causes" of sanctions violations which include issues frequently encountered by non-U.S. companies that find themselves subject to U.S. sanctions laws. For example, many non-U.S. entities have violated U.S. sanctions laws by processing transactions that involve a sanctioned country or person through U.S. financial institutions (almost all of which have been denominated in U.S. dollars), even if there is no other U.S. nexus to the transaction. These "root causes" form a list of potential compliance pitfalls against which a compliance plan should protect.

A number of OFAC enforcement settlements, starting in December 2018, incorporate the elements of the OFAC Framework and therefore should serve as an additional resource. Accordingly, organizations should review their sanctions compliance policies and procedures in light of the OFAC guidance and these enforcement actions for a "roadmap" to sanctions compliance.

Regulator statements are particularly valuable when companies are operating in an uncertain regulatory environment. Brexit presents unique sanctions compliance challenges in part due to the question as to how it will be achieved. The UK Government has provided some guidance on UK sanctions policy in the event of a no-deal Brexit (the "Guidance").

Currently the UK implements and enforces sanctions regimes agreed by the UN Security Council and the EU through EU regulations and associated domestic legislation. The Guidance states that, in the event of a no-deal Brexit, the UK Government will look to carry over all EU sanctions at the time of departure. New sanctions regimes are implemented through regulations made under the Sanctions and Anti-Money Laundering Act 2018 (the "Sanctions Act"). The UK Government intends to put as many of the proposed new regulations as possible before Parliament prior to the UK's potential departure. In the past few months, new sanctions regulations were passed under the Sanctions Act in respect of Iran, Russia and Venezuela amongst several others. Parliament has also approved regulations transposing the EU Blocking Regulation into UK domestic law. Any sanction regimes contained in EU regulations not addressed through new UK regulation at the time of departure will continue as retained EU law under the EU (Withdrawal) Act 2018.

While the Guidance suggests seamless sanctions continuation, it also explicitly cautions against assuming that all aspects of existing EU sanctions will be replicated. Although the new UK regulations are intended to have substantially the same effect as EU Regulations, there may be differences in technical implementation. This is apparent in certain aspects of the new Iran, Russia and Venezuela regulations. For example, the test for "ownership and control" for asset freezes is not exactly the same and includes more detail than in EU regulations. Furthermore, whilst the EU regime does not provide for general licenses allowing multiple parties to carry out activity otherwise prohibited by sanctions, the new UK regulations provide for the issuing of general licenses.

Sanctions compliance planning for different Brexit scenarios should incorporate ongoing assessments of UK legislation and regulations to carefully determine the scope of restrictions. Further attention must be applied to determine whether there may be an applicable exemption to cover the activity in question.

Regulator statements related to sanctions compliance should serve as a starting point for benchmarking sanctions compliance efforts. The challenge for companies is to accept such guidance and then to craft sanctions compliance programs that both anticipate and respond to regulator concerns and are tailored to their sanctions risk assessment.

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"The publication of guidance effectively establishes a baseline standard for compliance programs"

Beyond Brexit: Regulatory equivalence

Irrespective of whether the UK leaves the EU with a withdrawal agreement, interest grows in the future of regulatory policy, the inter-connectivity of international financial services, and how firms from other countries will be welcomed by the main international jurisdictions.

The Bank of England and the UK Financial Conduct Authority have stressed that the UK's withdrawal from the EU should not be an opportunity to race to the bottom in regulatory standards. On the contrary, says FCA chair Charles Randall, "[w]e will need to redouble our engagement with our policymaking and regulatory colleagues in Europe and across the world, to continue to influence global standards of financial regulation".

However, it is unknown to what extent the UK will align or diverge from EU regulation post-Brexit, and whether it will be deemed equivalent. The weight of global standards could mean a degree of inevitable alignment.

There has been increasing globalisation of the financial sector over recent decades. The 2007-8 financial crisis led to a broad consensus for international regulatory standards and increased alignment to strengthen the global financial system. Initiatives are led by the G20, through international standard setters, such as the Basel Committee on Banking Supervision, the International Organisation of Securities Commissions (IOSCO), the International Association of Insurance Supervisors and the Financial Stability Board (FSB).

However, the level playing field has not been as successful as had been initially imagined and there is often divergence in the implementation of international standards. In addition, in the current political climate, it remains to be seen to what extent current international players will follow the ethos of alignment.

The tensions are summed up by the European Commission in its recent Communication on equivalence in the area of financial services:

> *"The EU commitment to global regulatory convergence around international standards is unwavering. At the same time, these global frameworks have a general standard setting purpose and are not always fit for addressing concrete questions emerging in a specific bilateral context."*

This reality is unlikely to change in the foreseeable future. Indeed, both the FSB and IOSCO have recently published research into market fragmentation (which can arise as a result of differences in international regulation and supervision) and cross-border regulation.

Currently, the question of "equivalence", "comparability" or "deference" is tackled on a jurisdiction by jurisdiction basis (albeit by the European Commission in the EU), with varying degrees of economic protectionism.

To combat this protectionism in the EU, the European Commission is moving away from the use of directives as the predominant method by which policy is legislated. Directives allow EU members states discretion in their method of implementation. The Commission increasingly implements policy by regulations, which impose identical laws on EU member states. Even then, disparities in interpretation can manifest.

"Equivalence" relies on a third country being assessed by the European Commission as having a regulatory framework for the relevant financial services product which is equivalent to that of the EU. A positive equivalence assessment can allow non-EEA "third countries" to access the EEA market. In making equivalence assessments, the European Commission is also taking a firmer stance. In addition, the political undertones behind the unilateral equivalency assessment are apparent in the European Commission's acknowledgement that during the process:

> *"...the Commission also needs to consider whether equivalence decisions would be compatible with EU policy priorities in areas such as international sanctions, the fight against money laundering and terrorist financing, tax good governance on a global level or other relevant external policy priorities."*

Despite trends towards economic protectionist globally, in the US, J. Christopher Giancarlo (then Chairman of the Commodity Futures Trading Commission (CFTC)) has given encouraging messages on their equivalence concept in relation to the derivatives markets:

> *"Mutual commitment to cross-border regulatory deference ideally should mean that market participants can rely on one set of rules – in their totality – without fear that another jurisdiction will seek to selectively impose an additional layer of particular regulatory obligations that reflect differences in policy emphasis, or application of local market-driven policy choices beyond the local market. This approach is essential to ensuring strong and stable derivatives markets that support economic growth both in the United States and around the globe."*

It remains to be seen if Giancarlo's vision will become reality. In the same speech Giancarlo acknowledged that the CFTC should seek stricter comparability standards for requirements which address systemic risk. However, this appears to allow for a much narrower scope for protectionism than the wide range of policy issues that the EU permits to influence an equivalence assessment. In any event, systemic risk is a global concern for financial markets.

The UK has historically been relatively permissive in its approach to allowing third country financial institutions into the UK, to the extent permissible under EU law. To help uphold its place as a globally open financial market post-Brexit, it will have to "remain open for business". It is in this context that Andrew Bailey, Chief Executive of the FCA has discussed equivalence and argues for an assessment based on outcomes, not rules:

> *"And, wherever possible, those outcomes should flow from global standards, which should always be the best test of equivalence. Our financial markets are global not regional."*

The UK government is currently calling for input on its review of the future of financial regulation and it will be interesting to see if the UK adopts an outcomes based approach, how this impacts its access to global markets, and whether it uses the approach in its own equivalence assessments post-Brexit. The UK's future vis-à-vis international financial services largely will depend on the how far it aligns with international standards and the protectionist approach adopted by each jurisdiction.

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Toolkit

Access our Brexit Toolkit to analyse how Brexit will affect your business and how to prepare for the changes ahead at hoganlovellsbrexit.com

Changes to deemed dividend rules bring good news for secured creditors

Prior to the issuance of the final regulations under Section 956 of the Internal Revenue Code of 1986, a dividend was deemed created when a U.S. borrower pledged, as security for its obligations, two-thirds or more of the voting stock in a foreign subsidiary considered to be a "controlled foreign corporation" (CFC) or if the CFC guaranteed or pledged its assets as security for the U.S. parent's obligations. The U.S. parent was required to include in its U.S. taxable income the lesser of (i) the total principal amount of the loan that was supported by the foreign subsidiary credit support, and (ii) the amount of such foreign subsidiary's earnings and profits that previously have not been taxed in the U.S.

To avoid this exposure, credit agreements with a U.S. borrower had been drafted to exclude CFCs as guarantors, to exclude the pledge of any assets of a CFC, and to limit any pledge of voting stock of a CFC to no more than 65% of the voting stock.

The purpose of the Section 956 deemed dividend rules was to prevent a U.S. parent from benefitting from the earnings of a CFC without paying the U.S. taxes that would result from an actual distribution of the earnings to the U.S. parent.

One of the changes included in the Tax Cuts and Jobs Act (**TCJA**) enacted in December 2017 was a participation exemption system effectively exempting from U.S. federal income taxation the foreign-sourced portion of dividends that were paid to a U.S. corporation by a foreign corporation with respect to which the U.S. corporation was a 10% or greater shareholder.

Since an actual dividend from a CFC to its U.S. corporate parent is now generally not subject to U.S. taxation under the TCJA provisions, draft versions of the TCJA also repealed the deemed dividend rules of Section 956 for U.S. corporations with CFCs that qualify for the new participation exemption. However, inexplicably, the final version of the TCJA failed to include such repeal and as result, the TCJA created a trap by retaining the rules under which a pledge or guarantee by a CFC in support of a debt of its U.S. corporate parent could result in deemed dividends subject to U.S. taxation, even though an actual dividend would not result in U.S. taxation.

To address this problem, in October 2018, the IRS published proposed regulations under Section 956 (the "**Proposed Regulations**"), which, in most situations, eliminated the deemed dividend that otherwise would have resulted from the U.S. Borrower's pledge of the voting stock of a CFC or a pledge of assets or guarantee by a CFC in support of the debt of its U.S. corporate parent. The Proposed Regulations reduced the amount to be included in taxable income as a result of Section 956 to the extent that an actual dividend paid by the CFC would not be subject to U.S. federal income tax as a result of the TCJA participation exemption system.

The Proposed Regulations included a provision that allowed taxpayers to rely on the Proposed Regulations for taxable years of a CFC beginning after 31 December 2017, and for taxable years of a U.S. shareholder in which or with which such taxable years of the CFC end, provided the taxpayer and U.S. persons who are related to the taxpayer consistently apply the Section 956 Regulations for all CFCs in which they are U.S. shareholders.

On May 23, 2019, the IRS issued final Section 956 Regulations consistent with the Proposed Regulations that apply to taxable years of a CFC beginning on or after July 22, 2019, and to taxable years of a U.S. shareholder in which or with which such taxable years of the CFC end.

CFCs of U.S. corporate borrowers will generally now be able to provide guarantees and 100% pledges in support of their US corporate parents' debt without triggering adverse tax consequences for the U.S. parent. Lenders may ask that the agreed security principles in agreements with US borrowers reflect this change and require guarantees by CFCs and/or direct or indirect pledges of 100% of the voting stock of CFCs and possibly a pledge of the assets of CFCs.

However, care needs to be taken when considering this issue because the final Section 956 Regulations generally address only corporations eligible for the participation exemption system enacted under the TCJA and may not be applicable to other corporate forms such as limited liability companies.

This means that the pledge of more than 65% of the voting stock or the CFC pledges and guarantees still may result in adverse tax consequences, including in the following circumstances:

- If the U.S. borrower is not a corporation (except to the extent the borrower is a partnership for U.S. tax purposes and its partners are corporations that would be entitled to the participation exemption if the partnership received a distribution);
- If not all of the CFC's earnings are foreign source (e.g., CFC has income from a U.S. trade or business or from a U.S. subsidiary of the CFC);
- If the CFC has issued instruments which pay "hybrid dividends," i.e., for which the CFC receives a deduction or other tax benefit related to taxes imposed by a foreign country;
- If the U.S. borrower does not meet certain holding period requirements, e.g., has owned the CFC for fewer than 365 days over a specified period.

Non-tax considerations (such as local law issues) will still need to be considered in determining whether credit and/or collateral support from a foreign subsidiary are feasible.

Existing credit agreements should be reviewed to determine whether covenants which prohibit the pledge of more than 65% of the voting stock of the CFC and/or the pledge of assets or guarantees by CFCs only apply where the pledge or guarantee would result in adverse tax consequences to the borrower since such CFC pledges and guarantees may now be required.

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China's New Foreign Investment Law: the impact on financial institutions

China's new Foreign Investment Law ("**FIL**") was passed by the National People's Congress ("**NPC**") of the People's Republic of China ("**China**" or "**PRC**") on March 15, 2019. The FIL will take effect from January 1, 2020, and the existing legislation that has formed the backbone of Foreign Direct Investment ("**FDI**") regulation in China since the 1980s (currently scattered over three laws) will be repealed on the same day.

The most significant impact of the FIL is the shift of corporate governance structures and corporate actions from those set out in the laws currently governing foreign invested enterprises ("**FIE Laws**") to those provided under *the PRC Company Law* ("**Company Law") *or the PRC Partnership Law*. The same basic premise applies to financial institutions. Historically, regulators have stipulated various rules on corporate governance which apply generally to the sector, but foreign-funded financial institutions ("**FFFIs**") have often been carved out. Going forward, the FIL will require governance structures of entities formed under the FIE Laws to align over a five year period counting from the effective date of the FIL with those under the Company Law, to be consistent with those of their domestic capital counterparts.

It is worth mentioning that the FIL also clarifies the position for FFFIs when there is uncertainty as to which prevailing rule should be chosen from several inconsistent applicable rules (the "**Inconsistency Issue**"). With the introduction of Article 41 of the FIL, and based on Article 218 of the Company Law, it is now clear that in case of inconsistency, industry rules (like the rules issued by the China Banking and Insurance Regulatory Commission ("**CBIRC**")) applicable to FFFIs will prevail over the FIL, and the forthcoming implementing rules for the FIL and other rules applicable to FIEs will continue to prevail over inconsistent provisions of the Company Law.

In reality, taking foreign funded insurance companies ("**FFICs**") as an example, after the FIL comes into force, given that *the Foreign-funded Insurance Company Administrative Regulations* ("**FFIC Regulations**") and the *Foreign-funded Insurance Company Administrative Regulations Implementing Regulations* ("**FFIC Implementing Regulations**") are basically silent on the issue of corporate governance, presumably the corporate governance provisions in the Company Law would apply to FFICs. However, the minimum registered capitalisation provisions set out in Article 7 of the FFIC Implementing Regulations which provide that equity joint venture ("**EJVs**") and wholly foreign-owned enterprise ("**WFOE**") insurance companies need to have a minimum registered capital of RMB 200 million (fully paid up in cash) would still apply. In other words, to the extent that those FFFI-sector laws are silent on a given issue, the provisions of the FIL (including the reference back to the Company Law as the main source of governance rules) will be the fall-back law for regulating FFFIs, leaving FFFIs as odd hybrids under the new FIL regime.

While the introduction of the FIL is a worthy attempt at streamlining the rules applicable to FIEs (including FFFIs), the legal regime applicable to FFFIs is still far from being comprehensive, cohesive or anywhere near systematic (the "**Conclusive List Issue**"). On the one hand, regulation in relation to many aspects, including market entry, commencement of business inspection and management differ between FFICs

and domestically-funded insurance companies ("**DFICs**") as well as between foreign-funded banks ("**FFBs**") and domestically-funded banks ("**DFBs**"). On the other hand, the regulatory distinction between FFFIs and domestically-funded financial institutions ("**DFFIs**") is inconsistent with the way other types of foreign invested enterprise ("**FIE**") are regulated under the FIE Laws. These leave us with a messy patchwork of laws applying to financial sector FIEs. Presumably those issues will resolve gradually over time once we have "across the board" equal treatment with DFFIs ("**National Treatment**").

Articles 3, 9 and 16 of the FIL, among other things, place greater emphasis on fair competition and equal treatment between foreign investors and Chinese domestic capital investors. This is consistent with the declared financial opening up policy of the Chinese government. On July 20, 2019, the People's Bank of China officially issued 11 measures to further expand the financial sector's opening up to the outside world, including encouraging FFFIs to participate in the establishment and investment of the wealth management subsidiaries of commercial banks, permitting foreign investors to contemplate investing into FFICs without being subject to the 30-year track record requirement, and fully liberalizing the 51 percent foreign shareholding restriction in a life insurance company in 2020 (which is one year earlier than originally planned).[1]

Although the liberalisation measures set out above will bring true National Treatment a step closer, given the extent to which DFFIs are entrenched within their markets and have established extensive national subsidiary and branch networks, plus fierce competition from online banks and payment companies, it will still be a steep mountain for FFFIs to climb when seeking to compete with these. We believe improving product design and corporate governance are likely to be key battlegrounds for FFFIs in China.

To read the full article, please visit our website.

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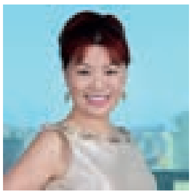

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1. http://www.gov.cn/guowuyuan/2019-07/20/content_5412220.htm

Chapter 4

The Rise and Rise of FinTech

The Dawn of the Open Era: Open Banking in Asia-Pacific

Asia-Pacific region economies are often spoken of in terms of their rapid adoption of mobile communications and the run-away success of e-commerce platforms and mobile payments. It is no wonder then that lawmakers in the region have turned to evaluate "open" initiatives in financial services, whereby data will flow freely through an ecosystem of financial institutions, FinTechs and other players seeking to leverage technology to provide innovative new services.

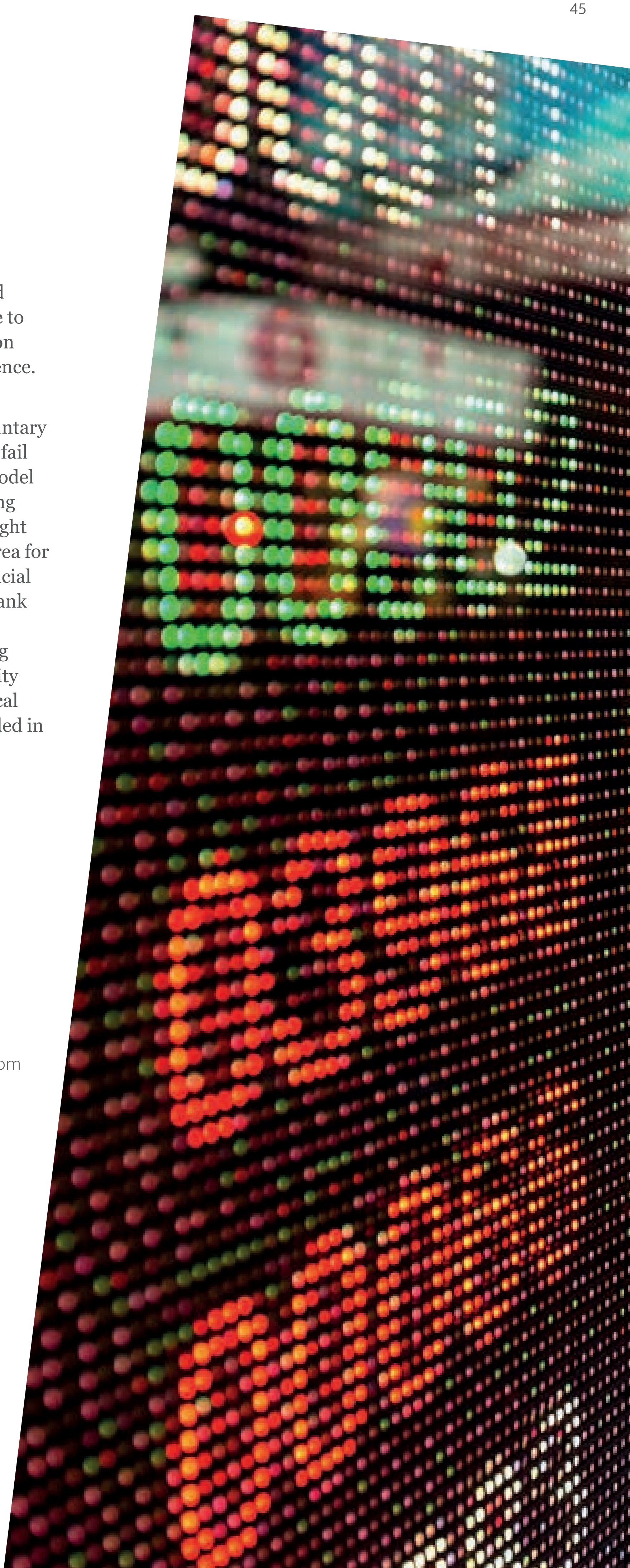
UK Open Banking is often held up as the template for these initiatives, a regime that forces an opening of payment account data by leading financial institutions, primarily as a competition law and Payment Services Regulatory remedy directed at enabling consumers freer choice in financial services and an "unbundling" of the universal banking model. Banking under the UK model aims to be "open" in the sense of creating a fully interoperable environment, with standardized application program interfaces ("APIs") that support the release of payment account information and enable the communication of consumers' payment instructions to institutions through FinTechs.

In the APAC region, Australia has seen a similar movement, with the Australian Competition and Consumer Commission set to implement a Consumer Data Right that seeks to enable frictionless consumer choice to move their data from service provider to service provider across a wide range of sectors, with financial services being the first implementation. Notably, Australia's open initiative is focused only on data, with no corresponding move to require institutions to accept transaction instructions delivered through FinTechs and other non-bank players. Like the UK, however, Australia's focus is on improving competition and so amounts to a "forced opening" of institutional data.

Other jurisdictions in the region are more focused on encouraging technological innovation and FinTech investment than on directly addressing competition-related concerns about market inefficiencies. Hong Kong stands as a leading example on this score, with a contractual approach under its Open API Framework. The Hong Kong Monetary Authority (the "HKMA") has not mandated API standards directed at achieving a fully interoperable ecosystem, and the regulator will not have general oversight of the collaboration space given that FinTechs are not generally regulated by the HKMA. Instead, financial institutions serve as gatekeepers carrying out due diligence on collaboration partners and entering into contracts that reflect institutions' regulatory requirements in areas such as data protection, technology risk management and customer care. The HKMA has directed the banking industry to develop a set of minimum requirements for assessing and onboarding FinTechs, but decisions by institutions to collaborate will generally be left to risk-based assessments.

Singapore has taken an even less prescriptive approach, publishing an API Playbook that institutions may consult when evaluating API collaborations. There is no specific requirement that institutions open their data to non-bank competitors or collaboration partners. As is the case with the HKMA, Singapore's Monetary Authority does not regulate the full range of FinTechs and so will not have general oversight of the environment.

Other jurisdictions in the region are evaluating open banking initiatives and so we can expect further variations in the approach to regulation to emerge.



The "Open Era" is just dawning in financial services. We can expect to see lawmakers and regulators in the Asia-Pacific region continue to experiment with new approaches to regulation and refine approaches once they gain experience.

Whether implemented as part of a "forced opening" of institutional data or under a voluntary approach, API collaborations will succeed or fail on the strength of the underlying business model and the confidence consumers have in trusting their data to non-bank players. Getting the right balance will be key. This is an exciting new area for collaboration and competition between financial institutions and tech companies and offers bank customers new ways of engaging with their accounts and account information. Protecting consumer interests and preserving the stability and integrity of the financial system are critical interests. But a careful risk-weighting is needed in order to create space for innovation.

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Mexican FinTech Law

Over the last few years, the financial services industry in Mexico has experienced innovation and disruption with the emergence of financial technologies.

In Mexico, the FinTech ecosystem has evolved to become one of the most developed and dynamic in Latin America. The Mexican market represents strong opportunities for FinTech companies due to the low penetration of financial services and the existence of a young and tech-savvy consumer base.

In the next few months, all operating FinTechs in Mexico will become formally regulated under the Financial Technology Institutions Law ("FinTech Law") and the secondary regulation. This will bring important challenges and opportunities in the evolution and consolidation of Mexico as a global FinTech hub.

This document will briefly describe the FinTech ecosystem, legal framework and the upcoming deadline for operating FinTech companies in order to introduce a broad picture of the latest FinTech developments in Mexico.

The Mexican FinTech ecosystem

The FinTech ecosystem in Mexico has grown rapidly over the last few years, making Mexico the largest FinTech hub in Latin America with more than 394 operating FinTech companies, only slightly ahead of Brazil, with 380 FinTech companies and startups.[1]

Mexico´s FinTech sector is comprised of companies and startups from all segments, ranging from payments and remittances, crowdfunding, lending, digital banking, insurance, trading and capital markets, wealth management, corporate financial management, and personal financial management, among others.[2]

According to different media sources, there are approximately 20 to 25 FinTech companies in the process of obtaining authorization before the National Banking and Securities Commission ("CNBV") to comply with the Mexican FinTech legal framework.

The Mexican FinTech legal framework

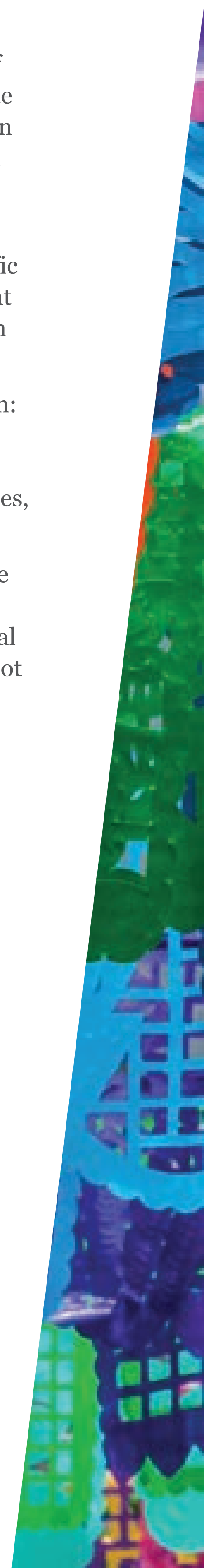
The joint participation of the public and private sector has been fundamental in the evolution of the FinTech ecosystem. In particular, the private sector made important efforts to have legislation that promotes and drives FinTech development in Mexico.

On March 8th, 2018, Mexico became the first jurisdiction in Latin America to include a specific FinTech legal framework through the enactment of the FinTech Law and its secondary regulation issued on September, 10th, 2018.

The FinTech Law regulates two types of FinTech: (i) crowdfunding institutions and (ii) electronic money and payment institutions. The FinTech Law also covers subjects such as cryptocurrencies, open banking and regulatory sandbox.

Secondary regulation and provisions such as the open banking rules, the outsourcing rules for e-money institutions rules, and the technological infrastructure guidelines, among others, have not been published yet.

It is crucial for the Mexican government to promote a legal framework that enables FinTech development, protects the financial users and does not present entrance barriers to innovative companies.



1. Finnovista and Inter-American Development Bank (2018). FinTech Radar. https://www.finnovista.com/the-mexican-fintech-ecosystem-recovers-the-leading-position-in- latin-america-and-approaches-nearly-400-fintech-startups/?lang=en
2. Finnovista and Inter-American Development Bank (2018). FinTech Radar. https://www.finnovista.com/the-mexican-fintech-ecosystem-recovers-the-leading-position-in- latin-america-and-approaches-nearly-400-fintech-startups/?lang=en

Deadline for authorization filing

FinTechs operating in Mexico must have filed for authorization before the CNBV prior to September 25th, 2019 to be able to continue their activities.

Afterwards, the CNBV and the Interinstitutional Committee[3] has a term of six months to grant or deny the authorization filing. Such period can be extended for another three months depending on the information requirements from the financial authority.

The process for obtaining authorization requires entities to submit before the CNBV, among other information, the operation model, the business plan, the shareholders information, the capital and corporate structure, the board of director's integration, the financial viability report. The required level of detail in all these documents is high.

Likewise, entities willing to operate as a FinTech in Mexico are required to be incorporated in Mexico, to fulfil the minimum capital requirements that range between $165,000 and $230,000 depending on the operations performed and to include in their bylaws the obligation to comply with the FinTech legal framework.

Furthermore, entities operating must submit their internal policies regarding compliance with AML/KYC regulation, operation, risk management, fraud prevention, electronic means of communication, user notification and protection, among others.

3. The Interinstitutional Committee is comprised of members from the CNBV, the Mexico Central Bank and the Ministry of Finance.

Conclusions

The next few months will be fundamental to the development of the FinTech ecosystem in Mexico. We are looking forward for the implementation of the FinTech Law and the secondary regulation as we are certain that regulation will promote FinTech investment, public support and more financial users involvement.

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Band 1, FinTech

Chambers Professional Advisers, 2019

The new Italian FinTech initiatives

In line with the actions taken in several EU Member States, Italy has also recently enacted specific measures for the development of FinTech initiatives by introducing a dedicated sandbox.

The initiative for the establishment of the sandbox follows the publication in January 2019 of the ESAs Report on FinTech: Regulatory sandboxes and innovation hubs setting out a comparative analysis of existing innovation facilitators and best practices for the design and operation thereof. In light of the indications provided this Report, a regulatory sandbox consists of a test area for innovative FinTech initiatives where the possibility of a cooperative dialogue with the regulators and flexibility in the application of the existing legislation is ensured.

With respect to Italy, pursuant to Law Decree No. 34 of 30 April 2019 (as converted into law by Law No. 58 of 28 June 2019) concerning urgent measures for economic growth (the "**Growth Decree**"), in order to foster innovation in the financial, banking and insurance industry, the Italian Ministry of Economy and Finance is to adopt one or more decrees (the "**MEF Regulations**") setting out the main requirements to launch an initiative aimed at testing FinTech activities (the "**Sandbox**").

Italy thus becomes the sixth EU Member State to establish a Sandbox for FinTech initiatives. The main characteristics of the Sandbox would be the following:

- a maximum 18 month duration;
- lower capital requirements;
- simplified obligations proportionate to the activities to be carried out;
- shorter timing for authorization procedures;
- boundaries of the activities that may be performed.

The MEF Regulations are to be adopted within 180 days from the entry into force of the converting law (i.e. 30 June 2019) and should include, among other things, the general requirements for taking advantage of the Sandbox, the capital requirements, the obligations to be fulfilled which should be simplified and proportionate to the activity to be carried out, the operating boundaries, the disclosure requirements, the timing for the authorisation, the professional requirements of the key officers, the corporate governance and risk management structure, the eligible corporate structure, and the financial guarantees (if any).

The MEF Regulations will also regulate the steps to be taken following the end of the Sandbox 'testing' period. In this regard, pursuant to the Growth Decree, at the end of the Sandbox 'testing' period the national regulators may authorise, on a temporary basis, the participants in the Sandbox

to operate in the market according to a 'FinTech-oriented interpretation' of the industry-specific legislation currently in force.

This provision is closely linked to the requirement for the national regulators (the Bank of Italy, CONSOB and IVASS) to publish on a yearly basis a report on FinTech including the outcome and highlights of the Sandbox activities. National regulators are also required to indicate any legislative and regulatory amendment necessary to foster the development of the industry. The above seems to represent a clear intention of the legislator to start reviewing the current legal framework so as to adjust it to the new technological development of the industry.

The Growth Decree provides for the establishment of a FinTech Committee in charge, among other things, of facilitating contacts between the industry, institutions and authorities, drafting regulatory proposals and taking actions aimed at the development of FinTech in the Italian territory, also liaising with foreign entities.

In this regard, the ESAs Report shows that sandbox participants often need to liaise with authorities other than those from the financial sector (e.g. data protection authorities or antitrust authorities), given the variety of subject matters impacted by FinTech activities. The ESAs Report, therefore, suggested that such authorities should also participate in the Sandboxes. For this purpose, the Italian FinTech Committee to be set up by the MEF Regulations will include not only the Ministries of Economy and Finance, Economic Development and European Affairs and the national regulators (i.e. the Bank of Italy, CONSOB and IVASS), but also the AGCM (i.e. the Italian Antitrust Authority), data protection authorities, the AGID (i.e. the Agency of Digital Italy) and the Tax Agency.

The absence of regulatory sandboxes, of course, may not have been the primary reason that the Italian FinTech market has been developing more slowly compared to other markets. However, the establishment of the Sandbox and the flexibility that the Growth Decree granted to national regulators in relation to the development of FinTech activities seems to be a good start for fostering technological innovation in the Italian financial market. Time will tell how the change to the new Government will impact developments in this area.

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"FinTech Firm of the Year"

Italy Legal Community Awards, 2019

Open everything and improved security: life after PSD2

PSD2 is a significant piece of legislation, aimed at disrupting the traditional banking and payment services market, improving competition and promoting innovation. One of the ways it does this is by forcing providers to allow access to customer accounts to disruptors who can offer new services to customers by exploiting the wealth of information which can be obtained through access to customers' account information. Nearly two years after PSD2 first came into force, how is this brave new era of open banking working out for both sides? What might the next twelve months bring? We provide a snapshot of the current state of play and some crystal ball gazing from our European and UK teams below.

It's not just about disruption though. PSD2 also looks to protect consumers by imposing a higher level of security for online activity and card payments. This now requires "strong customer authentication" or "SCA"– involving 2 out of 3 elements of possession, knowledge or inherence – for example, confirming a card payment by typing in a one-time password sent to a mobile phone. Whilst the implementation date for these new requirements was set for 14 September 2019, it became apparent as the deadline approached that there was still a lot of work to do to ensure that the technical changes required were in place. There were potential issues at all stages of payment transactions, impacting retailers, card issuers, merchant acquirers and the major card schemes.

A concerted lobbying effort to delay full implementation for online transactions resulted in an EBA opinion, published in June 2019, setting out a structure for national regulators to allow a degree of tolerance (or "supervisory flexibility") for delayed implementation of SCA in their jurisdictions. The national approaches to this "supervisory flexibility" across the EU have not been uniform; we set out the position in some of the major jurisdictions below.

Jurisdiction	What's the current market approach to open banking? How might it develop in the year ahead?	SCA delay: what's the plan? *
France	STET S.A., a French company owned by major French credit institutions (BNP Paribas, BPCE, Crédit Agricole, Banque Fédérative du Crédit Mutuel, La Banque Postale and Société Général), has built and launched a PSD2 API aiming to provide a secure and easy-to-use set of services to be implemented by European account servicing payment service providers (ASPSPs) for access by third party providers (TPPs). French ASPSPs are generally expecting to rely on the STET API, although certain ASPSPs may have decided to rely on in-house API or web scraping solutions.	The French Central Bank considers that French payment service providers will not be able to comply in time because most are already relying on (and are planning to continue to rely on) the EMV 3-D Secure communication protocol that the EBA's June 2019 opinion classed as non-compliant with SCA. The Central Bank has therefore proposed to ensure compliance with SCA on a gradual basis over a period of three years. It expects to have 60% of payments requiring SCA compliant with the RTS in December 2020 and 90% in December 2021. It will carry out an assessment of the situation in the French market by the end of each year until 2022. The French banking supervisory authority (*Autorité de contrôle prudentiel et de résolution*) (ACPR) has not yet published any official position in response to the publication of the EBA opinion on SCA in June 2019.

Jurisdiction	What's the current market approach to open banking? How might it develop in the year ahead?	SCA delay: what's the plan? *
Germany	Open banking has been the subject of much discussion between the traditional banks and fintechs. The banks are offering one API standard, which many fintechs see as too sophisticated and complex to use. BaFin, the German regulator, has intervened and required banks to continue to offer customer interface access for third party providers (TPPs) as an interim measure until the APIs have been improved.	BaFin, the German regulator, has issued a circular which broadly reflects the position adopted by the EBA opinion. BaFin is looking to grant greater flexibility to market participants when implementing SCA in relation to online card payments. BaFin has also published a statement saying that it will not enforce the 14 September 2019 SCA deadline. This only concerns e-commerce card transactions and issuers and acquirers are expected to comply. However, they can accept non-SCA transactions for the time being to ensure that there is no disruption to card acceptance. BaFin has not yet set a new deadline as it will determine the timeline after consulting with market participants. It has, however, pointed out that (i) strict liability in accordance with PSD2 applies and (ii) best efforts to implement the changes are expected from market participants.
Italy	In June 2018, the first open banking platform was launched in Italy. It is a financial ecosystem enabling and promoting collaboration between banks, corporate and fintech companies in order to create innovative solutions for customers. Also, it aggregates, integrates and coordinates APIs and services developed by participants in the ecosystem. Since September 2018, a significant number of banks have relied on an external service provider, CBI Globe - Global Open Banking Ecosystem. No further guidelines have been provided on open banking in Italy.	On 1 August 2019, the Bank of Italy published a communication providing for the possibility to request additional time for the implementation of SCA requirements for online card payment transactions. The communication indicates that the maximum term of the extension will be established by the EBA and subsequently communicated to the market. In order to take advantage of the extension, relevant entities will need to submit a detailed migration plan to the Bank of Italy which must also include initiatives in terms of customer preparedness and communications toward both merchants and cardholders. During this migration period, payments executed without SCA will be subject to the liability regime under the national implementing legislation for PSD2.
Luxembourg	Luxembourg has a global and standardized platform named LUXHUB which is used by many large, both public and private, Luxembourg banks. LUXHUB's website provides a "catalog" of API providers which include, but are not limited to, the Banque de Luxembourg, Banque Raiffeisen, BGL BNP Paribas, Spuerkeess and Post Luxembourg. As from 14 June 2019, LUXHUB is available to third party providers (TPPs). It is also interesting to note that another large Luxembourg bank, the Banque Internationale à Luxembourg (BIL), has developed its own open banking platform (apparently open to developers) via a first API, giving access to account information (balance and transactions) and enabling payments. It is not yet clear if any TPPs are already using the API. It will be interesting to see how this develops in the following months and to have feedback on the existing platforms.	The Luxembourg supervisory authority (*Commission de Surveillance du Secteur Financier*) (CSSF) published a press release on 30 August 2019 extending the deadline for SCA compliance beyond 14 September 2019 for e-commerce card payment transactions. The CSSF states that it is aware of the complexity of the required compliance changes and has made use of the possibility offered by the June 2019 EBA opinion to extend the SCA implementation period. The CSSF has also affirmed its willingness to participate in cross-border discussions in order to adopt a common and harmonized deadline. Finally, entities that want to make use of this extension must inform the CSSF and submit a detailed migration plan.

Jurisdiction	What's the current market approach to open banking? How might it develop in the year ahead?	SCA delay: what's the plan? *
The Netherlands	A significant number of Dutch banks have made API services available in recent months. As yet, no further guidance on open banking has been published in the Netherlands.	Although the vast majority of payments in the Netherlands meet the new SCA requirements, some credit card payments are not yet compliant. The Dutch Central Bank (*De Nederlandsche Bank*) (*DNB*) intends to grant limited additional time to market participants who were unable to prepare for the introduction of SCA for credit card transactions on time. The amount of additional time that will be granted has not yet been determined. Working with the EBA, the DNB aims to achieve a uniform migration within Europe towards the introduction of SCA for credit card transactions.
Poland	The Polish Bank Association (ZBP), which unites commercial and cooperative banks, launched the PolishAPI project in the first half of 2018. However, the project itself goes beyond the banking sector and also includes: cooperative savings and credit unions (SKOK), the Polish Organisation of Non-banking Payment Institutions (PONIP) together with its associated members, the Polish Chamber of Information Technology and Telecommunications (PIIT), the Polish Insurance Association (PIU), National Clearing House (KIR), Loan Information Office (BIK), and Polish Payment Standard (PSP). The project is aimed at developing an interface enabling third parties to access payment accounts. From time to time updated versions of interface specifications are released, the latest one being issued in July 2019. In addition, KIR is developing HUB PSD2, which is going to facilitate the implementation and functioning of PolishAPI, through the integration of the systems of all entities which use and will use it in the future. Even though PolishAPI is perceived as a tool to standardize the approach of Polish banks to open banking solutions and reduce the costs of PSD2 implementation, it should be noted that it will not be used by the whole sector. Some banking groups are already developing their own standards and it is expected that Polish subsidiaries will be forced to use them too. In addition, some banks view the possession of their own API as a way to create a competitive edge, giving them a chance to distinguish themselves from competitors.	Taking into account the June 2019 EBA opinion and data gathered and analysed by the Polish regulator, the Polish Financial Supervision Authority (*Komisja Nadzoru Finansowego*) (PFSA), it considers that some Polish payment services market participants are not sufficiently prepared for such implementation. The PFSA is willing to adopt the solution proposed by the EBA and grant limited additional time to allow migration of the current authentication approaches to those that are fully compliant with the SCA rules. However, this can be applied only in relation to online payments based on payment cards and to contactless payments executed at payment terminals. In order to qualify for the grace period, a payment service provider must submit a "migration plan", which should be appropriate, realistic and agreed with the PFSA. If this is done, no other supervisory measures relating to the failure to use SCA will be applied against the payment service provider. It should be noted that from 14 September 2019, all the risks associated with the failure to comply with the SCA rules are fully borne by payment service providers. The length of the additional grace period has not yet been determined but will be decided in cooperation with the EBA.
Spain	Entry into force of Spanish regulation transposing PSD2 in Spain has sparked the initiation of open banking in Spain. This new legislation allows authorised third party providers (especially entities in the fintech area) (TPPs) to gain access to customer data, and promote greater competition in the industry. Banks are reluctant to collaborate and open their core data to these TPPs. As things currently stand, the TPPs have not received much information from the banks about what will happen from 14 September 2019.	The Bank of Spain is working on a circular along the lines of the BaFin circular in Germany. It looks like there will be a minimum delay of 14-18 months, but nothing has been confirmed beyond that. An official publication from the regulator is expected before the SCA rules enter into force on 14 September 2019. The current position is that market participants have not yet implemented SCA in their systems.

Jurisdiction	What's the current market approach to open banking? How might it develop in the year ahead?	SCA delay: what's the plan? *
United Kingdom	The Competition and Market Authority's Retail Banking Market Investigation Order 2017 (applicable only to the "CMA9", the 9 largest current account providers in the UK) established the Open Banking Implementation Entity (OBIE) as a central standards body and mandated use of specified APIs to provide open access to current account data of retail and small business customers. The OBIE's open banking standard is largely being adopted as the common UK standard for PSD2 compliance and is being used by the CMA9. While it's still early days, an Open Banking progress update in summer 2019 stated that 137 regulated providers now offer open banking services, made up of 85 third party providers (TPPs) and 52 account providers; 32 of these entities have at least one proposition live with customers. The UK regulator, the Financial Conduct Authority (FCA), is looking at expanding open banking into the wider concept of open finance, to apply to other financial products, notably in the savings sector. The OBIE is planning to set up "Premium APIs" to sit above the mandatory "Regulatory APIs" with the aim of providing a commercial incentive for banks to improve API performance and extend the open banking system, as well as providing additional functionality sought by TPPs.	The UK regulator, the Financial Conduct Authority (FCA), has announced the following: • *E-commerce card transactions:* an 18-month plan to extend the timetable for SCA implementation up to 14 March 2021. It will not take enforcement action against firms which do not comply with SCA from 14 September 2019 in areas covered by the plan, as long as there is evidence they have taken steps to comply with it. After the 18-month period, it expects all firms to have made the necessary changes and be able to apply SCA. • *Online banking:* phased implementation of SCA by 14 March 2020. It is unclear how this relates to the 'adjustment period' mentioned below. It has also been reported that the FCA will be applying a six-month 'adjustment period' for access interfaces. This suggests that it will not be taking action against either account servicing payment service providers or TPPs for breach of the Payment Services Regulations 2017/SCA Regulatory Technical Standards before March 2020. However, it will keep things under review and may shorten the period if 'sufficient progress' is made.

* Reflects the position as at 12 September 2019

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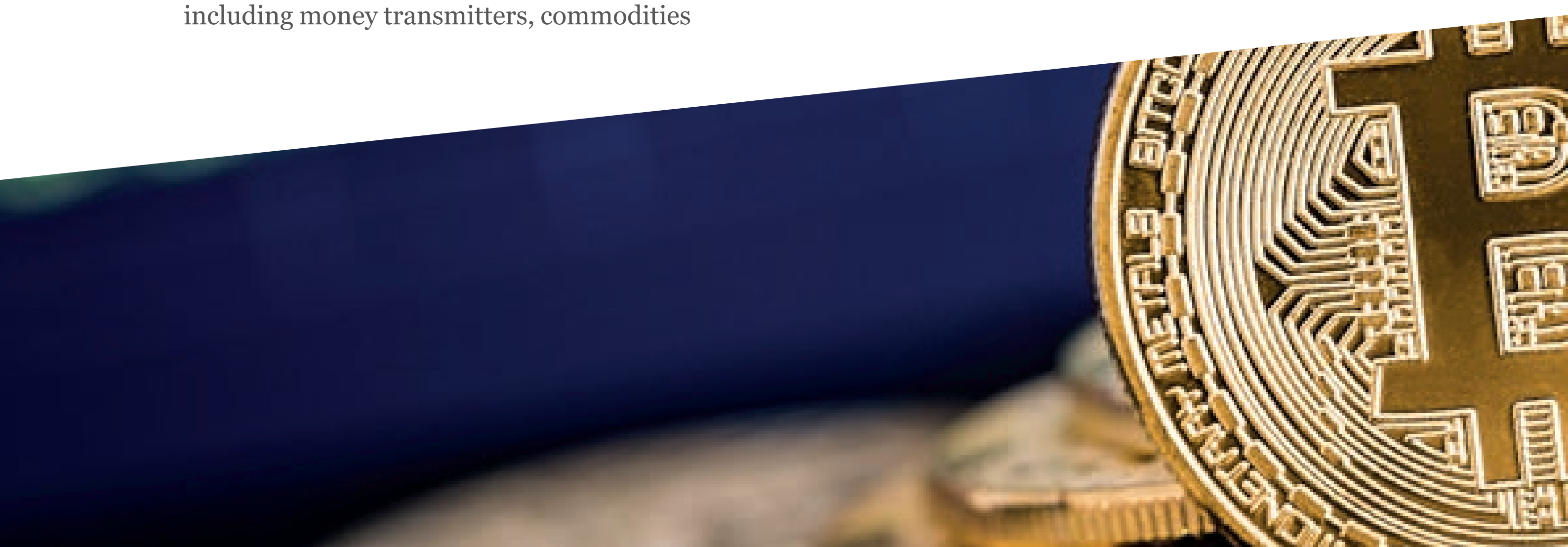
Despite growing scrutiny and enforcement in the cryptocurrency space, regulatory uncertainty remains

As the world marks the eleven-year anniversary of the seminal Satoshi Nakamoto white paper, which introduced the world to Bitcoin, the cryptocurrency industry remains a relatively nascent, highly volatile, somewhat untrusted, and uncertain industry. Despite – or to spite – the statements of certain regulatory and law enforcement agencies, virtual currencies do not neatly fit into existing regulatory structures. Depending on the specific circumstances, crypto-assets may be regulated by any of a number of federal agencies within the United States (not to mention the array of state or foreign agencies who might stake a claim to jurisdiction). The process of applying a complex network of laws and rules enforced by different agencies onto these new technologies, products, and services has resulted in an opaque regulatory environment. This in turn yields reluctance to provide investment for much-needed research and development, along with genuine uncertainty as to how to comply with an evolving regulatory landscape.

The uncertainty starts with the question of which regulatory agency has jurisdiction over these products and businesses. Various agencies – the Commodity Futures Trading Commission (CFTC), the Securities and Exchange Commission (SEC), and the Financial Crimes Enforcement Network (FinCEN) – have all asserted some form of oversight and regulation over this industry, proliferating the space with enforcement actions, speeches, guidance, and advisories, as well as other public-facing statements regarding virtual assets. On October 11, 2019, the leaders of these respective agencies issued a *Joint Statement on Activities Involving Digital Assets ("Joint Statement")* regarding the anti-money laundering obligations of those engaged in virtual currency.

The *Joint Statement* is certainly helpful in establishing that, because the Bank Secrecy Act (the principal U.S. anti-money laundering statute) applies to various types of financial institutions, including money transmitters, commodities brokers and futures commission merchants, and securities brokers and dealers, near-identical AML regulations apply regardless of the classification of the digital asset involved. At the same time, the joint guidance reiterates that a virtual asset's taxonomy is a function of "facts and circumstances underlying an asset, activity or service, including its economic reality and use (whether intended or organically developed or repurposed)". This strongly signals that subsequent use or market conditions could alter regulatory obligations and classifications, irrespective of developer (or creator or investor) intentions, leaving jurisdictional/regulatory interpretations fully open and somewhat unpredictable. Indeed, despite this coordinated announcement in the agencies' *Joint Statement*, it is not guaranteed that these agencies would necessarily defer to the others' respective interpretations or agree as to the scope of the others' jurisdictions.



Despite this lack of clarity, enforcement – theoretically predicated on the wrongful (and sometimes knowing and intentional) violation of clear, known (or at least knowable) rules – remains on the rise. For example, the SEC took action against the former owner of EtherDelta, a decentralized cryptocurrency exchange, for allegedly operating as an unregistered national securities exchange. According to the SEC, the platform facilitated secondary market trading of ERC20 tokens, a type of blockchain-based token commonly issued in Initial Coin Offerings. The matter was settled with neither an admission nor a denial of the SEC's findings, leaving unresolved the underlying question of whether the tokens were securities.

The jurisdiction of the CFTC with respect to cryptoassets extends to those that are commodities and not securities. While certain federal courts have found that cryptocurrencies are potentially commodities under the Commodity Exchange Act (CEA), commodity status for a specific cryptocurrency is still a fact-based, evolving analysis based on several factors, including how the cryptocurrency was issued, the purpose and use, the governance and degree of decentralization, and how the cryptocurrency was promoted. Recently, the CFTC Chairman stated that Ether, like Bitcoin, will be deemed a commodity regulated under the CEA. And even more recently, in late October, the Chairman posited that a digital asset might transform from a commodity to a security, or the other way around.

FinCEN, a bureau within the U.S. Department of the Treasury, administers the Bank Secrecy Act (BSA). Determining the applicability of its regulations to various cryptoassets may also be challenging as some decades-old regulations are applied to innovative products. The status of some actors in this space as "money transmitters" – a type of financial institution covered by FinCEN's rules – is the result of a facts-and-circumstances specific analysis that may provide only limited insight for purposes of future products. FinCEN has addressed how its money services business (MSB) regulations apply to business models for transactions involving convertible virtual currencies (CVCs), but any guidance applies only to that specific business model. Terminology and labels cannot easily be extended to other business models without a clear assessment of the underlying facts.

FinCEN's application of the regulations in the civil enforcement context has highlighted some of these issues and underscored the fact-specific nature of the analysis. In one enforcement action, FinCEN concluded that an operator was not merely a "user" of virtual currency (which would be outside of its jurisdiction), but rather a peer-to-peer exchanger of convertible virtual currency. As such, the operator was deemed a money transmitter and thus a financial institution for purposes of the anti-money laundering regulations and therefore subject to FinCEN's regulatory oversight. The operator was found to have

willfully violated the BSA's registration, program, and reporting requirements and accepted a civil monetary penalty. Other companies and individuals have likewise found themselves liable, and despite extensive guidance (most notably FinCEN's May 9, 2019 Advisory titled *Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies)*, several open questions remain.

Complicating things further, cryptocurrencies and other virtual currencies are increasingly implicated in criminal activity. Despite their extensive legitimate uses, digital currencies have also been connected to narcotics trafficking, human trafficking, sanctions evasion, and terror finance, along with a whole host of other criminal activities. Money transmitting businesses and kiosks have been used to exchange millions in cash and virtual currency for criminals, including Darknet drug dealers. Criminal enforcement matters involving cryptocurrency include fraudulent conduct, especially (though not exclusively) related to the misrepresentation of assets underlying the value of tokens in connection with initial coin offerings and similar financing schemes that involve virtual currencies or other tokenized assets.

As cryptocurrencies grow in availability and prominence, regulators are responding to the potential use of cryptocurrencies to obscure identities and to conceal the origin, control, and source of assets. The Treasury Department's Office of Foreign Assets Control (OFAC) publishes the names of parties that are designated under a sanctions program and added to OFAC's list of "Specially Designated Nationals" or "SDN List." The assets of SDNs are blocked (frozen) and U.S. persons generally are prohibited from dealing with them. To address the possibility that U.S. persons could inadvertently transact with SDNs using cryptocurrencies, OFAC has included cryptocurrency addresses with the identifying information in certain designations.

On the taxation front, the Internal Revenue Service (IRS) has sent letters reminding certain taxpayers of the tax and filing obligations associated with virtual currency transactions. To prove willfulness in the criminal context, the government must establish that the taxpayer was actually aware of the obligations under the tax laws; the letters could potentially be used to establish such awareness. So while "educational," issuing the letters suggests a possible willingness by the IRS to prosecute cases. In early October, the IRS updated its draft tax return form (Form 1040) to ask filers whether they received, sold, sent, exchanged, or otherwise acquired any financial interest in virtual currency.

As industry attempts to navigate the complex U.S. regulatory map for cryptocurrencies, the risk remains that the uncertain regulatory environment will stifle innovation, discourage promising use cases for crypto-assets, and allow unsuspecting participants to unintentionally run afoul of the law. The cryptocurrency industry's ability to develop products that fit within a certain predictable regulatory framework will remain challenging as the law, policymakers, and markets attempt to keep up with and develop approaches to these innovative products and services.

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PSD2 & GDPR: an opportunity for the African mobile payment business?

Africa is the leading continent in mobile money with over 60% of the world's mobile payment accounts located south of the Sahara.

Mobile money in Africa

Mobile money allows payments and transfers with a mobile phone, without a bank account or internet connection. This medium has been embraced in those African countries whose traditional banking infrastructure has a low penetration rate and is characterized by scarcity of bank branches and ATM machines, especially in rural areas, and by higher costs of banking services (including account holding fees). In 2017, mobile money transactions amounted to 20% of Sub-Saharan Africa's GDP and less than 2% of Europe's GDP. Mobile money is typically used for low-cost transactions, primarily to send and receive remittances, but also to pay utility bills, wages, school fees and agricultural products. East Africa has been the most dynamic region with Tanzania, Kenya, Uganda, Zimbabwe and Rwanda as the top 5 countries when it comes to mobile transactions, followed by West African Ghana and Côte d'Ivoire. The mobile payment infrastructure was developed and is still led by telecommunications companies whose market shares range from 45% to 70% depending on the countries.

Another characteristic of the African continent is that it is the one whose economy is the most reliant on investment and family-support remittances from its diaspora, especially the European-based expatriates. Yet the cost of money transfer to Africa remains, for several reasons, the highest globally. Blockchain and other distributed ledger technologies are being considered to tackle the fee issues. Some African governments have also expressed their intent to capitalize on the success of mobile payments to promote development via financial inclusion by encouraging portfolio diversification with credit services, investment products and cross-border payments. Similarly a number of mobile money companies have developed application programming interfaces (APIs) facilitating diverse transactions.

Expanding to Europe for transfers from Europe?

The 2015 Payment Services Directive (PSD2) and the 2016 General Data Protection Regulation (GDPR) both have an extraterritorial scope; they apply to entities beyond the borders of the European Union. PSD2 applies to transactions with "one leg out" and denominated in non-EU currencies. GDPR applies to non-EU data controllers and data processors that process the personal data of EU-based individuals.

As regards PSD2, its main innovation is that it acknowledges and welcomes new players such as FinTech companies. The Directive's objectives are to make payments safer, increase consumers' protection, foster innovation and competition

Toolkit

Access our comprehensive guide to PSD2 and the UK's Payment Services Regulations at hlengage.com

while ensuring a level playing field for all players. One key change brought by the Directive is the new security requirement to use strong customer authentication.

With respect to GDPR, the regulation enhanced data subject rights (such as the right to data portability, the right to be forgotten), data governance obligations (such as data mapping or audits) and information security requirements.

The set of rules governing electronic payments and the processing of personal data can appear onerous, especially to an organization which is not based in the EU. However, without a harmonized approach at EU level, different laws would undoubtedly have been enacted within the EU (some perhaps more onerous than the Union laws). Complying with more than one legal or regulatory framework would thus have been challenging, especially where compliant functionalities must be embedded in the technology solutions such as the APIs or the mobile applications.

In addition, both PSD2 and GDPR have been emulated outside the European Union. Data protection laws recently enacted in Africa (in Nigeria and Benin, for example) have taken GDPR into account, especially in respect of data subject rights and data security obligations. Likewise, Rwanda's new rules on electronic payments were significantly inspired by PSD2 with the introduction of a regulatory sandbox and payments initiation service providers.

If anything, PSD2 and GDPR can facilitate compliance on an EU level provided that compliance-by-design is adopted, even by embedding dormant functionalities to be activated where and when legally required. As mentioned above, given the infrastructure of the African banking sector, mobile money has been able to thrive on the continent. Exporting mobile money to Europe for use only within Europe could be more challenging. A non-conclusive attempt was recently made in Romania. However, in relation to Europe-to-Africa money transfers and other operations, the ability to comply with PSD2 and GDPR could open new opportunities and would most likely be more achievable than complying with different local legal frameworks in Europe.

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Stablecoins - strong and stable?

Cryptosceptics often point towards the wild price fluctuations of the likes of bitcoin as a reason why crypto assets cannot perform money-like functions: the store of value, a means of payment and a unit of account. However, the increasing popularity of stablecoins could quell these concerns.

What are stablecoins?

A recent ECB occasional paper defined stablecoins as: 'digital units of value that are not a form of any specific currency (or basket thereof) but rely on a set of stabilisation tools which are supposed to minimise fluctuations of their price in such currency(ies)'. Having minimised price fluctuations, there is a strong argument that stablecoins can indeed be a store of value, means of payment and a unit of account.

Why are they important?

Stablecoins were originally introduced to protect cryptoassets from volatility. However, there has also been a more recent trend of using stablecoins to protect against foreign exchange risk as well as providing opportunities to 'bank the unbanked'

According to an ECB occasional paper titled 'In search for stability in crypto-assets: are stablecoins the solution', published in August 2019, there are over 54 stable coin initiatives in existence. At present there is a market capitalisation of operation activities of €4.3 billion, which is almost three times its level in January 2018.

It is safe to say that there is certainly a growing demand for stablecoins.

Is it going anywhere?

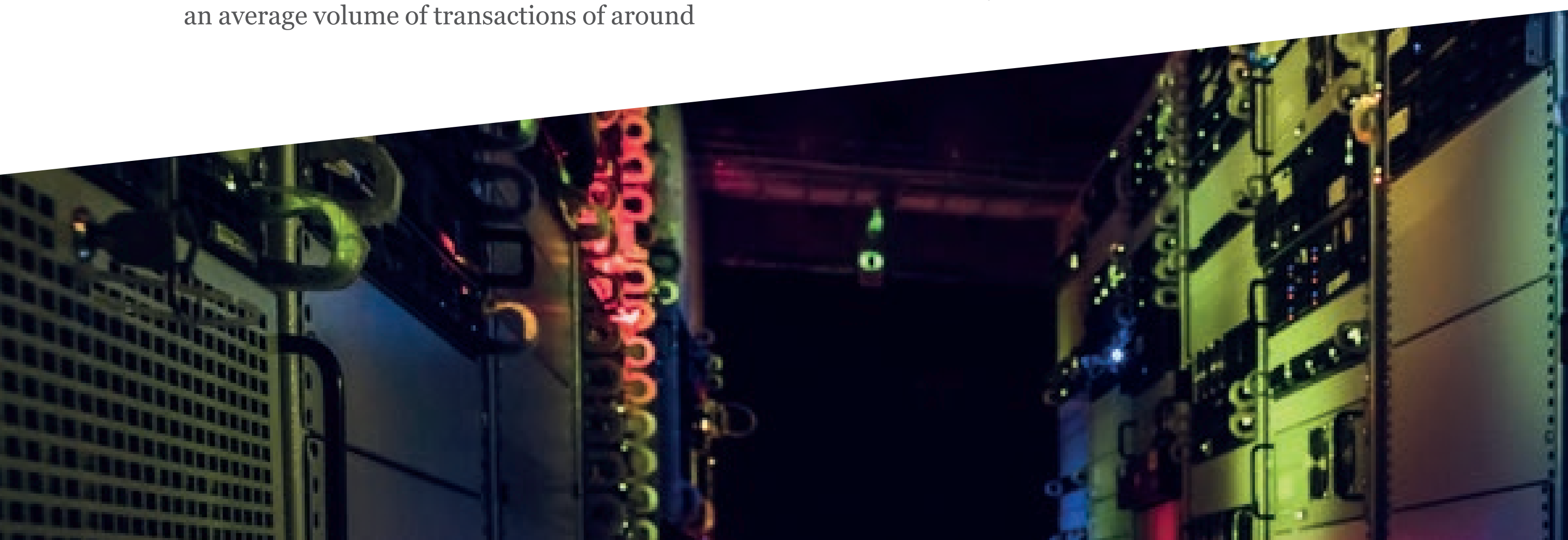
Notwithstanding its apparent growing popularity, some fundamental concerns have been raised. Can stablecoins deal with the volume of transactions that will be required of them if they are to become mainstream? Stablecoins currently operate with an average volume of transactions of around €13.5 billion per month, but Europe alone sees in excess of €44 trillion go through retail payment systems every year. Over 50% of stablecoins use the Ethereum network, which can only process 15 transactions a second; this will inevitably inhibit stablecoins' ability to scale up.

There is also the matter of reach. The crypto space still continues to have a barrier to entry. Many feel that they need to be tech-savvy to be involved or that it is too dangerous to use or that it just isn't that useful. As such, despite growing volumes, it is still quite a long way off from being able to attract a critical mass.

Will it take off?

The announcement of Facebook's Libra coin in June of this year could have a huge impact on the future of stablecoins. Facebook's 2.4 billion users gives Facebook an unparalleled network of consumers to generate scale. Libra makes blockchain and crypto more accessible and if it is adopted as many expect, it will be possible to carry out everyday transactions with Libra. Furthermore, Libra runs on the Libra Blockchain, which is able to process 1,000 transactions a second, which would also alleviate concerns over processing at scale.

Libra is just one example of a crypto asset in the form of stablecoins that is drawing attention. Walmart has recently announced that it is following suit and with large corporations investing in these projects, there is scope for stablecoins really to take off.



What does the future hold?

Whilst there is still a long way to go, stablecoins should have an interesting future. Many consider Libra to be the tipping point where we will see a wide scale adoption. All eyes will be on Libra to see how they manage it and it will be interesting to see who else will join in and create their own product.

However, the key question will be the regulatory environment. It may well be possible to scale up stablecoins and there may very well be use cases but this will mean very little without having the approval of the regulators.

Regulators are concerned and it could end up with them taking a hard line approach as wide scale adoption of stablecoins could threaten monetary sovereignty. French Finance Minister Bruno Le Maire and German counterpart Olaf Scholz have been openly critical of Libra for example, citing that it is a danger to consumers and could pose a systemic risk. Mark Carney of the Bank of England on the other hand stated that he has an open mind on the utility of Libra, noting that payments systems across the world are currently highly unequal with some being free and fast and others being expensive and slow.

Whilst the threats of a corporation encroaching on sovereign activities has brought regulators to their feet in defence, the core concerns centred around the need for modernisation of the monetary system has not fallen on deaf ears, with calls for the European Central Bank to 'accelerate its thinking on a public digital currency'.

This battle is one that is just beginning and will be long fought. There will be a long scoping process that will go to the core of what stablecoins are offering and therefore how they should be treated. In the meantime, central banks will push their own solutions through in a bid to take back control. Whatever the outcome is, one thing is clear, there is an interesting new dialogue developing in cryptocurrency and there is a sense that we are at a point of inflection in its narrative.

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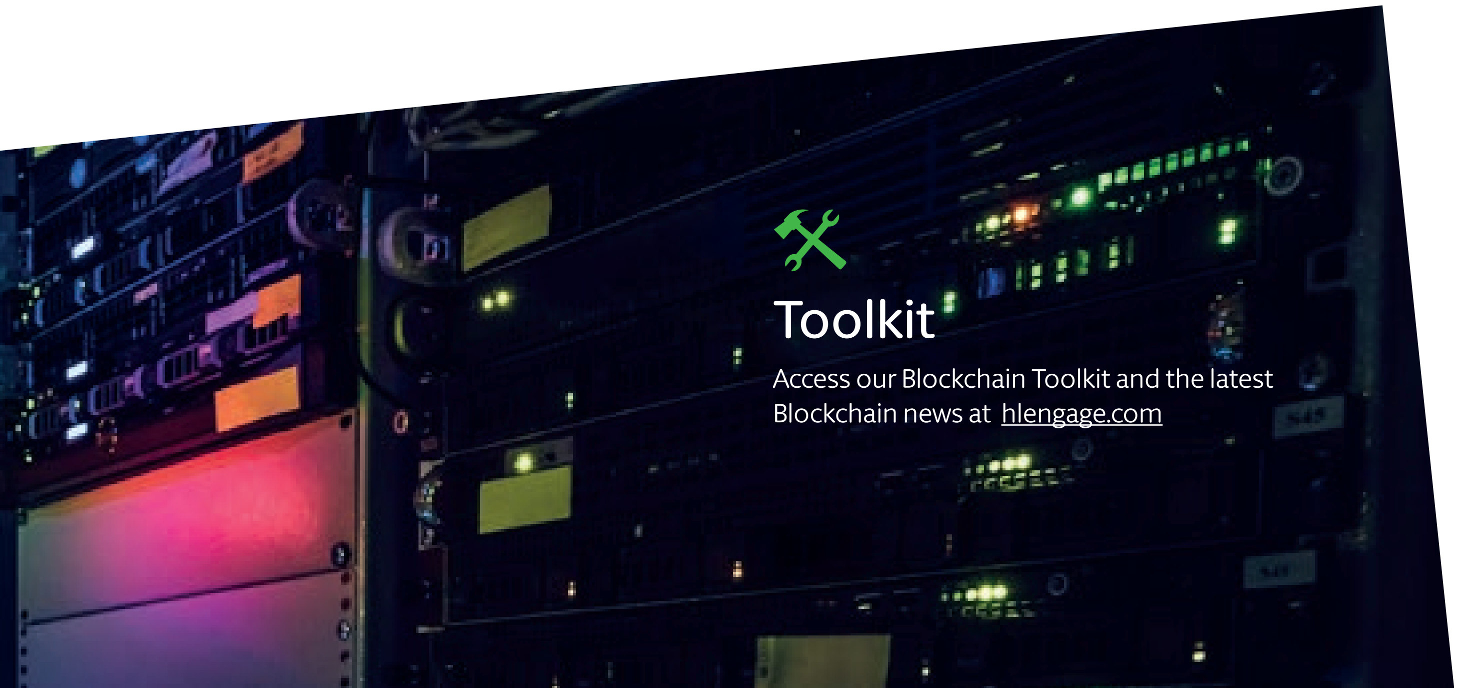


Our global financial institutions team

Financial technology is changing the face of financial services and overturning assumptions about the way they are delivered. Disruptive technologies are challenging the traditional models for the provision of services.

Our cross-border, multidisciplinary teams provide the insight our clients need, wherever they need it. Whether it is assisting with structural reform, competition investigations, patenting new technology, or entering new markets and developing new products, we can put together a team tailored to our clients' needs that can counsel them through the entire lifecycle.

We work across all major market sectors, including retail and investment banks, alternative lenders, asset managers, intermediaries, peer-to-peer and marketplace lenders, FinTech companies, infrastructure providers, as well as industry bodies and regulators. We bring a complete market view to the projects we work on.

Strong relationships with local, national, and supranational regulatory bodies mean we can navigate regulations to find solutions or lobby for change where none can be found.

We use our in-depth knowledge of the latest in innovation and current and projected industry climate to advise our clients on how to best prepare and work in established and emerging markets. We assist in the design and rollout of new products, or assist in the acquisition of new businesses.

We are where our clients need us to be— with on-the-ground teams in all major financial and technology hubs and offices in established and emerging economies.

Though we have more than 45 offices, our approach is to work as a unified, single firm, always bringing the whole-of-the-firm to our clients, wherever they may be.

700+

Lawyers

We have over 700 lawyers in our financial institutions sector. Our extensive network ensures that there are very few issues that we have not come across.

10+

Jurisdictions

Ranked for financial institutions in 10+ jurisdictions by Legal 500 and Chambers, including Band 1 rankings in the U.S., UK, France, Italy, Spain and Germany.

50+

Ranked lawyers

Our lawyers have been recognised as leaders in the financial institutions sector and awarded top individual rankings by legal guides in 2019, including the Hall of Fame status.

Hogan Lovells Engage: LIBOR

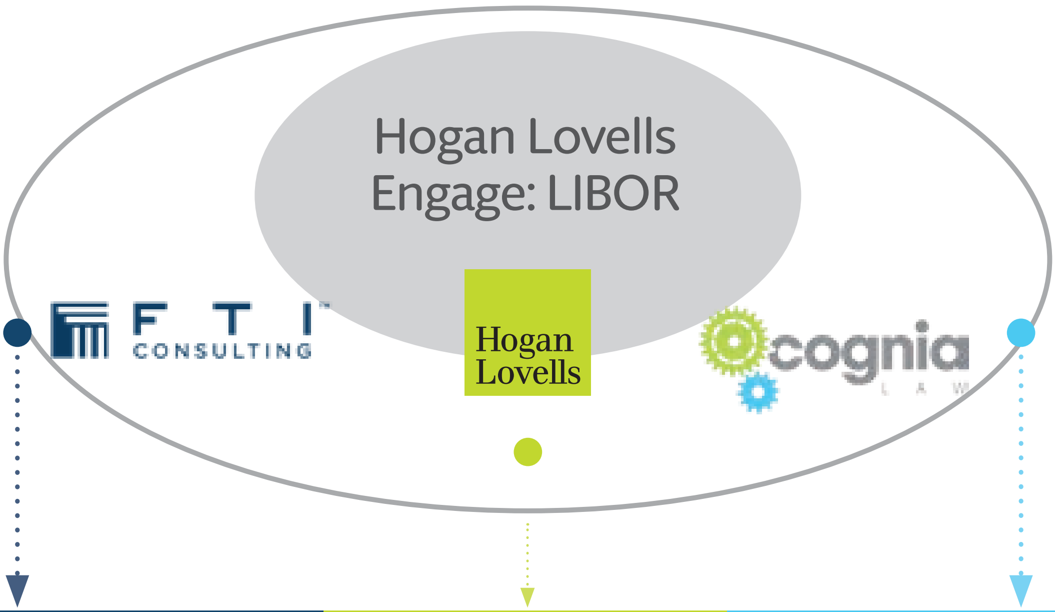
The legal and operational issues surrounding a transition from LIBOR (including litigation risk) to new risk free rates (RFRs) are complex and wide ranging. A successful repapering exercise requires a precise understanding of those legal issues in the context of the client's business, as well as the practical realities of the financial markets' transition to new RFRs across different currencies and financial products.

An advanced digital solution for LIBOR replacement

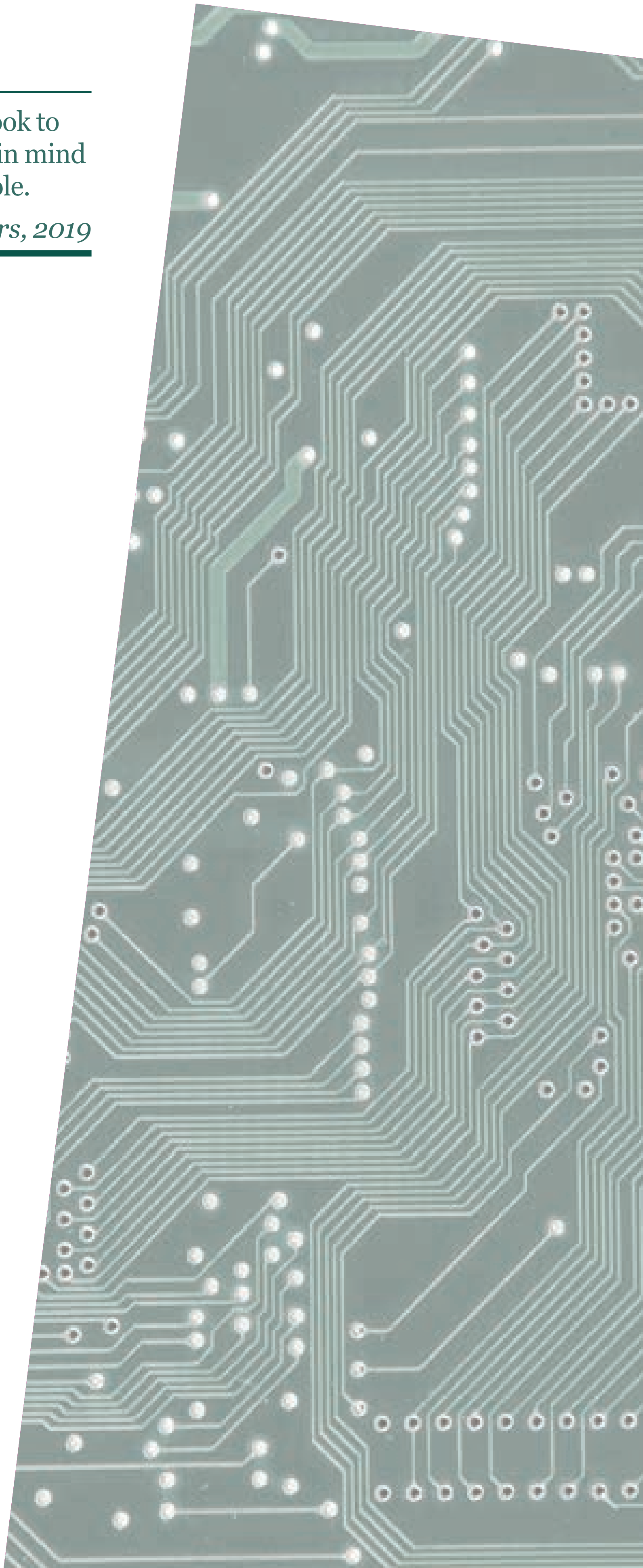
We have developed a 'one stop shop' solution to deliver a seamless, end-to-end service for our clients in light of the discontinuation of LIBOR after 2021, with an advanced delivery toolkit to provide legal expertise using alternative resourcing through Hogan Lovells' Legal Delivery Center and low cost delivery outsourcing firms, including Cognia Law and Elevate and Artificial Intelligence technology through our partnership with FTI Consulting.

We have built an innovative, highly scalable and efficient delivery model leveraging Artificial Intelligence, alternative delivery models and cutting edge legal expertise.

Our market insight, coupled with our connectivity to regulatory bodies, has allowed us to develop a hybrid process that combines the best people with the most advances legal technologies to deliver a premium LIBOR replacement service at a reduced cost



Advanced technology	Legal expertise	Alternative resourcing
In partnership with FTI Consulting, utilising a contract intelligence platform to deliver automated contract review and production.	Legal expertise delivered by Hogan Lovells with world class experience in financial services regulatory law and litigation.	Leveraging flexible and scalable resources through Hogan Lovells' Legal Delivery Center and Cognia Law or Elevate.



> They are very commercially-minded and look to get the best deal for clients, whilst bearing in mind all parties and relationships around the table.
>
> *Chambers, 2019*

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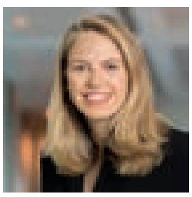

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Our commitment to innovation

The face of financial services is changing. So are we. In tune with our clients' priorities, we are always looking to enhance our mix of services and how we deliver them.

We create bespoke experiences, including collaborations to explore new technologies that result in efficiencies and improved processes, or provide defined sessions on topics such as "Legal Function Maturity", "Smart Sourcing" and "Moving from Cost-Center to Value-Center."

Here are some examples of the ways we are innovating in our service delivery for financial institutions clients.

Advanced technologies

Advanced technologies, such as artificial intelligence and machine learning, have advanced in recent years and banks and other financial institutions are exploring the potential applications of these. We know that technology, used well, can help us and our clients perform better. Across our practices we are applying advanced technologies to review documents, prepare litigation outcome assessments, help surface new insights, and realize other efficiencies.

A multi-disciplinary team including lawyers and technologists is constantly assessing the potential of such technologies to create value for our clients, and is available to share insights with them.

Tools and Partnerships with LegalTech

We have looked closely at the different suppliers of AI technology and what they have to offer. We have engaged with a number of different providers in the market, including EigenTech, Kira, Clocktimizer; Smartsheet and Cael, and other products like HighQ.

Global Teaming Agreement with FTI Consulting

Financial institutions are increasingly tasked with mining information from large volumes of contracts and other data stores to meet obligations, ensure compliance with data privacy legislation, navigate risks and gain business insights.

Our teaming agreement with FTI Consulting provides our clients with an exciting new contract intelligence and data governance offering that will provide both firms' clients with broader, more cost-effective and strategic data tools.

For larger or more complex contract reviews, we have a managed services agreement with FTI Consulting, where we work with them to leverage Kira or other contract review tools together with their Contract Intelligence platform.

The FTI team manage the technology, while we provide the legal expertise, report writing and review. FTI's and Hogan Lovells' joint capabilities leverage Hogan Lovells expertise and FTI's industry-leading AI and machine-learning tech-enabled contract process, to provide cost-effective and efficient services and analysis to clients.

Hogan Lovells Stream

Our solution to the challenge of keeping track of the key documents in dispute resolution procedures in an efficient and cost-effective way. It allows our clients to access, review and comment on key case documents on a portable tablet device via a secure private cloud-based platform.

DraftXpress

Computerised drafting of a set of template documents with recurring similar information to be inserted in several different places in the draft; the computer asks the drafting person a number of preset questions and produces a complete set of amended templates accordingly.

Alternative resourcing models

We understand that financial institutions are increasingly seeking timely, scalable and cost effective resourcing on projects, and we are committed to providing real value, seeking competitive pricing and rationalizing services.

To reduce costs and improve efficiency on matters, we can arrange to source some elements of our legal services in a range of ways.

Legal Project Management

Our full-service team of LPM professionals provides hands-on project management (for part or all of the matter), including assistance with delivery team structure, preparation of budgets and fee estimates, and tracking of time and costs on matters.

Our Legal Delivery Centre and Global Business Services Centres

Our Legal Delivery Centre, based in Birmingham, is a dedicated and scalable resource with a mixture of experienced qualified lawyers and forms part of our approach to continuously improve and extend the services we offer to our clients in a cost-effective way. Through a recent partnership, our Legal Delivery Centre and Cognia Law have joined forces, acting as one delivery team to provide a seamless end to end service, offering greater efficiency as well as shared best practices to our clients. Cognia Law is a next generation legal service provider to banks, corporations and law firms, headquartered in the UK with delivery operations based in South Africa.

Our Financial Services Regulatory Consulting practice

This combines both legal and consulting services and provides financial services companies with the ability to easily manage and integrate their combined legal regulatory strategy and compliance needs.

Elevate

Elevate is our flexible lawyering platform that leverages a pool of lawyers to deploy to meet our clients' needs for additional resource during periods of intense demand to ensure service quality for all our clients.

Legal Function Consulting

Our Global Head of Legal Service Delivery offers sessions with our clients to discuss working efficiently and demonstrating the value of the legal function to the business.

Citizenship & diversity

Good citizenship means boldly striving to exceed the social and environmental responsibilities we have to our people, our clients, and our local and global communities.

As a truly global law firm, we recognise that our continued success owes much to the diversity of our people. Embracing our cultural differences and recognising our strong local knowledge means we can deliver for our clients all over the world. This recognition of strength in diversity and a sense of togetherness permeates throughout the firm into all our practice areas; and so it is with our commitment to corporate responsibility (CR).

Our global CR strategy is aligned with the United Nation's Sustainable Development Goals (SDGs): 17 goals designed to end poverty, fight inequality, and tackle climate change. This is the ultimate example of what can be achieved if we are willing to work together across sectors and continents on all levels.

Our lawyers and business services professionals are each asked to dedicate 25 hours per year to pro bono legal and skilled non-legal volunteering activities benefiting the world around them. This is delivered through a combination of our five CR strands of Pro Bono, Diversity and Inclusion, Community Investment, Charitable Matched Giving, and Sustainability.

Pro bono - making a world of difference

We challenged ourselves to focus our time, skills, and resources over the past three years on empowering, advancing, and protecting the rights of girls and women.

Through the firm's Empowering Girls and Women Initiative and our Commitment to Action under the Clinton Global Initiative, we pledged to devote at least 56,000 hours of volunteer time and US$1 million in philanthropic contributions to support equality worldwide.

As 2018 came to a close, we went well beyond achieving the original three-year goals we'd set. But our commitment was never just about the numbers. Our people continue to be active and engaged in advocating for women and girls around the world.

We've delivered week long, comprehensive trainings to lawyers in the Balkans to equip them to tackle gender-based violence. We've worked with RAINN every year to review, research, and update six different databases covering all U.S. state laws that impact sexual assault victims and counsellors. We were the first private-sector sponsor for SPRING, a change accelerator for girls in East Africa and South Asia.

These are just a few examples of the many ways our lawyers mobilised in 2018 to bring about change and confront some of society's biggest problems.

US$35+ million

The value of pro bono legal services devoted through the Empowering Girls and Women Initiative

75,000

Pro bono hours dedicated to Empowering Girls and Women initiative matters

50+

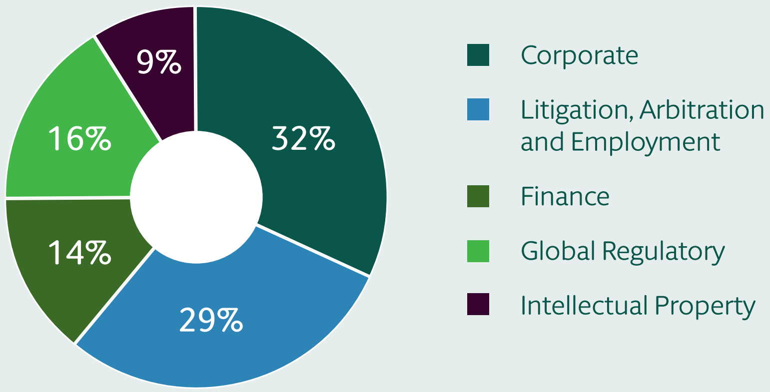
Formal partnerships with non-profits and the legal services

£733,370

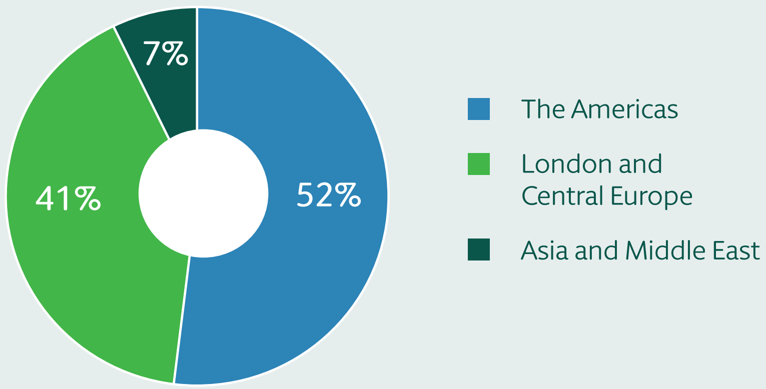
Compensation secured in the UK for victims of gender-based violence and human trafficking

About Hogan Lovells

Lawyers by practice group globally



Well-balanced across jurisdictions



Top numbers

45+
offices globally

24+
countries

2800+
lawyers

70+
languages

480+
lawyers ranked by Chambers & Partners

100+
years of history

Sector-focused approach

- Aerospace, Defence, and Government Services
- Automotive and Mobility
- Consumer
- Diversified Industrials
- Education
- Energy and Natural Resources
- Financial Institutions
- Insurance
- Life Sciences and Health Care
- Real Estate
- Technology, Media, Telecommunications

Relied on by the world

Our LAE team advises 50 of the Fortune 100, 34 of the FTSE 100, and 17 of the DAX 30

More than 700 global M&A deals over three years with a total value in excess of US$500bn

Our finance team advises 46 of the top 50 banks listed in the Fortune 500

Our IP team represents more than half of the world’s top 100 brands

Rare ability to handle large, complex international trade matters in every major market

Innovative

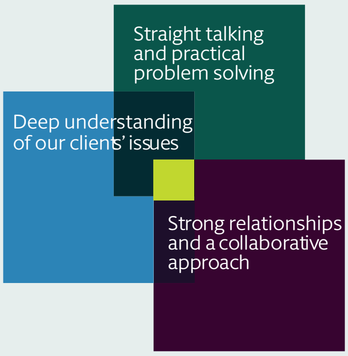
Top 10 most innovative law firms in North America, Europe, and Asia (Financial Times)

12th among “2019 Innovation Champions” (BTI Consulting Group)

Trend spotting: FinTech, cyber risk, mobile payments, GDPR compliance, connected cars, digital health, Internet of Things, 3D printing, blockchain, and more.

We use innovative legal service delivery (LPM) and exploring the latest technology (e.g., Artificial Intelligence)

We offer



Our culture

Ambitious

Innovative

Supportive

Committed

Responsible

Alicante
Amsterdam
Baltimore
Beijing
Birmingham
Boston
Brussels
Budapest*
Colorado Springs
Denver
Dubai
Dusseldorf
Frankfurt
Hamburg
Hanoi
Ho Chi Minh City
Hong Kong
Houston
Jakarta*
Johannesburg
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Louisville
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Madrid
Mexico City
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Munich
New York
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Paris
Perth
Philadelphia
Riyadh*
Rome
San Francisco
Sao Paulo
Shanghai
Shanghai FTZ*
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Washington, D.C.
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*Our associated offices
Legal Services Centre: Berlin

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