Global Regulatory and Tax Developments to Watch in 2023

Evolving priorities in a changing world

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Introduction

It is important in regulation to acknowledge how the world is continuing to change at an accelerated rate. Growing and deepening digitalisation brings new asset types and new ways to enter financial markets, but also new risks and new challenges. The needed focus on sustainability is creating a new wave of complexity in accountability, governance and risk management for companies, as well as introducing the need for taxonomies and standards for company disclosure and impact investing.

Financial resilience in securities markets has been firmly shored up in the decade and more since the global financial crisis. But operational resilience is becoming ever more complicated and initial regulations in the wake of the crisis now need to be reviewed and refined for the current markets.

All of this is set against a background of political and economic uncertainty. Subsequent shocks, such as the global pandemic and the conflict in Ukraine, have had significant impacts on financial markets and on trade and economies across the globe. Many companies are finding themselves adjusting to new realities, leading to localisation and nearshoring trends as well as reaching out towards new markets to diversify supply chains.

Regulatory choices are driven by geopolitics and markets, and geographies are jostling to make themselves attractive to investors, opening up innovative funds and new asset classes. At the same time, regulators need to balance innovation and new technological developments with maintaining protections and ensuring that financial standards and duties are met.

In this paper, HSBC's Markets and Securities Services shares its view of some of the key global regulatory and tax developments to watch as we move through 2023.

ESG: an accelerated pace for regulation

In recent years, regulators have been increasingly busy developing specific measures that will help to achieve the sustainability targets set by governments and policy-makers. Primarily, regulators are focusing on the transparency needed by investors to facilitate the flow of capital to sustainable businesses and technologies.

Firms now need to navigate a substantial book of ESG regulations that aim to improve accountability, ESG reporting and company disclosures. The key purpose is to create standards that will allow comparison between companies and assets so that decisions around ESG can be made accurately. With global standards phasing in, impact investors will be better able to assess the sustainability credentials of assets and interrogate whether funds are 'greenwashing'. Asset and wealth managers too will be able to compare company stocks and other assets to establish the extent to which they conform to ESG requirements.

A note on biodiversity

Running parallel to the COPs on climate change for the last fifteen years are the UN's conferences on biodiversity. COP15, held in 2022, achieved a significant milestone with the announcement of the Kunming-Montreal Global biodiversity framework[1] commitments. The historic framework contains four goals and 23 action targets, including the headline "30×30" ambition to conserve 30% of the world's land and 30% of the ocean by 2030. Currently, only around 17% of land and 10% of marine areas receive some form of protection.

Although it is not mandatory, the framework contains clear obligations to ensure measures are implemented to require all large companies to monitor, assess and transparently disclose their risks, dependencies and impacts on biodiversity, along with their operations, supply and value chains and portfolios. In September 2023, the Taskforce on Nature-related Financial Disclosures (TNFD) is expected to release its final risk management and disclosure framework for organisations to report and act on evolving nature-related risks[2].

Listen to our podcast on the TNFD and ESG here

[1]https://www.cbd.int/doc/c/e6d3/cd1d/daf663719a03902a9b116c34/cop-15-l-25-en.pdf
[2]https://tnfd.global/about/

Focus on… How Europe is leading the way

For some time now, the European Union has been instrumental in driving the ESG regulatory agenda. As part of a wider push for greener business practices and net-zero targets across the bloc, the EU has upped the pressure on the financial sector through greater regulation on disclosures and reporting.

Key developments include:

The Sustainable Finance Disclosure Regulation: designed to increase transparency in sustainable investment markets and cover a broad range of ESG metrics.

- Comprehensive sustainability-related disclosures for EU asset owners and asset managers, as well as non-EU managers that market to EU investors. The main provisions came into effect in March 2021[1].

- Level 2 regulatory technical standards (RTS) came into effect on 1 January 2023 and means fund providers need to supply detailed sustainability-related disclosures and complete mandatory reporting templates[2].

- Financial market participants need to report on entity-level principal adverse impacts no later than 30 June 2023[3].

The EU Taxonomy: establishes a framework for an EU-wide classification system of "environmentally sustainable economic activities".

- As of January 2022, firms have to disclose specific KPIs against the activities they have identified to be taxonomy-aligned. Additionally, asset managers must disclose how the funds meet the taxonomy's first two environmental objectives[4].

- Under a rule adopted in March 2022, the Complementary Climate Delegated Act[5], gas and nuclear are included in the Taxonomy as transitional activities, in a limited number of circumstances and under strict conditions. The Act applied from 1 January 2023.

- The second phase of the Taxonomy relating to broader environmental activities also applied from 1 January 2023[6].

Corporate Sustainability Reporting Directive (CSRD)[7]: introduces more detailed reporting requirements and extends requirements to a broader scope of large EU companies and companies listed on an EU-regulated market. The first reporting is due in 2025 for financial year 2024 for listed companies with over 500 employees.

Corporate Sustainability Due Diligence Directive (CSDDD)[8]: The European Commission's (EC) proposal to apply extensive due diligence rules covering "adverse human rights and environmental impacts of their own operations, those of their subsidiaries and their upstream and downstream value chain".

Consultation on ESG ratings: The EC is also looking at a possible policy initiative on ESG ratings and sustainability factors in credit ratings[9].

Call for evidence on greenwashing[10]: The three European Supervisory Authorities (EBA, EIOPA and ESMA) have published a Call for Evidence on greenwashing to gather input from stakeholders on how to understand the key features, drivers and risks associated with greenwashing and to collect examples of potential greenwashing practices.

Consultation on guidelines for the use of ESG or sustainability-related terms in funds' names: In February 2023, ESMA completed a consultation on proposals for thresholds to be introduced on the use of environmental, social, governance and sustainable words in product names.

[1]https://www.esma.europa.eu/sites/default/files/library/jc_2022_62_jc_sfdr_qas.pdf | [2]https://www.esma.europa.eu/sites/default/files/library/jc_2021_03_joint_esas_final_report_on_rts_under_sfdr.pdf | [3]https://www.esma.europa.eu/sites/default/files/library/sustainable_finance_-_implementation_timeline.pdf | [4]https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698935/EPRS_BRI(2022)698935_EN.pdf | [5]https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4349#:~:text=The%20Complementary%20Delegated%20Act%20is,Taxonomy%20%2D%20this%20is%20our%20future. | [6]https://eu-taxonomy.info/info/eu-taxonomy-timeline | [7]https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en | [8]https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145 | [9]https://www.esma.europa.eu/press-news/esma-news/esma-publishes-results-its-call-evidence-esg-ratings | [10]https://www.esma.europa.eu/press-news/consultations/esas-call-evidence-greenwashing

ESG in the UK

The UK's current legislation is made up of a patchwork of domestic and EU-derived rules, although a lot of progress has been made in sustainability regulations for listing and disclosures. The UK was the first G20 country to enshrine in law mandatory TCFD-aligned requirements for Britain's largest companies and financial institutions to report on climate-related risks and opportunities[1]. Proposals for further Sustainability Disclosure Requirements (SDR) and sustainable investment labels are in consultation with the FCA[2], as are ideas for a UK Green Taxonomy, although these have been delayed for now[3]. In November 2022, the FCA also announced regulatory oversight of certain ESG data and ratings providers in the form of a voluntary Code of Conduct[4], and further policy is expected here. Outside of green sustainability, there's a plan for a consultation in 2023 on Diversity, Equity and Inclusion in the financial sector[5].

ESG in the US

In the US, the Biden administration continues to push a more sustainability-focused agenda. The Inflation Reduction Act of 2022 introduced multiple tax breaks, incentives and other provisions for green industry and tackling climate change, including renewables, energy storage, carbon capture, clean hydrogen, sustainable aviation and EVs, to name a few[6]. The law has been billed as the largest climate legislation in US history.

In disclosure and reporting, to an extent, US companies need to follow in the EU's footsteps, as much of Europe's legislation will impact their business. Even firms who aren't directly impacted by the new reporting requirements will likely be part of the value chain of a company that is. That means that those firms will need to be able to answer ESG questions to help their European partner with the data for their ESG reports.

The Securities and Exchange Commission (SEC) has also recently started making its own moves. The SEC's proposed climate disclosure rule for publicly listed companies is aligned to the TCFD framework and was proposed in March 2022[7]. If approved, it will start taking effect in 2024. There are also two form and rule amendments proposed by the SEC that look to enhance and standardise disclosures related to ESG factors considered by funds and advisers, and to expand the regulation of the naming of funds with an ESG focus[8]. Since 2021, the SEC has had a dedicated ESG taskforce in its Division of Enforcement, which continues to integrate greenwashing and misconduct relating to ESG issues into their examination processes.

ESG in APAC

As ESG investment increases in the Asia-Pacific region, the pace of regulatory change is accelerating too. Similar to counterparts around the world, Asian regulators are focused on setting up the framework on disclosures in a bid to simplify and promote sustainable investment.

In China, policy-makers and regulators have demonstrated initial commitments to bring ESG disclosures up to the level of international markets by establishing clearer definitions and disclosure requirements for corporates and financial market participants. Green development will be a major focus of the central government, as laid out in the 20th Party Congress Report[9], and central regulators, including the China Securities Regulatory Commission and the State Administration for Market Regulation, have committed to developing a set of environmental disclosure standards for listed companies before the end of 2025, as stated

[1]https://www.gov.uk/government/news/uk-to-enshrine-mandatory-climate-disclosures-for-largest-companies-in-law | [2]https://www.fca.org.uk/publications/consultation-papers/cp22-20-sustainability-disclosure-requirements-sdr-investment-labels | [3]https://www.reuters.com/business/sustainable-business/britain-hits-pause-button-green-taxonomy-plans-2022-12-14/ | [4]https://www.fca.org.uk/news/news-stories/code-conduct-esg-data-and-ratings-providers | [5]https://www.fca.org.uk/publications/discussion-papers/dp-21-2-diversity-and-inclusion-financial-sector-working-together-drive-change | [6]https://www.pwc.com/us/en/services/esg/library/inflation-reduction-act-climate-considerations.html | [7]https://www.sec.gov/news/press-release/2022-46 | [8]https://www.sec.gov/news/press-release/2022-92 | [9]https://www.fmprc.gov.cn/eng/zxxx_662805/202210/t20221025_10791908.html

in the 14th Five Year Development Plan for Finance Standardisation. Last year, a subsidiary of the State Council encouraged state-owned enterprises to issue ESG reports by 2023 in its Work Plan for Improving Quality of Listed Central SOEs[1] , and the first Chinese laws and regulation based guidance for enterprise ESG disclosure[2] were released by the China Enterprise Reform and Development Society (CERDS), a State Council-backed think tank.

Hong Kong's Mandatory Provident Funds Authority (MPFA), which regulates the country's MPFs, i.e. pension funds, has issued a circular on Principles for Adopting Sustainable Investing in the Investment and Risk Management Processes of MPF Funds[3]. The HK Securities and Futures Commission (SFC) has also issued a Circular for ESG Funds with guidance on enhanced ESG disclosures[4].

Other countries are also acting, both alone and in collaboration. The Monetary Authority of Singapore (MAS) released disclosure and reporting guidelines for retail ESG funds in July 2022[5] and the Taiwan Stock Exchange is now mandating ESG disclosures[6]. In Singapore, there will be more refinement on its ESG taxonomy in 2023. The Green Finance Industry Taskforce will finalise the Green and Transition Taxonomy and financial institutions will be required to report their taxonomy alignment from 2023 onwards[7]. In India, the Securities and Exchange Board has issued a consultation paper on ESG Disclosures, Ratings and Investing, which is seeking public comment on regulatory framework of ESG disclosures by listed entities, ESG ratings in the securities market and ESG investing by mutual funds[8].

Malaysia's Securities Commission issued the Principles-Based Sustainable and Responsible Investment Taxonomy for the Malaysian Capital Market in 2022 to help advance the nation's climate and sustainability agenda[9]. The Commission has also issued Guidelines on Sustainable and Responsible Investment (SRI) Funds, setting out additional requirements for any new or existing funds that want to qualify as an SRI or as an ASEAN Sustainable and Responsible Fund[10].

The Australian Government is seeking to introduce standardised, internationally-aligned reporting requirements for climate-related disclosures in order for Australian businesses to remain competitive in global markets. The Australian Treasury was running a consultation[11] until February 2023 seeking views on the design and implementation of the climate-related financial risks disclosure regime. The Treasury is aiming to align climate risk disclosure requirements with international standards and was seeking feedback on how the reporting requirements should be implemented. Disclosure requirements for climate-related financial risks could be introduced in Australia as early as 2024.

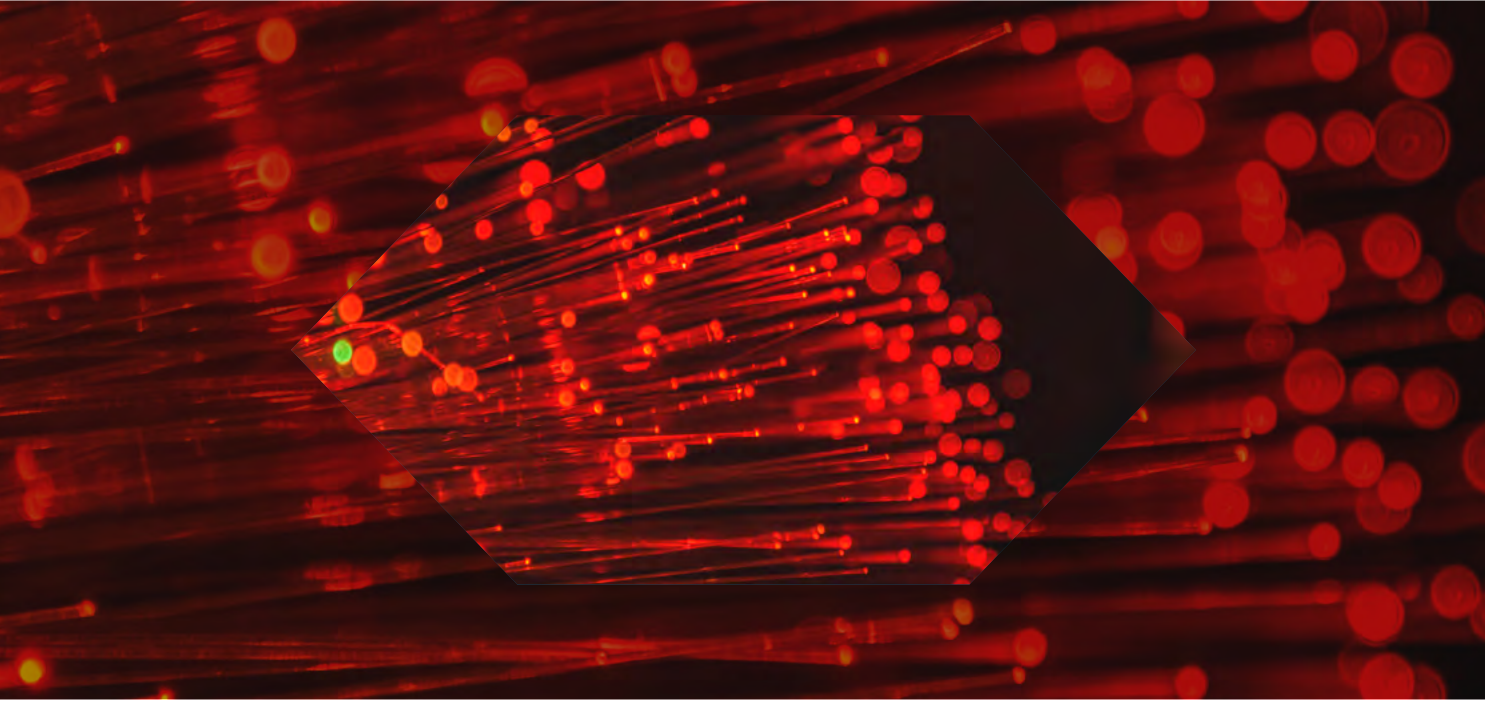
Regionally, members of ASEAN are collaborating to build an ASEAN Taxonomy for Sustainable Finance, which would offer a common building block for sustainable finance adoption[12].

ESG in Middle East, North Africa and Türkiye

In MENAT, there is a steady willingness to recognise the world's focus on ESG, with some emphasis on social and governance aspects. As rules tighten in other regions, companies in the region will be impacted as part of supply chains. Many countries, such as the UAE, Saudi Arabia and Bahrain, have also committed to a net-zero transition.

In January 2023, the GCC Exchanges Committee published a set of voluntary ESG disclosure metrics, which are aligned with the UN's Sustainable Development Goals[13]. The metrics are voluntary and they don't replace existing guidelines for the exchanges, which include Abu Dhabi and Dubai's financial markets, Saudi Exchange, Bourse Kuwait, Bahrain Bourse, QSE and Muscat Stock Exchange. However, many see the announcement as a first step towards mandatory and standardised disclosures.

[1]http://www.sasac.gov.cn/n2588030/n2588944/c24789613/content.html | [2]https://www.thomsonreuters.com/en-us/posts/news-and-media/china-esg-reporting/ | [3]https://www.mpfa.org.hk/-/media/files/information-centre/legislation-and-regulations/circulars/mpf/20211126/cir-20211126.pdf | [4]https://sc.sfc.hk/TuniS/apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/corporate-news/doc?refNo=21PR67 | [5]https://www.mas.gov.sg/regulation/circulars/cfc-02-2022---disclosure-and-reporting-guidelines-for-retail-esg-funds | [6]https://www.fsc.gov.tw/en/home.jsp?id=54&parentpath=0,2&mcustomize=multimessage_view.jsp&dataserno=202107130002&dtable=News | [7]https://www.mas.gov.sg/development/sustainable-finance/green-finance-industry-taskforce | [8]file:///C:\Users\43870827\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\A7NZUWUG\ESG-Disclosures-Ratings-and-Investing.pdf"ESG-Disclosures-Ratings-and-Investing.pdf] | [9]https://www.sc.com.my/api/documentms/download.ashx?id=a0ab5b0d-5d7d-4c66-8638-caec92c209c1 | [10]https://www.sc.com.my/api/documentms/download.ashx?id=a0ab5b0d-5d7d-4c66-8638-caec92c209c120230217 Summary of Amendments SC Guidelines on SRI Funds.pdf | [11]C:\Users\43870827\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\A7NZUWUG\c2022-314397_0.pdf | [12]https://asean.org/book/asean-taxonomy-for-sustainable-finance/ | [13]https://www.saudiexchange.sa/wps/portal/saudiexchange/about-saudi-exchange/exchange-media-centre/press-release/press-release-details/!ut/p/z1/lZLLboMwEEW_JusZHAxsSdPQKjwCNA_YRA6ZEiSCI8dJq359Aalqk74tLzyjcz33WoYcVpA34lyVQleyEXVbZ7m15q6F7M7BKPIDFy0n8Rbxw9RA04TlJeAEnoVx6MYRszl6kQH5v_SYzjjG-k1kw9DFBD62_6fGb5eLv-vwSwXjutA7SyYg7yNBI18AXEa9u-JyhB34w2aWwP4xgvolWNGILf3rreTaHpaKjPKmClClJB7StxA01mlRIT0e_OmqIC1HsyKcz1TNREqTd1EN7SqsXgoy_leFpvyE13k-DWG9f0rFMSqthB1tdyLHTLG8MBojFoX4ANu748kOo_BWSyqaXYds1HJffvuMF6nMFhP5-vsLpfB6OQn_tdvgJDnZ-B/dz/d5/L0lHSklna0tDbEVBIS9JTGhBQ01RQUJFS01CS2JtNm1BIS80SkN-panNZcE1oVGpVRWchL1o3XzVBNjAySDgwTzg0MDkwNjRDU1ZGTDYyMEc1L1o2XzVBNjAySDgwTzBCUkQwNjhSU082SEROQUU2L3ByZXNzSUQvMTIx/



Digital: an increasingly complex landscape

Companies across verticals and geographies continue to digitalise operations, driven by cost, efficiency and customer demands and supported by how well a virtual world worked during the global pandemic. However, the proliferation of technologies is leading to an ever-more complex world in which operational resilience is facing new threats and new asset types require whole new regulations.

Focus on… A new regulatory perimeter for digital assets

Recent headline-grabbing events, from extreme movements in cryptocurrency markets to meme stocks, have illustrated the growing necessity for clarity and regulation around digital assets. The underlying technology could have clear benefits for the financial sector, and CBDCs, stablecoins, tokenised assets, DeFi, and crypto assets are all new asset types that need greater clarity around their operating model and global firms need to be able to manage their different risk profiles.

The sector and the asset types are both evolving rapidly and regulators are clearly keen to catch up with the pace of change.

Europe

- The Markets in Cryptoassets Regulation (MiCA)[1] is a new regulatory framework for currently out-of-scope cryptoassets and providers in the EU. It is expected to take effect across 2024/25 and hopes to close gaps in existing EU financial services legislation by establishing a harmonized set of rules for cryptoassets and related activities and services.

Listen to our conversation about digital funds regulation in Europe

- The EU's DLT Market Infrastructure Regulation pilot scheme[2] was applicable from March 2023. It introduces temporary permission to operate a market infrastructure based on distributed ledger technology.

- The UK's Department for Digital, Culture, Media and Sport (DCMS) is holding an inquiry into the operation, risks, and benefits of non-fungible tokens (NFTs) and the wider blockchain[3]. MPs are expected to consider "whether NFT investors, especially vulnerable speculators, are put at risk by the market".

- In February 2023, UK's HM Treasury issued a consultation and call for evidence[4] regarding the future financial services regulatory regime for cryptoassets. The consultation builds on previous HM Treasury papers

[1]https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0593 | [2]EUR-Lex - 32022R0858 - EN - EUR-Lex (europa.eu) | [3]https://committees.parliament.uk/committee/378/digital-culture-media-and-sport-committee/news/174174/dcms-committee-to-hold-inquiry-into-the-future-of-the-nft-market/ | [4]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1133404/TR_Privacy_edits_Future_financial_services_regulatory_regime_for_cryptoassets_vP.pdf

on cryptoassets, stablecoins and distributed ledger technology (DLT). In addition, the FCA and BoE have issued a number of discussion papers, consultation papers, policy statements and regulatory guidance notes on cryptoassets, including the FCA's consultation paper on financial promotions for cryptoassets[1].

US

- The proposed Responsible Financial Innovation Act[2] aims to bring digital assets under regulation by establishing a comprehensive regulatory framework. The legislation is unlikely to pass quickly, but it's the first step in an ongoing debate about the future of digital assets in the US.

- The White House issued a fact sheet on a Comprehensive Framework for Responsible Development of Digital Assets in September 2022[3]. It also issued an administration roadmap to reduce the risks related to cryptocurrency[4], with a legal framework expected to be developed in the coming months.

- There are discussion drafts of proposed bills for the regulatory framework and consumer protections for stablecoins: the Stablecoin Trust Act[5] and Stablecoin Transparency Act[6].

Learn more about stablecoins here

Hong Kong

- The HK Monetary Authority and the SFC have issued a joint circular on intermediaries' virtual asset-related activities[7], which provides guidance and best practices for those wishing "to engage in activities relating to virtual assets". They also published an additional circular[8] to provide broad guidance to authorised institutions when dealing with matters relating to VAs and virtual asset service providers.

- Separately, the SFC published a circular on virtual asset futures exchange traded funds[9], setting out "the requirements under which it would consider authorising exchange traded funds (ETFs) that obtain exposure to virtual assets primarily through futures contracts for public offering".

- In February 2023, the SFC has also issued a consultation paper on the Proposed Regulatory Requirements for Virtual Asset Trading Platform Operators Licensed by the Securities and Futures Commission[10]. This could be a precursor to allowing retail participation in trading of crypto assets.

- The Financial Services and the Treasury Bureau issued a policy statement on the development of virtual assets at the end of 2022[11], setting out its vision to facilitate a "sustainable and responsible" development of the sector in Hong Kong.

[1]https://www.fca.org.uk/publication/consultation/cp22-2.pdf | [2]https://www.congress.gov/bill/117th-congress/senate-bill/4356/all-info | [3]https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/16/fact-sheet-white-house-releases-first-ever-comprehensive-framework-for-responsible-development-of-digital-assets/ | [4]The Administration's Roadmap to Mitigate Cryptocurrencies' Risks - NEC - The White House | [5]https://www.banking.senate.gov/imo/media/doc/the_stablecoin_trust_act.pdf | [6]https://www.congress.gov/bill/117th-congress/senate-bill/3970 | [7]https://www.charltonslaw.com/sfc-and-hkma-issue-joint-circular-on-intermediaries-virtual-asset-related-https://www.charltonslaw.com/sfc-and-hkma-issue-joint-circular-on-intermediaries-virtual-asset-related-activities/#:~:text=Issued%20on%2028%20January%202022,market%20developments%20and%20industry%20enquiries. | [8]https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2022/20220128e3.pdf | [9]https://apps.sfc.hk/edistributionWeb/api/circular/openFile?lang=EN&refNo=22EC60 | [10]https://apps.sfc.hk/edistributionWeb/gateway/EN/consultation/openFile?refNo=23CP1 | [11]https://gia.info.gov.hk/general/202210/31/P2022103000454_404805_1_1667173469522.pdf

- In January 2023, the HKMA published its conclusion of a discussion paper on crypto-assets and stablecoins[1]. It plans to "put in place an agile and risk-based regime for regulating certain financial activities that are related to stablecoins" and is targeting implementation in 2023/24.

Singapore

- MAS announced Project Guardian in June 2022[2], a collaboration with the financial industry to explore the economic potential and use cases for asset tokenisation.

Get further insights on tokenisation here

- A consultation paper on Proposed Regulatory Approach for Stablecoin-Related Activities[3] closed in late 2022 and it has also proposed regulatory measures for Digital Payment Token Services[4].

Malaysia

Bursa Malaysia is conducting proofs-of-concept on a number of emerging technologies, including block chain and robotics.

Australia

- The Australian Prudential Regulation Authority (APRA) has set out a Risk Management and Policy Roadmap for cryptoassets in April 2022, including initial risk management expectations for all regulated entities that engage in cryptoasset-related activities, along with the related policy roadmap for the period ahead[3].

- The Australian Treasury has committed to a "token mapping" exercise to identify how crypto-assets and services should be regulated, with a consultation paper also issued in February 2023[6].

MENAT

- Dubai's Virtual Asset Regulation Law[7] was approved in March 2022, creating a legal framework for virtual assets and establishing the Dubai Virtual Regulatory Authority. In October 2022, the emirate also released amended rules on the regulation of crypto tokens.

- Abu Dhabi's Financial Services Regulatory Authority (FSRA) issued a discussion paper on DeFi (decentralised finance)[8] to understand the opportunities, risks and possible future regulatory framework in April 2022, which closed in June 2022.

- Bahrain closed a consultation on amendments to the Cryptoasset Module in September 2022[9].

Learn more about stablecoins here

[1]https://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2023/20230131e9a1.pdf | [2]https://www.mas.gov.sg/news/media-releases/2022/mas-partners-the-industry-to-pilot-use-cases-in-digital-assets | [3]https://www.mas.gov.sg/publications/consultations/2022/consultation-paper-on-proposed-regulatory-approach-for-stablecoin-related-activities#:~:text=26%20October%202022-,Consultation%20Paper%20on%20Proposed%20Regulatory%20Approach%20for%20Stablecoin%2DRelated%20Activities,be%20imposed%20on%20such%20activities. | [4]https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/2022-Proposed-Regulatory-Measures-for-DPT-Services/Consultation-Paper-on-Proposed-Regulatory-Measures-for-Digital-Payment-Token-Services.pdf | [5]https://www.apra.gov.au/crypto-assets-risk-management-expectations-and-policy-roadmap | [6]Token Mapping Consultation Paper (treasury.gov.au) | [7]https://dlp.dubai.gov.ae/Legislation%20Reference/2022/Law%20No.%20(4)%20of%202022%20Regulating%20Virtual%20Assets.html | [8]https://www.adgm.com/media/announcements/fsra-issues-discussion-paper-on-decentralised-finance-defi | [9]https://www.cbb.gov.bh/wp-content/uploads/2022/08/Consultation-Amendments-to-CRA-Module.pdf

Operational resilience moves centre-stage

After the Global Financial Crisis, regulatory policy in the financial sector was understandably focused on the financial resilience of companies. Now that those policies are in place, the target has shifted. Operational resilience is the key pillar today, including within a firm and in the wider sector. For individual companies, cybersecurity and data security remain the most important digital facets of operational resilience. But there's also a growing recognition that financial firms operate within an ecosystem that includes third parties, within supply chains and because of the outsourcing of digital services to cloud providers.

Cloud adoption opens up a new level of operational risk, particularly because the sector is dominated by a number of large providers. This raises the risk that a single cloud provider's failure could have a knock-on effect across companies and even in different parts of the world.

Expanding the scope of resilience regulation

The EU's Digital Operational Resilience Regulation (DORA)[1] is a significant new regulation relating to outsourcing and cloud use. DORA sets uniform requirements for network security for companies and organisations in the financial sector, as well as critical third parties that provide IT-related services to them, such as cloud platforms or data analytics services. All companies within the framework will need to make sure they can withstand, respond to, and recover from all types of IT-related disruptions and threats.

Learn more about DORA here

In the UK, new rules jointly developed by the FCA, PRA, and the Bank of England, came into effect in March 2022 to improve the operational resilience of the UK financial sector[2]. Subsequently, the UK authorities have issued a joint discussion paper[3] on potential ways to manage the systemic risks posed by certain third parties, "including UK financial stability, market integrity and consumer protection".

The US is still using its Sound Practices to Strengthen Operational Resilience[4] paper, issued in 2020 and supplemented by the Computer-Security Incident Notification[5] rule in 2021. While in Asia, Hong Kong's Monetary Authority has finalised a new Supervisory Policy Manual module that sets out its approach and supervisory expectations on operational resilience by providing guidance on the general principles that companies should consider when building their operational resilience[6]. Hong Kong's SFC has also issued a report which lays down operational resilience standards and required implementation measures which supplement the SFC's existing guidance[7].

Focus on... Central Bank Digital Currencies (CBDCs)

Alongside the creation of a stronger regulatory perimeter around digital assets, governments and regulators in various countries are also exploring the possibility of creating digital versions of their fiat currency – CBDCs.

- **The European Central Bank** is proceeding with its plans for a Euro CBDC[8].
- **The UK's Bank of England and HM Treasury** began their own consultation in February 2023, which will close in June 2023, inviting feedback on their proposal for a retail digital pound[9].
- **The UAE** has a roadmap for 2023-2026 on launching its own CBDC[10] and has participated in a number of pilots using CBDCs for cross-border payments.
- **The US Federal Reserve** issued a discussion paper on the pros and cons of a potential US central bank digital currency in January 2022, which closed to feedback in May 2022. No decision has been reached as of yet[11].

Read more about CBDCS here

[1]EUR-Lex - 32022R2554 - EN - EUR-Lex (europa.eu) | [2]https://www.fca.org.uk/publication/policy/ps21-3-operational-resilience.pdf | [3]https://www.bankofengland.co.uk/prudential-regulation/publication/2022/july/operational-resilience-critical-third-parties-uk-financial-sector | [4]https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-144a.pdf | [5]https://www.federalreserve.gov/supervisionreg/srletters/SR2204.htm#:~:text=The%20final%20rule%20defines%20a,deliver%20banking%20products%20and%20services | [6]Supervisory Policy Manual (SPM): New module OR-2 on "Operational Resilience" and revised module TM-G-2 on "Business Continuity Planning" (hkma.gov.hk) | [7]https://www.sfc.hk/-/media/EN/files/COM/Reports-and-surveys/Report_Operational-resilience-and-remote-working-arrangements_Oct-2021_EN.pdf | [8]https://www.ecb.europa.eu/paym/digital_euro/html/index.en.html | [9]https://www.bankofengland.co.uk/-/media/boe/files/paper/2023/the-digital-pound-consultation-working-paper.pdf | [10]https://www.centralbank.ae/en/our-operations/fintech-digital-transformation/ | [11]https://www.federalreserve.gov/central-bank-digital-currency.htm

Investment funds: regulators open up alternative assets

The current policy focus in investment funds is designed to encourage fund domiciliation in favour of the regulator's jurisdiction, as well as directing capital flows towards certain asset classes and encouraging diversified portfolios.

The market research firm Preqin is forecasting that assets under management in alternative assets, including both private assets and hedge funds, will increase to USD23 trillion by 2026, from USD13 trillion as at the end of 2021[1].

Get more insights on private assets here

Developments in private assets
As private capital grows, there has been increased innovation in the marketplace to open it up to more investors. Key legislation includes:

EU

- **European Long-term Investment Funds (ELTIFs):** designed to channel investments towards long-term projects. Proposed amendments in November 2021 were designed to remove barriers to entry for retail investors and amend restrictive fund rules to increase the uptake of ELTIFs. A vote on this amendment is due during 2023[2].

Listen to our podcast on ELTIFs

UK

- **Long-term Asset Fund (LTAF):** The original LTAF created a category of authorised open-ended fund designed specifically to facilitate investment in long-term, illiquid assets that include venture capital, private equity, private debt, real estate and infrastructure. The FCA closed a consultation paper[3] in October 2022 on expanding the distribution of the LTAF to retail investors and the FCA authorised its first Long Term Asset Fund in March 2023[4].

Hear our podcast on LTAFs

Changing regulatory regimes

There have also been a number of regulatory changes aimed at reviewing the regulating regimes for funds and asset managers, in both the EU and UK:

EU

- **AIFMD II:** draft legislative proposals to reform the Alternative Investment Fund Managers Directive[5] have been in the works for some time, although there is a general consensus in the industry that AIFMD has been effective and the general framework should be preserved. The Compromise Text contains five key developments in the areas of delegation, loan origination, liquidity management tools (LMTs), depositaries and alternative investment fund manager (AIFM) activities. Discussions on this text between the Council, European Parliament and the Commission will continue this year and adoption is expected in 2025.

Listen to our discussion on AIFMD

- **UCITS VI:** The Commission's proposal for AIFMD II suggests making corresponding amendments to the Undertakings for Collective Investment in Transferable Securities Directive. Relevant provisions set out in the final AIFMD II will subsequently be applied to UCITS funds as well, which will create compliance efficiencies for those asset managers who operate under both regimes.

UK

- The FCA has published a discussion paper on Updating and Improving the UK Regime for Asset Management[6] to open a debate on the shape of a Future Regulatory Framework from HM Treasury for the UK's asset management sector. The aim is to ensure that changes can enable technological innovation, stay consistent to international standards and simplify where possible.

[1]https://www.preqin.com/insights/research/reports/alternatives-in-2022 | [2]https://www.consilium.europa.eu/en/press/press-releases/2022/10/19/european-long-term-investment-funds-provisional-agreement-reached/ | [3]https://www.fca.org.uk/publication/consultation/cp22-14.pdf | [4]FCA authorises first Long Term Asset Fund | FCA | [5]https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0721 | [6]https://www.fca.org.uk/publications/discussion-papers/dp23-2-updating-and-improving-uk-regime-asset-management

Focus on... China opportunities

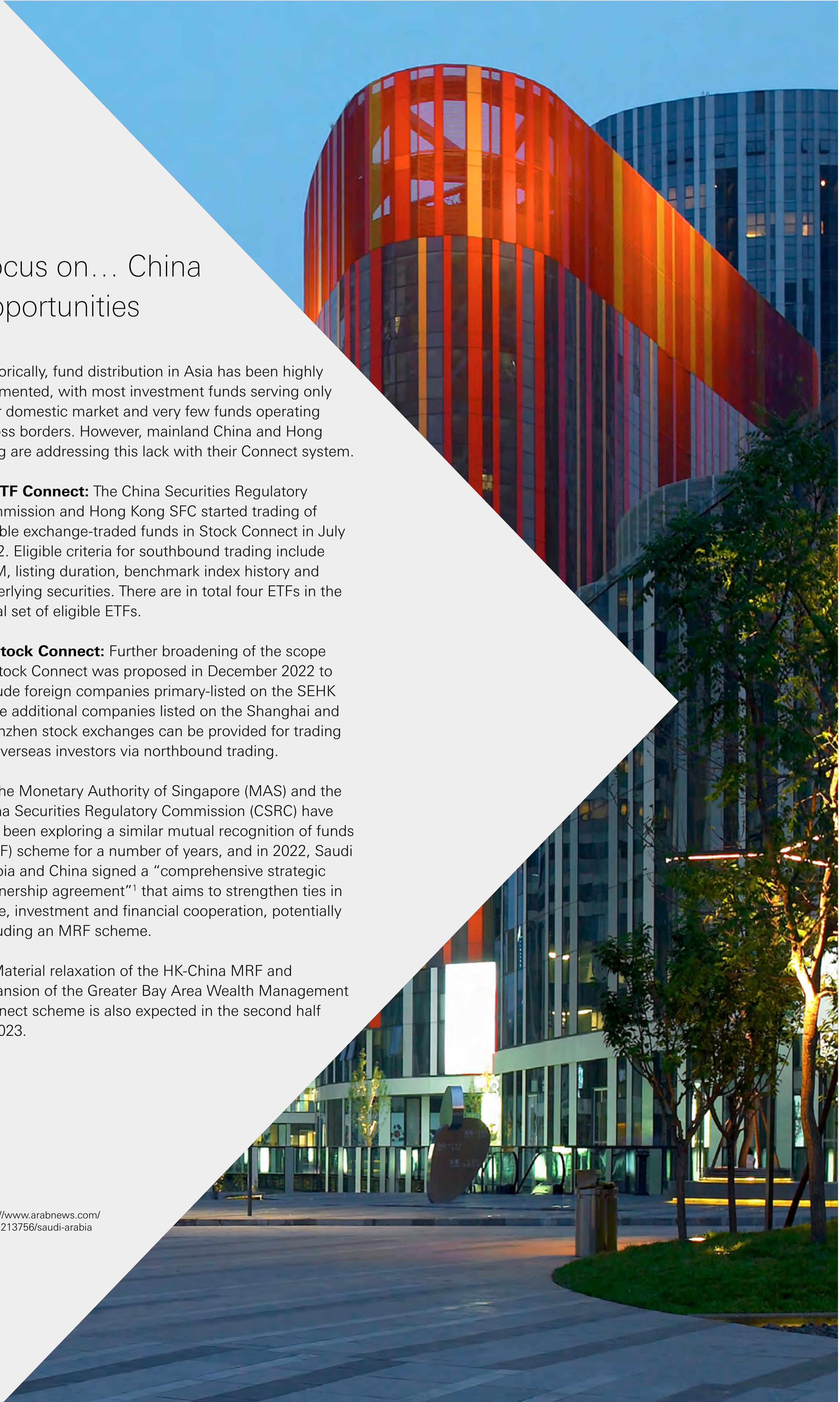
Historically, fund distribution in Asia has been highly fragmented, with most investment funds serving only their domestic market and very few funds operating across borders. However, mainland China and Hong Kong are addressing this lack with their Connect system.

- **ETF Connect:** The China Securities Regulatory Commission and Hong Kong SFC started trading of eligible exchange-traded funds in Stock Connect in July 2022. Eligible criteria for southbound trading include AUM, listing duration, benchmark index history and underlying securities. There are in total four ETFs in the initial set of eligible ETFs.

- **Stock Connect:** Further broadening of the scope of Stock Connect was proposed in December 2022 to include foreign companies primary-listed on the SEHK while additional companies listed on the Shanghai and Shenzhen stock exchanges can be provided for trading by overseas investors via northbound trading.

- The Monetary Authority of Singapore (MAS) and the China Securities Regulatory Commission (CSRC) have also been exploring a similar mutual recognition of funds (MRF) scheme for a number of years, and in 2022, Saudi Arabia and China signed a "comprehensive strategic partnership agreement"[1] that aims to strengthen ties in trade, investment and financial cooperation, potentially including an MRF scheme.

- Material relaxation of the HK-China MRF and expansion of the Greater Bay Area Wealth Management Connect scheme is also expected in the second half of 2023.



[1]https://www.arabnews.com/node/2213756/saudi-arabia

Securities markets: reviewing regulations to bring greater efficiencies

In the wake of the global financial crisis (GFC), regulators worldwide undertook a program of reforms aiming for greater financial resilience in world markets. Most of these major reforms have now been implemented, but further improvements are expected as these regulations come under further reviews.

Cutting settlement times

Many jurisdictions are looking at reducing settlement times for transactions. The US SEC, for example, has adopted proposed rule changes to shorten the standard settlement cycle for most broker-dealer transactions from two business days after the trade date (T+2) to one (T+1)[1]. The proposed changes are designed to reduce credit, market, and liquidity risks for investors. The compliance date for the final rules is 28 May 2024.

In the UK, the Accelerated Settlement Taskforce[2], chaired by Charlie Geffen, was launched by the Chancellor in December 2022 to explore the potential for faster settlement of financial trades in the UK. This industry taskforce is also examining the move to a ‘T+1’ standard settlement period. It will publish its initial findings by December 2023, with a full report and recommendations made by December 2024.

Following the announcement of the US plan to shorten the settlement cycle to T+1, Korea’s FSS has requested the Korea Securities Depository (KSD) to provide comments and opinions on doing the same. Malaysia has established the Post Trade and Settlement working group to improve the institutional clearing and settlement process. And India has already gone live with a gradual rollout of T+1 that began in February 2022, with the final phase completed in January 2023[3].

The Securities Clearing Corporation of the Philippines' (SCCP) is focused on launching a new clearing and settlement system and shifting the Philippine equity settlement cycle from T+3 to T+2[4]. The timeline to implement T+2 as such is tentatively targeted within four to six months after the launch of the new clearing and settlement system.

Vietnam has already shortened its settlement cycle to T+2 since August 2022. The Vietnam Security Depository's revised rules advance settlement completion to 12.00 T+2, instead of 16.00 T+2 as per current practices, for transactions of equities, fund certificates and covered warrants. Cash and securities settlement to investors’ accounts at the depository members are available for further trading before the afternoon trading session on the stock exchanges ends on T+2, which enables further trading opportunities for investors.

[1]https://www.sec.gov/news/press-release/2023-29 | [2]Accelerated Settlement Taskforce - GOV.UK (www.gov.uk) | [3]https://economictimes.indiatimes.com/markets/stocks/news/et-explained-india-completes-transition-to-t1-settlement-cycle/articleshow/97391603.cms | [4]https://www.pse.com.ph/sccp-migrates-to-new-clearing-and-settlement-technology/

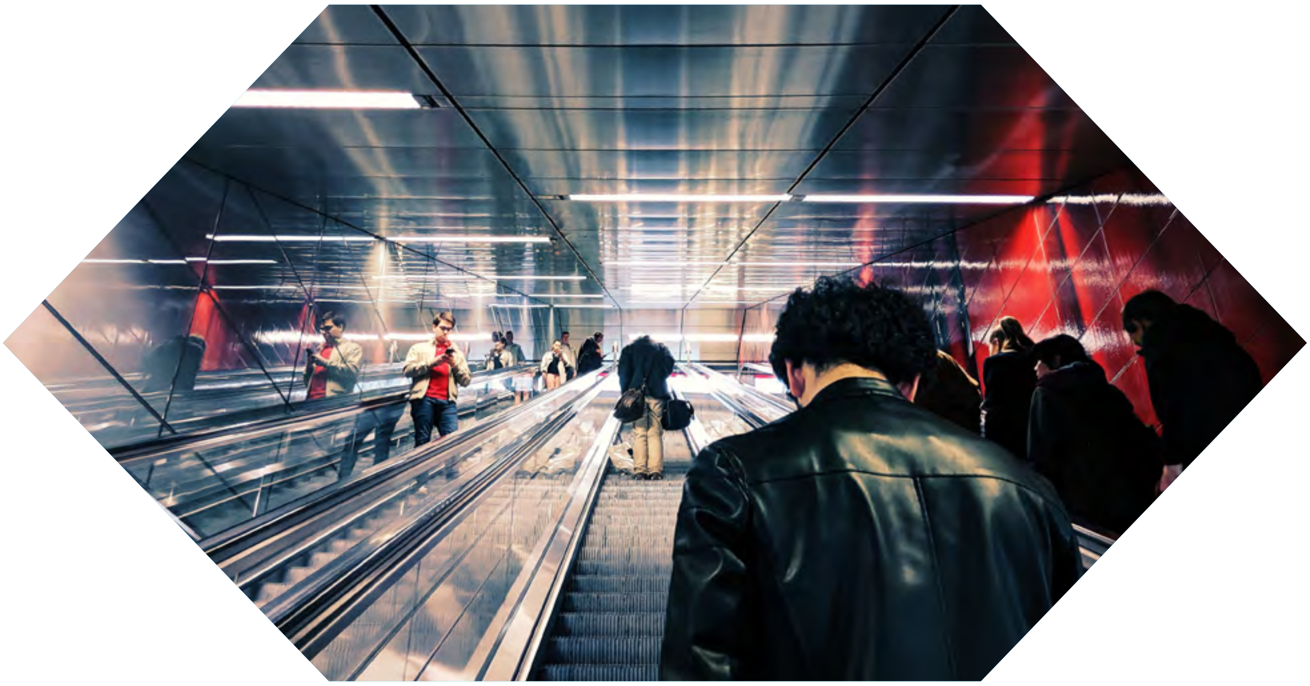
Europe refocuses

The Central Securities Depositories Regulation (CSDR) was one of the key rules adopted in the aftermath of the GFC. In March 2023, MEPs adopted changes to CSDR, including measures to expand the recognition regime for CSDs established in a third-country, and closer monitoring to target settlement fails when securities transactions are being completed[1]. Reporting under the new standards of the EMIR REFIT[2], designed to amend and simplify the European Markets Infrastructure Regulation (EMIR) "to address disproportionate compliance costs, transparency issues and insufficient access to clearing for certain counterparties", will start in April 2024.

Read more about CSDR here

And legislative proposals for MiFID3/MiFIR2[3] are progressing through the EU process. The changes aim to help investors, particularly smaller and retail ones, to access the market data necessary to invest in shares or bonds more easily and make EU market infrastructures more robust. This will also help increase market liquidity and make it easier for companies to receive funding from capital markets.

Due to the postponement of the ECMS initiative, a unified system for managing assets used as collateral in Eurosystem credit operations, SCoRE, which defines common rules for managing collateral, is also delayed. The first wave is expected by April 2024, with the second wave not before November 2025.



[1]https://www.europarl.europa.eu/news/en/press-room/20230227IPR76594/meps-adopted-changes-to-financial-instruments-settlement-regime | [2]https://www.esma.europa.eu/press-news/esma-news/esma-publishes-guidelines-and-technical-documentation-reporting-under-emir | [3]https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0726

Focus on… The UK Edinburgh Reforms

The UK government has set out a package of over 30 reforms for financial service regulation known as the "Edinburgh Reforms". These changes include the areas where the government plans to repeal or alter elements of retained EU law, under the Financial Services and Markets (FSM) Bill.

The UK's Chancellor highlighted financial services as one of the country's key growth sectors in November 2022 and released a statement on "the government's ambition for the UK to be the world's most innovative and competitive global financial centre" the following December[1]. The most extensive changes are under "promoting effective use of capital", but the reforms also aim to make the UK a world leader in sustainable finance, put the sector at the forefront of technological innovation and deliver for consumers and businesses.

HM Treasury has identified 43 "core" files of retained EU law that it wishes to repeal or reform under the FSM bill. The initial work includes:

- The Wholesale Markets review (on which the government has just finished its initial consultation[2])
- The UK Listing Review (whose recommendations are being considered by the FCA[3])
- Securitisation review[4] (which is expected to come into force in 2023 at the earliest)
- Solvency II review (see page 19)

The government will then focus on:

- Packaged Retail and Insurance-based Investment Products Regulation
- Short Selling Regulation
- Taxonomy Regulation
- Money Market Funds Regulation
- Payment Services Directive and eMoney Directive
- Insurance Mediation and Distribution Directives
- Capital Requirements Regulation and Directive
- Long-Term Investment Funds Regulation
- Consumer information rules in the Payments Accounts Regulations 2015

[1]https://www.gov.uk/government/collections/financial-services-the-edinburgh-reforms | [2]https://www.gov.uk/government/consultations/uk-wholesale-markets-review-a-consultation | [3]https://www.gov.uk/government/publications/uk-listings-review/uk-listings-review-government-response | [4]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1122740/Draft_Statutory_Instrument_Securitisation_Regulation___1_.pdf

Asia Developments

In Asia, regulators are responding to the latest developments in the financial industry and looking beyond their borders for investment.

Mainland China

- The China Securities Regulatory Commission (CSRC) continues to actively boost the opening up of China's capital markets, as authorities seek to attract overseas investment to boost the local economy.

- The Beijing Stock Exchange was set up to be the base for innovative small and medium-sized (SME) firms, allowing investors to access SMEs that have the potential to grow into larger entities[1].

Hong Kong

- eMPF[2], which is an electronic infrastructure to enable standardizing, streamlining and automating of the MPF scheme administration is underway, steered by a working group formed by the government with MPF trustees. The design of the eMPF Platform is targeted to be completed by July 2022 and the eMPF Platform system will be ready in early May 2023, as per the contractor's project timeline.

- Trustee/Custodian Licensing Regime (RA13)[3]: The SFC has proposed to regulate depositaries of SFC-authorized CIS under a new type of regulated activity – RA13. In February 2022, SFC published its consultation conclusions and commenced a further consultation on proposed amendments to subsidiary legislation, SFC codes and guidelines. The implementation date will be 18 months from the Gazettal Date and the SFC Licensing Application will be submitted within 4 months of the Gazettal Date.

- HKMA Stay Rules[4]: The Financial Institutions (Resolution) (Contractual Recognition of Suspension of Termination Rights—Banking Sector) Rules (Stay Rules) announced by HKMA came into operation in August 2021. All financial contracts of covered entities – except short-term inter-bank borrowing governed by non-HK law, which include a termination right exercisable by the counterparty – must contain a term to the effect that the parties will be bound by any suspension of termination rights imposed by the HKMA. Compliance is required within 24-30 months, depending on counterparty types.

- HKMA Code for Trust Business[5]: In May 2022, the HKMA issued its consultation conclusion on "Enhancing the Regulation and Supervision of Trust Business", which aims to enhance protection of client assets held on trust, promote fair treatment of customers, establish a customer-centric culture in the trust business and align with international standards and practices, with the hope of reinforcing Hong Kong's position as a leading asset and wealth management centre.

[1]https://www.reuters.com/world/china/xi-says-china-set-up-stock-exchange-beijing-2021-09-02/ | [2]https://www.mpfa.org.hk/en/empf/overview | [3]https://apps.sfc.hk/edistributionWeb/api/consultation/conclusion?lang=EN&refNo=19CP3 | [4]https://www.hkma.gov.hk/eng/key-functions/banking/bank-resolution-regime/bank-resolution-standards/stays-on-termination-rights/ | [5]https://www.hkma.gov.hk/media/eng/regulatory-resources/consultations/Annex_3-Finalised_Code_of_Practice_for_Trust_Business_with_Changes_Shown.pdf

- HK Position Limit[1]: HKEX has published conclusions to its consultation on the revision of: (1) the position limit regime for Single Stock Options (SSO) and Single Stock Futures (SSF); and (2) the additional position limits and Large Open Position (LOP) reporting requirements for mini-Hang Seng Index (mini-HSI) and mini-Hang Seng China Enterprises Index (mini-HSCEI) derivatives contracts (collectively, flagship-minis). HKEX has decided to adopt the proposals to revise the position limit regime for SSO and SSF; and to remove the additional position limits for its flagship-minis contracts. However, the Exchange will not at this stage proceed with the proposal to revise the LOP reporting requirements for its flagship-minis contracts. The effective date of the revised position limits will be announced following regulatory approval.

Indonesia

- A new omnibus law in the financial sector has introduced a number of overhauls to existing laws and regulations in various topics across the financial sector, ranging from, among others, banking, money market, capital market, deposit insurance, insurance, non-bank financial services and consumer protection.

MENAT strengthens investor access

In MENAT, existing platforms and processes are being streamlined or enhanced to bring markets in line with global standards and enable easier investor access. For example, the UAE and Saudi Arabia are simplifying their IPO processes, and announcements in English have started in Kuwait. Insolvency laws have also been updated in markets including Saudi Arabia, UAE, Bahrain, Qatar and Kuwait, giving investors greater certainty of process during an insolvency or bankruptcy.

Some countries including Saudi Arabia, UAE, Qatar and Kuwait are introducing central counterparty clearing houses (CCPs), and updating trading and post-trade practices to international best practice. New products are also being enabled including Global Depository Receipts in Saudi Arabia, and an ESG index in the UAE and Qatar.

Get more insights on Saudi Arabia's Post Trade Transformation Program here

[1]https://www.hkex.com.hk/News/Market-Communications/2022/220728news?sc_lang=en

Further key changes in Europe and the UK

Solvency II under review
Both the European Commission and the UK government are separately reviewing insurance rules known as Solvency II, in a bid to make the sector more resilient and to protect policyholders.

In June 2022, the European Council agreed its general approach on amendments to the Solvency II Directive, including adjustments aimed at improving proportionality, long-term guarantee measures, cross-border supervision issues and creating macroprudential tools[1].

But in Britain, the review has been seen as a move away from key EU prudential regulatory standards. Solvency UK[2], as it's being termed, was announced in November 2022 and the key changes include:

- Revoking most of the EU-derived financial services statute law as it applies in the UK, on the basis that this will instead be covered in PRA and FCA rules
- Cutting the 'risk margin', a capital buffer that insurance companies must hold, by 65% for life insurers and 30% for general insurers
- Broadening the eligibility of assets that life insurers can use to match their liabilities
- Largely maintaining the existing methodology for calculating the 'matching adjustment' benefit
- Creating a new statutory objective for the PRA and FCA for competitiveness and growth
- And creating a new regulatory principle in support of net-zero.

The UK looks to retail investors and clients
There is a focus right now on retail investors and retail clients in the UK aimed at improving the services provided to them. This includes the FCA's new Consumer Duty, an important piece of regulation that will fundamentally change how financial institutions serve retail clients. The regulation sets higher standards of consumer protection across financial services and also requires firms to "put their customers' needs first".

In the FCA's own words[3], the Duty will include requirements for firms to:

- end rip-off charges and fees
- make it as easy to switch or cancel products as it was to take them out in the first place
- provide helpful and accessible customer support, not making people wait so long for an answer that they give up
- provide timely and clear information that people can understand about products and services so consumers can make good financial decisions, rather than burying key information in lengthy terms and conditions that few have the time to read
- provide products and services that are right for their customers
- focus on the real and diverse needs of their customers, including those in vulnerable circumstances, at every stage and in each interaction

The FCA has set a challenging implementation timeframe, given the wide range of proposals and how they will affect companies' products, solutions, communications and staff training, as well as company-wide issues like governance, accountability and reporting. Companies have 12 months from the July 2022 launch to implement the new rules for all new products and services and any existing ones that are currently on sale. The rules will be extended to closed book products 12 months later, to give firms more time to bring these older products up to the new standards.

For retail investors, the growing trend towards online investment and digital distribution of disclosure is changing the sector. As most disclosure regulations were designed for advised sales and paper-based disclosure, the FCA has started a review of retail disclosure to help financial services evolve for the future[4]. The Future Disclosure Framework discussion period ended early in 2023 and a feedback statement will be issued in the coming months.

[1]https://www.consilium.europa.eu/en/press/press-releases/2022/06/17/solvency-ii-council-agrees-its-position-on-updated-rules-for-insurance-companies/ | [2]https://www.gov.uk/government/news/solvency-ii | [3]https://www.fca.org.uk/news/press-releases/fca-consumer-duty-major-shift-financial-services | [4]https://www.fca.org.uk/publications/discussion-papers/dp22-6-future-disclosure-framework

Tax reforms

This is a seminal year for tax reforms as regulations increasingly look to curb tax avoidance and respond to pressure to take action on global inequality.

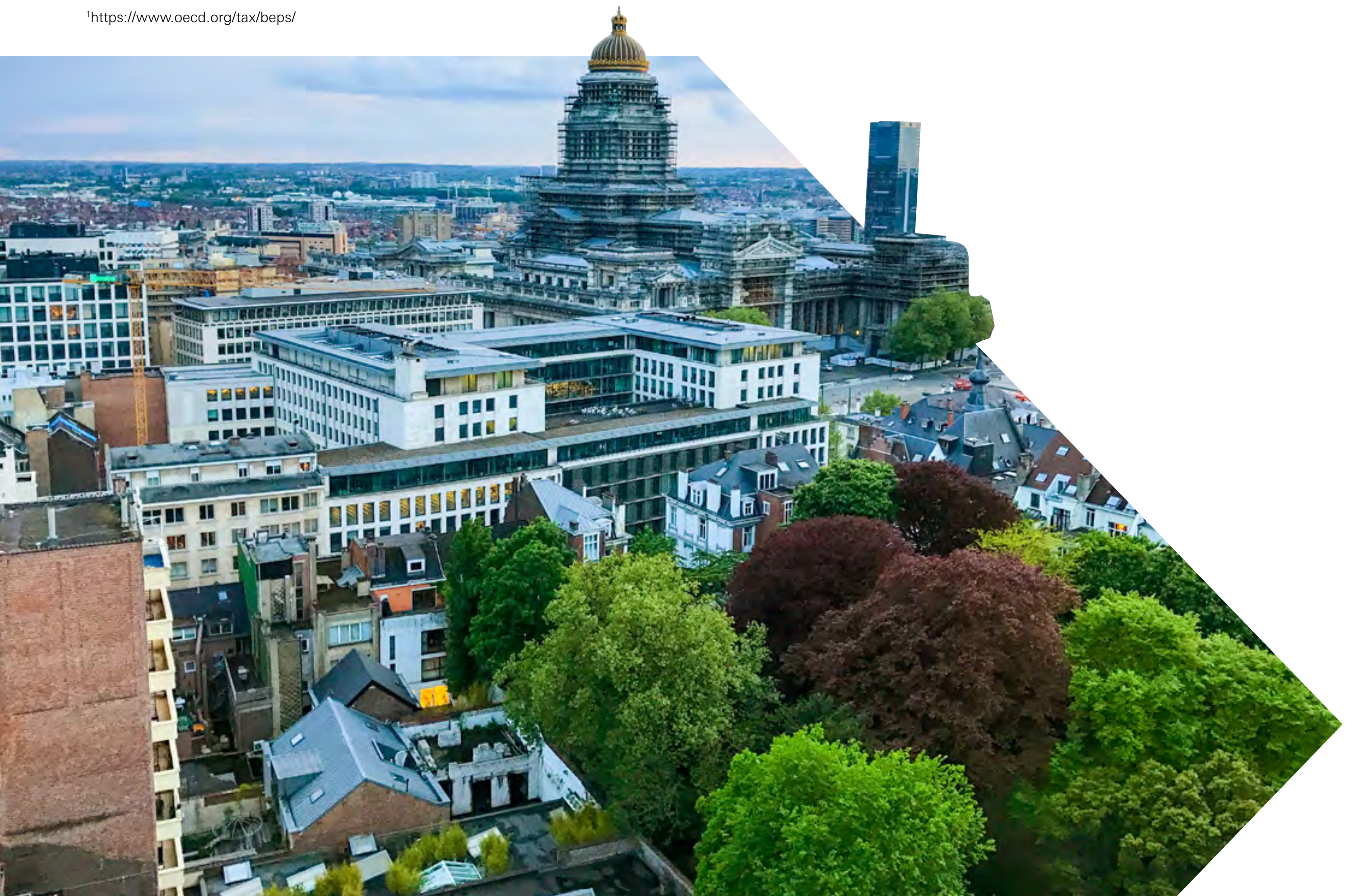
The new minimum global tax rate
After protracted negotiations, almost all countries in the G20/OECD Inclusive Framework on base erosion and profit shifting (BEPS)[1] have signed up to a joint political statement on the agreed components of their 'two-pillar' approach to global tax reform.

Pillar One aims to align taxing rights more closely with the location of customers. It was originally targeted only at highly digitalised groups, however the scope has increased to bring in all industry sectors with the exception of regulated financial services and extractive industries. Pillar One will only initially apply to multinationals with an annual global turnover over €20bn and a profit before tax of at last 10%.

Pillar Two, which will have a much broader impact sets out global minimum tax rules designed to ensure that multinational enterprises (MNEs) with a consolidated revenue of €750m pay a global minimum effective rate of tax of 15%. Where the effective rate of tax in a jurisdiction is below 15%, the global anti-base erosion rules (GloBE rules) will impose top-up taxes. There will also be a subject to tax rule (STTR) that will allow developing countries to apply additional tax on certain cross-border related party payments.

The UK and the EU have announced that Pillar 2 will apply for accounting periods beginning on or after 31 December 2023 with an 18 month period expected to be available for the first reporting. Hong Kong has also announced tax changes to meet the requirements of Pillar Two in its 2023 budget. There are a number of entity types that are out of scope for Pillar 2; including government entities, international organisations, non-profits, pension funds, investment and real estate funds. However, given the complexity of Pillar Two rules it will be important for MNEs to review their group structures carefully to determine whether they fall within the scope. For financial services companies, insurance and banking MNEs will be most impacted and structures within these groups will merit careful analysis. The US has not implemented the Pillar Two rules and the interaction between the US GILTI rules and Pillar Two remains an area of considerable interest.

[1]https://www.oecd.org/tax/beps/



Withholding tax reforms in the EU

For a number of years, there has been no standard withholding tax relief process across the EU – each member state has its own procedures, forms, timelines and document requirements – creating an excessive burden for stakeholders and a high risk of double taxation, resulting in applications for refunds. The EU Commission has provided a number of recommendations to its members, but the system is still very fragmented.

However, a draft directive expected in Q2 of 2023 aims to set minimum standards across all member states[1]. This new framework would become effective, on current timetables, sometime in 2024/25. It is expected to include an electronic tax residence certificate (e-TRC), issued with verifiable credentials and electronic seals using EU blockchain services and electronic authentication, which will simplify processes and enable greater automation. The draft directive is also expected to feature a quick refund process that will make reclaiming withholding taxes easier for investors.

Individual countries within Europe are also currently working on withholding tax reforms, including Sweden, Denmark and Germany.

Tax transparency for crypto-assets

The Crypto-Asset Reporting Framework (CARF)[2], published in October 2022, is a response to a G20 request that the OECD develop a framework for the automatic exchange of tax information between countries on crypto-assets. CARF will ensure transparency around crypto-asset transactions by automatically exchanging information with the taxpayer jurisdictions of residence on an annual basis, in a standardised manner similar to the Common Reporting Standard.

In the EU, an update to the Directive on Administrative Cooperation (DAC) was issued in December 2022. DAC8[3] expands the reporting and exchange of information between tax authorities within the EU to cover income or revenue generated by users residing in the EU while operating with crypto-assets. The US FATCA reporting regime is also expected to be updated to include crypto assets as early as 2024.

Final thoughts

We can see the continued drive towards sustainability in growing ESG regulation as countries, companies and financial firms embrace the journey to net-zero. We also see regulators responding to rapidly evolving technologies, as they create rules for products that didn't exist a scant decade ago. And we see a continued focus on accountability in new tax rules that seek to improve tax outcomes for citizens. Taken together, these three policy pillars represent solid foundations for policy makers to positively benefit a post pandemic world.

[1]https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13031-Withholding-taxes-new-EU-system-to-avoid-double-taxation_en
[2]https://www.oecd.org/tax/exchange-of-tax-information/crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.htm
[3]https://taxation-customs.ec.europa.eu/system/files/2021-01/dac8_presentation.pdf

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