Global Regulatory and Tax Developments to Watch in 2024

Keeping up with a world in flux

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Introduction

2024 will see a continuation of the challenging operating environment that has impacted financial services firms and the wider sector, with companies navigating ongoing economic uncertainty and growing geopolitical risks amid a climate of increasing regulatory reviews and reforms.

Regulators are responding to today's challenging macro environment by placing a greater focus on rules concerning the sustainability profile of the financial services sector; with scrutiny over climate-related risks becoming the norm across many jurisdictions. In response to an increasing environment of complexity around topics such as accountability, governance and risk management, regulators are accelerating the development of standards for company disclosure and impact investing.

Meanwhile, the ongoing process of digitalisation continues to drive the development of new asset classes and new ways for investors to enter into and transact in financial markets, while also presenting challenges. 2024 will also see significant market infrastructure changes including shortening of settlement cycles which will have a significant impact on operating models of investment managers and their service providers globally. As such, operational resilience is becoming ever more complicated and existing regulations are being reviewed and refined to meet current priorities. Regulators are treading a fine line, supporting technological innovation while maintaining protections and transparency within markets.

In this paper, HSBC's Markets and Securities Services shares its view of some of the key global regulatory and tax developments to watch in 2024.

Sustainability: advancing regulatory frameworks

In 2024, firms operating in and across multiple jurisdictions will need to continue to navigate a substantial book of sustainability-related regulations as regulators further develop regulatory requirements that aim to improve accountability, disclosures, and risk management.

The aim is to create standards that will allow comparison between companies and assets so that decisions regarding sustainability can be made accurately. With global standards phasing in, impact investors will be better able to assess the sustainability credentials of assets. This will help asset and wealth managers be better able to compare investments to establish the extent to which they conform to sustainability requirements.

Setting the global baseline for ESG disclosures

As the need to deliver on sustainability pledges intensifies, companies need to understand how to incorporate the range of sustainability standards and frameworks into their own approaches. Chief of these is the International Sustainability Standards Board (ISSB), which oversees standards for the disclosure of sustainability-related financial information, based on the principle of financial materiality and intended for an investor audience. In June 2023, the ISSB published its IFRS S1 and S2 standards, which set a baseline for global ESG disclosures.

IFRS S1 establishes disclosure standards to help companies communicate their short-, medium- and long-term sustainability risks and opportunities to their investors. IFRS S2 outlines specific climate-related disclosures to be used in conjunction with IFRS S1.[1]

Both these standards are effective for reporting periods beginning on or after 1 January 2024 and reporting could begin in 2025. Their effectiveness will be measured by the extent to which these standards are adopted, and to which stakeholders can come into alignment on their core principles. The ISSB has committed to expanding its scope to include biodiversity, human capital, human rights, and integration.

Market regulators now have to decide whether to adopt the ISSB standards and how to best align them with their requirements. The UK, Singapore, Australia, and Malaysia are among markets that have declared their intention to adopt them so far; with Hong Kong requiring all issuers on the Hong Kong Stock Exchange (HKEX) to make ISSB-aligned disclosures from 2025.[2] Observers can expect to see different jurisdictions adopting ISSB standards with differing levels of

1 https://www.ifrs.org/news-and-events/news/2023/06/issb-issues-ifrs-s1-ifrs-s2
2 https://www.hkex.com.hk/News/Regulatory-Announcements/2023/231103news?sc_lang=en

localisation and implementation. As such, it may take some time for a common language for disclosures to emerge.

The ISSB has also collaborated with the Global Reporting Initiative (GRI) – which established a common reporting language for sector specific disclosure standards, including the asset management sector, to disclose their impact on the environment. The GRI standards are the only global standards with an exclusive focus on impact reporting and are aimed at a multi-stakeholder audience. The standards aim to give investors and other stakeholders greater confidence in the sustainability credentials of businesses. The GRI issued an update to its Biodiversity Topic Standard in Q1 2024.[3]

Another area of regulatory focus is the impact of climate change on the natural world. In September 2023, the Taskforce on Nature-related Financial Disclosures (TNFD) released its final risk management and disclosure framework for organisations to report and act on evolving nature-related risks.[4] The TNFD framework is intended to be used by businesses and financial institutions of different sizes, across sectors and jurisdictions, in a manner that can inform the global baseline on nature-related reporting.

The EU's continued focus on disclosures and data
For some time now, the European Union has been instrumental in driving the sustainability 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.

Sustainable Finance Disclosure Regulation (SFDR) under review: In the EU, a fundamental review of the SFDR is underway. This may potentially change the way in which Article 8 (funds that promote environmental and social characteristics) and Article 9 (sustainable investment funds) categories are used. The European Commission is considering several issues, including whether the SFDR is fit for purpose, whether the firm-level disclosures are useful, and – most importantly – whether the Article 8 and 9 categories need to be amended significantly. This may result in these categories being formalised into "labels" with additional criteria, or a new labelling regime might be added on to the SFDR. The SFDR review is likely to continue throughout 2024. The publication date of the final results is unclear.

Taxonomy Regulation: The Taxonomy Regulation sets out criteria that an activity must satisfy to be referred to as 'environmentally sustainable' and also creates disclosure obligations for certain products that are within the scope of SFDR. Additional requirements will come into effect during 2024-2025.

Separately, EU regulators will continue to assess asset managers' compliance with sustainability-related disclosures in SFDR and the EU Taxonomy Regulation as part of the ongoing Common Supervisory Action (CSA) launched by ESMA in July 2023. The CSA will run until Q3 2024.

3 https://www.globalreporting.org/standards/standards-development/topic-standard-project-for-biodiversity/
4 https://tnfd.global/wp-content/uploads/2023/09/FINAL-18-09-23-TNFD-final-recommendations-release.pdf

Corporate Sustainability Reporting Directive (CSRD): More detailed reporting requirements are being introduced to the CSRD in line with the European Sustainability Reporting Standards (ESRS) and its requirements are being extended to a broader scope of large-size EU companies and companies listed on an EU-regulated market.[5] The first reporting is due in 2025 for financial year 2024 for listed companies with over 500 employees.

European Sustainability Reporting Standards

In July 2023, the European Commission adopted the European Sustainability Reporting Standards (ESRS) for use by all companies subject to the EU's Corporate Sustainability Reporting Directive (CSRD).[6] The ESRS was developed by the European Financial Reporting Advisory Group (EFRAG) in discussion with the ISSB and the GRI to ensure interoperability between the EU and global standards. The European standards are aimed at a multi-stakeholder audience and are based on the principle of "double materiality" that considers both the climate-related impacts on a company as well as that company's impact on the climate and other ESG factors. The full range of environmental, social, and governance issues, including climate change, biodiversity, and human rights, are covered in the standards, which will be phased in over time for different companies from January 2024.

Corporate Sustainability Due Diligence Directive (CS3D): CS3D will subject large companies active in the EU to extensive due diligence rules covering a range of social and environmental obligations across the supply chain.[7] The Directive is subject to further review, and timelines are uncertain at this stage.

Regulation of ESG ratings providers: The EC has also proposed measures to regulate ESG ratings providers, with the aim to enhance the reliability and transparency of ESG ratings methodologies and to prevent conflicts of interest.[8] In February 2024, the Council and European Parliament reached a provisional agreement, which will be subject to further approval by both parties before proceeding through the formal adoption procedure. The regulation will start applying 18 months after its entry into force. Providers and users of ESG ratings, and all those companies subject to them, will need to pay special attention to these new requirements in 2024 and beyond.

Call for evidence on greenwashing: In May 2023, following a call for evidence, the three European Supervisory Authorities (ESAs) – consisting of the EBA, EIOPA and ESMA – published a report on the key features, drivers and risks associated with greenwashing. The ESAs plan to publish a further report in May 2024.[9]

Guidelines for the use of ESG or sustainability-related terms in fund names: In February 2023, ESMA completed a consultation on proposals for quantitative thresholds to be introduced on the use of ESG and sustainability-related terms in fund names. The final guidelines, which are expected to be published during Q2 2024, are likely to have a material effect on the marketing of sustainable funds.

5 https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en
6 https://finance.ec.europa.eu/news/commission-adopts-european-sustainability-reporting-standards-2023-07-31_en
7 https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en
8 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13330-Sustainable-finance-environmental-social-and-governance-ratings-and-sustainability-risks-in-credit-ratings_en
9 https://www.esma.europa.eu/press-news/consultations/esas-call-evidence-greenwashing

The UK – further requirements under development
In 2023, the UK's Green Finance Strategy established a regulatory framework to accelerate the transition to a green financial system and ensure the global flow of green finance, to meet its environmental objectives.[10]

Key developments to watch:

- The UK Sustainability Disclosure Requirements (SDR) framework, published in November 2023, introduces a series of measures to be phased in during 2024-2026, with the key objective of mitigating greenwashing and enabling market participants to identify viable green investment opportunities.[11] The package of rules includes sustainable investment labels, detailed product and entity level disclosures, and rules relating to the naming, marketing and distribution of funds; as well as an anti-greenwashing rule.

- Enhanced climate-related disclosures: The Financial Conduct Authority (FCA) is committed to rolling out its existing TCFD-aligned disclosures rules across the entire economy by 2025. It requires firms to disclose how they account for climate risk across their strategy, governance, and risk management at firm level and how they account for climate risk in investment decisions at the product level.[12] Investment managers are caught under the rules. Annual product and firm level TCFD reports are required. Asset managers with AUM of over £50 billion had to report from 30 June 2023. Firms with AUM between £5 billion and £50 billion have to report from 30 June 2024.

- The UK government has committed to endorsing the ISSB standards through the creation of a UK Sustainability Disclosure Standards (SDS) framework by July 2024. The FCA plans to make SDS disclosures mandatory for listed firms from January 2025.[13] A consultation on the proposed rules is expected during H1 2024.

- Following a consultation by the FCA's Data and Ratings Working Group, an industry code of conduct for ESG ratings and data product providers was launched in December 2023.[14] The code focuses on promoting transparency, good governance, management of conflicts of interest, and strengthening systems and controls in the sector. The FCA is also expected to consult in due course on a proposed regulatory framework for ESG ratings providers, following the 2023 consultation by HM Treasury on proposals for bringing ESG ratings providers within the scope of regulation.[15]

- A consultation on a UK Green Taxonomy is expected in 2024, the rollout of which has been delayed in order to best understand the EU's adoption of its own Taxonomy.[16]

Transition plan reporting

The UK government is leading in the facilitation of transition plans for companies and is committed to making disclosure of these plans mandatory; the FCA has already implemented updated rules for asset managers and owners and listed companies based on a comply or explain basis. To achieve this, it has established the Transition Plan Taskforce (TPT) to help set the gold standard for private sector transition plans.[17] The FCA's updated disclosure requirements are expected to enter into force for accounting periods beginning from after 1 January 2025 (reporting in 2026).

In the EU, the CSRD includes transition plan disclosures and will apply to larger EU firms from the 2024 financial year (reporting in 2025).

Outside of the EU, work is also underway on facilitating enhanced transition plan disclosures. In February 2023, Singapore's Green Finance Industry Taskforce launched a third consultation on a Green and Transition Taxonomy that would provide additional clarity on the thresholds and criteria for classifying transition activities and providing clarity around the technological solutions that could be used to achieve net zero.[18] The Monetary Authority of Singapore (MAS) also published a consultation on net-zero transition plan guidelines in October 2023, including additional details on internal strategic planning and risk management processes.[19] In January 2024, mainland China began a trial of its first transition finance taxonomy, which sets criteria by which companies can attain funding for their green activities if they meet certain criteria.[20]

Asia: sustainability momentum continues
ESG momentum is accelerating in Asia as sustainability investment picks up pace. As such, there is increased pressure from global investors for capital markets to publish standardised sustainability disclosures to help guide investment. There is also a desire within Asia to benchmark international best practices. Despite the absence of consistent ESG frameworks across Asia, cooperation between jurisdictions is on the rise and work is underway to establish common disclosure standards.

10 https://assets.publishing.service.gov.uk/media/643583fb877741001368d815/mobilising-green-investment-2023-green-finance-strategy.pdf
11 https://www.fca.org.uk/publications/policy-statements/ps23-16-sustainability-disclosure-requirements-investment-labels
12 https://www.fca.org.uk/publication/policy/ps21-24.pdf
13 https://www.gov.uk/guidance/uk-sustainability-disclosure-standards
14 https://www.fca.org.uk/news/news-stories/fca-welcomes-launch-industry-code-conduct-esg-ratings-and-data-products-providers
15 https://www.fca.org.uk/publication/corporate/regulatory-initiatives-grid-nov-2023.pdf
16 https://www.gov.uk/government/publications/green-finance-strategy/mobilising-green-investment-2023-green-finance-strategy-annexes
17 https://transitiontaskforce.net
18 https://www.mas.gov.sg/news/media-releases/2023/industry-taskforce-launches-third-consultation-on-green-and-transition-taxonomy
19 https://greencentralbanking.com/2023/10/30/mas-publishes-net-zero-transition-plan-guidelines
20 https://chinadialogue.net/en/digest/chinas-first-transition-finance-taxonomy-launches

India

In India, the Securities and Exchange Board has issued a consultation paper on ESG Disclosures, Ratings and Investing, which is seeking public comment on a regulatory framework of ESG disclosures by listed entities, ESG ratings in the securities market and ESG investing by mutual funds.[21]

Australia

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 ran a consultation, which closed in February 2023, seeking views on the design and implementation of the climate-related financial risks disclosure regime.[22] 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 in 2024/2025.[23] 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.[24]

Mainland China

Regulators in mainland China are committed to aligning ESG disclosures with global standards and the central government has a major focus on green development. It has committed to developing environmental disclosure standards for limited companies by the end of 2025.

Hong Kong

Hong Kong aims to bring its corporate disclosure frameworks in line with ISSB standards. The Hong Kong Stock Exchange (HKEX) has proposed all listed issuers make climate-related disclosures in their ESG reports and make additional ISSB-aligned disclosures starting in 2025. It has also introduced mandatory ESG requirements for managers of collective investment schemes (CISs) to consider climate-related risks as part of their risk management considerations.

Firms in-scope of the Hong Kong Monetary Authority's (HKMA) circular on the sale and distribution of green and sustainable investment products will need to ensure full compliance by November 2024. The circular sets out expected standards and guidance for in-scope firms when marketing or classifying a product as green and sustainable, including assessing a client's sustainability preferences, disclosures, and management of greenwashing risks.[25]

Taiwan

Taiwan requires listed issuers to issue enhanced Corporate Social Responsibility (CSR) reports and disclose a wide range of ESG information. It has also established criteria for the ESG fund labels of onshore funds.

Singapore

Singapore is expanding the scope of its mandatory climate reporting requirements in alignment with the TCFD, with new measures to be phased in during 2024. The MAS expects fund managers to assess whether their fund falls within the criteria for an ESG fund and has launched the Singapore-Asia Taxonomy for Sustainable Finance (Singapore-Asia Taxonomy).[26] Companies are required to report on their alignment with the taxonomy’s objectives using a traffic light system which categorises their activities as either “green”, “transition” or “ineligible”.[27] In December 2023, MAS also published a code of conduct for ESG rating providers, featuring a checklist for providers to self-attest their compliance.[28]

The Singapore Sustainable Finance Association (SSFA) announced its official launch as the first cross-sectoral industry body to support the development of Singapore as a leading global center for sustainable finance. Mr. Wong Kee Joo, CEO, HSBC Singapore, will be the co-chair, alongside BlackRock.[29]

South Korea

In South Korea, guidance on voluntary ESG disclosures for issuers is set to become mandatory for larger corporations by 2025 and mandatory for all issuers on the Korea Composite Stock Price Index (KOSPI) by 2030.[30] A taskforce was established to develop ESG fund disclosure standards to align South Korean

21 https://www.sebi.gov.in/reports-and-statistics/reports/feb-2023/consultation-paper-on-esg-disclosures-ratings-and-investing_68193.html
22 https://treasury.gov.au/sites/default/files/2023-06/c2023-402245.pdf
23 https://www.corrs.com.au/insights/mandatory-climate-related-financial-risk-disclosure-government-releases-draft-framework
24 https://asean.org/book/asean-taxonomy-for-sustainable-finance
25 https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2023/20231129e1.pdf
26 https://www.mas.gov.sg/news/media-releases/2023/mas-launches-worlds-first-multi-sector-transition-taxonomy
27 https://www.mas.gov.sg/-/media/mas-media-library/development/sustainable-finance/singaporeasia-taxonomy-dec-2023.pdf
28 https://www.mas.gov.sg/news/media-releases/2023/mas-publishes-code-of-conduct-for-providers-of-esg-rating-and-data-products
29 https://www.ssfa.org.sg/launch-of-the-singapore-sustainable-finance-association-ssfa/
30 https://insights.issgovernance.com/posts/esg-regulation-in-south-korea-disclosure-guidance

ESG investments with global standards and combat greenwashing. The Korean Green Taxonomy (K-Taxonomy) was implemented in 2023, classifying green economic activities around environmental goals that closely resemble those of the EU Taxonomy.

Malaysia

Malaysia is seeking to bring its climate and sustainability agenda into alignment with international standards and has established an advisory committee to oversee the implementation of ISSB standards.[31]

MENAT intensifies its sustainability focus

In the Middle East and wider MENAT region, the pace of ESG regulation has been slow, but following the UAE's hosting of COP28, the region's sustainability framework is likely to advance. Many countries are committed to achieving net zero, including the UAE, Saudi Arabia, and Bahrain. Governments are paying increased attention to ESG risks and demonstrating greater willingness to align with the growing global focus on sustainability.

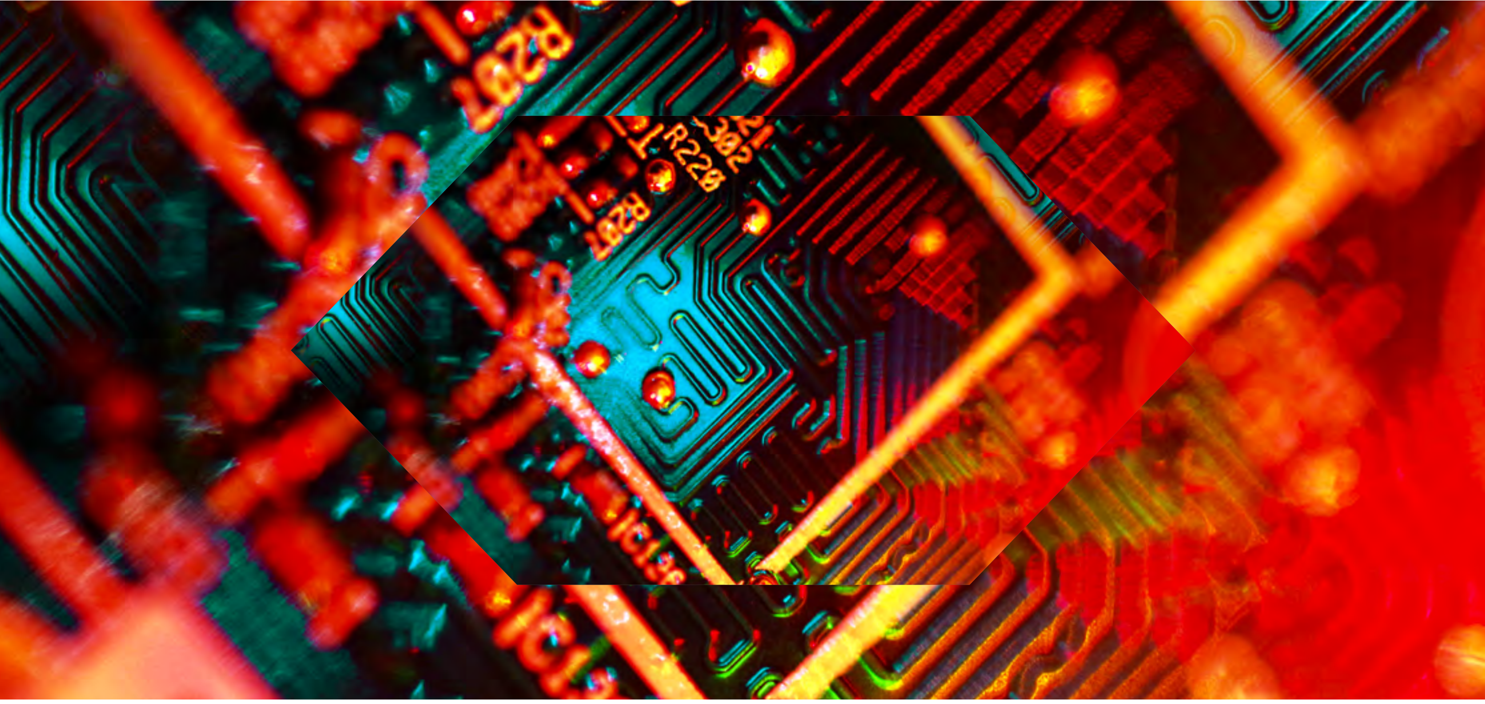
In January 2023, the GCC Exchanges Committee published a set of ESG disclosure metrics, which are aligned with the UN's Sustainable Development Goals.[32] The metrics are voluntary, and they don't replace existing guidelines for the exchanges, which include Abu Dhabi and Dubai's financial markets, Saudi Exchange, Bourse Kuwait, Bahrain Bourse, QSE and Muscat Stock Exchange. However, many see the announcement as a first step towards mandatory and standardised disclosures.

US plans for greater transparency

With policymakers placing renewed attention on ESG considerations, and investors demanding greater quality and consistency in sustainability information, US financial services regulators have been given the motivation needed to establish enhanced ESG regulatory frameworks. The Securities and Exchange Commission (SEC) has signalled its intent to move from principles-based guidelines to mandatory regimes, and is developing requirements such as standardised disclosures, emissions reporting, and more stringent criteria for the labelling of ESG funds.[33] This has set the US on a course to narrowing the regulatory gap for ESG disclosures compared to other jurisdictions such as the EU.

In September 2023, the SEC adopted amendments to the Investment Company Act "Names Rule," which addresses fund names that are likely to mislead investors about a fund's investments and risks. This includes names suggesting an investment focus on ESG-related factors.[34] Additionally, in March 2024, the SEC adopted rules to enhance and standardise climate-related disclosures by public companies and in-public offerings.[35] According to the SEC, the rules will provide investors with consistent, comparable, and decision-useful information, and issuers with clear reporting requirements. It is also considering additional disclosure requirements relating to topics such as human capital and ESG fund labelling, and has established a dedicated ESG Task Force to examine greenwashing and other ESG-related misconduct.[36]

31 https://www.pwc.com/my/en/assets/media/pwc-in-the-news/2023/230918-A-game-changer-for-sustainability-reporting-ver2.pdf
32 https://mediaoffice.ae/en/news/2023/January/10-01/Gulf-Exchanges-Announce
33 https://www.sec.gov/news/speech/gensler-pri-2021-07-28
34 https://www.sec.gov/news/press-release/2023-188
35 https://www.sec.gov/news/press-release/2024-31
36 https://www.sec.gov/securities-topics/enforcement-task-force-focused-climate-esg-issues



Digital assets: an evolving regulatory landscape

The regulatory landscape for digital is evolving in order to encourage innovation including new asset classes and financial technologies and to promote greater regulatory clarity. Three key themes have emerged:

1. New asset classes

Emerging digital assets including crypto-based assets are being looked at as new asset classes and solutions are being structured to meet investor demand. Policymakers are aware of the potential risks that digital assets pose. They are also focused on ensuring investors are protected, including tightening up rules around the misleading marketing of digital assets and addressing a general lack of consumer understanding. There are also concerns around the potential for financial crime, with regulators extending anti-money laundering and combating the financing of terrorism (AML/CFT) frameworks to include digital assets.

EU Markets in Crypto-assets regulation (MiCAR)
The EU Markets in Crypto-assets regulation (MiCAR) came into force in June 2023 and introduces uniform EU market rules for crypto assets, including those not currently regulated by existing financial services legislation.[37] Key provisions cover the transparency, disclosure, authorisation, and supervision of transactions.

While compliance deadlines technically start in December 2024, members states have the discretion to delay its introduction until July 2026. However, some details regarding EU requirements are yet to emerge, especially for investment managers. Notably, ESMA will define guidance on rules for advice and portfolio management, but it will only be finalised by the end of 2024.

The UK's future regulatory framework for cryptoassets
The UK's regime for unbacked digital assets is comparatively less advanced than the EU, and final rules are uncertain. But following a February 2023 consultation, more detailed rules are expected to emerge towards the end of 2024 into 2025.[38]

2. Asset tokenisation on the rise

The process of asset tokenisation – the issuance of a digital representation of an asset on Distributed Ledger Technology (DLT) instead of traditional systems of records – will likely dominate the digital asset pilots of regulated firms in 2024.

The EU's DLT Pilot regime came into effect in March 2023.[39] This is a 'sandbox' approach that is open for application for up to six years from launch and simplifies

37 https://www.esma.europa.eu/esmas-activities/digital-finance-and-innovation/markets-crypto-assets-regulation-mica
38 https://assets.publishing.service.gov.uk/media/653bd1a180884d0013f71cca/Future_financial_services_regulatory_regime_for_cryptoassets_RESPONSE.pdf
39 https://www.esma.europa.eu/sites/default/files/library/esma70-460-189_qas_dlt_pilot_regulation.pdf

regulations for participants. ESMA will report on the success of the regime and recommend next steps in 2026.

The UK's blueprint for the implementation of fund tokenisation was issued in November 2023.[40] It establishes a phased approach to fund tokenisation, with an initial focus on DLT replacing traditional fund registration systems. The FCA and the Treasury are seeking to further develop fund tokenisation and help firms engage with this process, which may require legislative or regulatory rule changes.

The UK's long-awaited 'Digital Securities Sandbox' (DSS) is set to launch by the end of the first quarter of 2024. It marks the first step towards the emergence of secondary markets in tokenised financial securities.[41] The UK sandbox, which complements its EU counterpart, will help firms seeking to establish market-leading trading and settlement venues.

3. CBDCs under development

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 in the form of Central Bank Digital Currencies (CBDCs).

- The European Central Bank is proceeding with its plans for a Euro CBDC.[42]
- The UK's Bank of England and HM Treasury closed their own consultation on a retail digital pound in June 2023.[43]
- The UAE has a roadmap for 2023-2026 on launching its own CBDC and has participated in a number of pilots using CBDCs for cross-border payments.[44]
- The US Federal Reserve issued a discussion paper on the pros and cons of a potential US CBDC. No decision has been reached as of yet.[45]

The US: balancing innovation with protections

In the US, uncertainty remains regarding what the regulatory framework for digital assets will look like and which market regulators will have authority over digital assets regulation.[46] This has created concern among US regulators regarding the potential risks to consumer protections and financial stability, with some beginning to issue guidance and take enforcement actions.

In July 2023, US congress re-introduced an updated version of the Responsible Financial Innovation Act (Lummis-Gillibrand Bill), with the objective of placing a greater emphasis on consumer protections and making it mandatory for stablecoin issuers to demonstrate proof of reserves.[47] The bill requires that crypto asset exchanges register with the Commodity Futures Trading Commission (CFTC), which will also have authority over algorithmic stablecoins, and imposes new penalties for violating anti-money laundering laws, and introduces mandatory segregation and third-party custody requirements.

Asia's new digital assets regime

In Asia, moves are underway to recalibrate legislation to support engagement with digital assets as a new wave of innovation sweeps the region.

40 https://www.gov.uk/government/news/technology-working-group-publishes-report-on-fund-tokenisation
41 M8298_Draft_response_to_DSS_consultation_final.pdf (publishing.service.gov.uk)
42 https://www.ecb.europa.eu/paym/digital_euro/html/index.en.html
43 https://www.bankofengland.co.uk/-/media/boe/files/paper/2023/the-digital-pound-consultation-working-paper.pdf
44 https://www.centralbank.ae/en/our-operations/fintech-digital-transformation
45 https://www.federalreserve.gov/central-bank-digital-currency.htm
46 https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets
47 https://www.lummis.senate.gov/wp-content/uploads/Lummis-Gillibrand-2023-Section-by-Section-Final.pdf

Hong Kong

Hong Kong is seeking to facilitate greater exposure to digital assets, with retail investors now able to directly hold virtual assets such as Bitcoin. Separately, the Securities and Futures Commission (SFC) has approved exchange traded funds (ETFs) that obtain exposure to virtual assets primarily through futures contracts for public offering.[48] In December 2023 they extended this by issuing a circular on SFC-authorised funds with exposure to virtual assets[49] potentially allowing authorised CIS to directly hold virtual assets.

Singapore

MAS has been actively experimenting with digital currency connectivity since 2016. On the international front, MAS is participating in Project Dunbar, which the Bank for International Settlements Innovation Hub is working on in its Singapore Centre. The project is exploring a common multi-CBDC platform to enable cheaper, faster, and safer cross-border payments. Domestically, MAS is working with the industry on Project Orchid to develop the infrastructure and technical competencies necessary to issue a digital Singapore dollar should there be a need to do so in future.

MAS has also launched an initiative – called Project Guardian – to explore the potential economic potential and value-adding use cases of asset tokenisation. More recently it has also sought and received comments on a consultation on a regulatory approach to stablecoin activities,[50] and has released new measures on the regulation of digital payment token services.[51]

Malaysia

Bursa Malaysia is conducting proofs-of-concept on a number of emerging technologies, including AI, block chain and robotics.[52] The Securities Commission Malaysia has also recently approved the first batch of digital asset custodians since the Guidelines on Digital Assets were published in 2020.[53]

Taiwan

The Financial Supervisory Commission (FSC) has only recently begun the process of digital asset regulation in Taiwan by proposing a draft virtual asset management bill in late 2023.[54] In late 2024, the FSC is planning to release a study around regulations for virtual asset service providers, as the current guidelines are only on a self-regulation basis.[55]

Australia

Since 2017, cryptocurrencies were legalised in Australia but weren't subject to specific regulations. As such, the Australian Treasury has recently finished its consultation on its proposed regulations around digital asset platforms.[56] With funding from the Australian Government, a research program known as the Digital Finance Cooperative Research Centre (DFCRC) was established. Its mission is to develop and capitalise on opportunities that arise from asset digitisation.[57] As part of the DFCRC, use cases for Central Bank Digital Currencies (CBDC) were also actively researched and explored.[58]

Japan

In a move aiming to foster Web3 expansion in Japan, the Japanese Ministry of Economy, Trade, and Industry (METI) has recently approved a regulation allowing venture capital firms to invest directly in digital assets.[59] Prior to this, the Japanese Financial Services Agency (FSA) introduced stablecoin regulations.

South Korea

Set for implementation in mid-2024, the Digital Asset Basic Act (DABA) comprises of multiple proposals aiming to balance blockchain development and investor protection in South Korea.[60] Another digital asset development in the country is the digital currency pilot set to begin in late 2024, based on the Bank of Korea's exploration of CBDCs.[61]

48 https://apps.sfc.hk/edistributionWeb/api/circular/openFile?lang=TC&refNo=23EC65
49 https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=23EC65
50 https://www.mas.gov.sg/-/media/mas-media-library/publications/consultations/pd/2023/response-to-consultation-on-stablecoins-regulation_15aug2023.pdf
51 https://www.mas.gov.sg/news/media-releases/2023/mas-strengthens-regulatory-measures-for-digital-payment-token-services
52 https://www.bursamalaysia.com/sites/5d809dcf39fba22790cad230/assets/640069b45b711a32db04c15d/Bursa_SR22.pdf
53 https://www.sc.com.my/digital-assets
54 https://ppg.ly.gov.tw/ppg/download/agenda1/02/pdf/10/08/05/LCEWA01_100805_00022.pdf
55 https://www.ignitesasia.com/c/4408104/572534/taiwan_allow_active_etfs_propose_crypto_regulation_this_year
56 https://treasury.gov.au/consultation/c2023-427004
57 https://dfcrc.com.au/about
58 https://www.rba.gov.au/payments-and-infrastructure/central-bank-digital-currency
59「新たな事業の創出及び産業への投資を促進するための産業競争力強化法等の一部を改正する法律案」が閣議決定されました（METI/経済産業省）
60 https://www.ccn.com/education/cryptocurrency-regulations-in-south-korea
61 https://www.bok.or.kr/eng/bbs/B0000364/list.do?menuNo=400411

The continuing importance of operational resilience

Operational resilience remains a topic of focus for both regulators and financial services firms, with ongoing technological proliferation leading to an ever-more complex world that presents new threats to the operations of firms. 2024 is a year in which firms will need to move from embedding and building compliance to demonstrating resilience in practice to supervisors, with regulators increasingly scrutinising their actions.

Expanding the scope of resilience regulation in the EU

The EU's Digital Operational Resilience Regulation (DORA) came into force in January 2023 and takes full effect in January 2025.[62] It 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.

DORA requires all firms covered in its scope to develop an ICT risk management framework and comply with harmonised rules on incident reporting, resilience testing and third-party risk management. It also introduces direct oversight for third parties designated as "critical". Two sets of technical standards will be finalised in 2024. Firms will need to ensure they take account of the new standards in the implementation process, despite the challenging 2025 timeline.

The EU's Cyber Resilience Act is expected to be finalised and published in the first half of 2024.[63] While the extent to which it is applicable to financial services is still under consideration, it will likely complement DORA's organisational resilience rules, establishing minimum cyber resilience standards for digital products.

The UK steps up operational resilience measures

The FCA and the PRA established new operational resilience rules that come into full effect in March 2025.[64] The rules require firms in scope to identify important business services and key dependencies, set impact tolerance levels, and demonstrate resilience through scenario testing and self-assessment. Firms should use 2024 to demonstrate compliance by having appropriate scenario testing in place that adequately takes risk profiles into account.

In December 2023, the FCA began a consultation on the operational resilience of critical third parties to the UK financial sector.[65] These would be subject to direct regulatory oversight and financial services firms would still need to ensure compliance with any pre-existing duties. Firms can take 2024 as an opportunity to assess their outsourcing arrangements to ensure appropriate governance of third parties is in place.

62 https://eur-lex.europa.eu/eli/reg/2022/2554/oj
63 Cyber Resilience Act - Questions and Answers (europa.eu)
64 https://www.fca.org.uk/publications/policy-statements/ps21-3-building-operational-resilience
65 https://www.fca.org.uk/publications/consultation-papers/cp23-30-operational-resilience-critical-third-parties-uk-financial-sector

Investment funds: regulatory regimes under review

Changes to the EU's AIFMD and UCITS framework
AIFMD, the EU's main directive regulating the management, administration, and marketing of alternative investment funds in the EU, will be impacted by several EU regulatory packages that will supplement or change existing requirements. This includes the 'AIFMD2' proposals, which were adopted by the European Council in February 2024, and will also make changes to the UCITS Directive for mutual funds.[66]

Three main areas where the directives could be enhanced were identified: difficulties in monitoring and managing financial stability risks; inefficiencies in managing investment funds; and insufficient clarity regarding the legal requirements for fund managers delegating their functions to third parties or different national supervisory practices.[67] There are also proposals to bring the designation, use and disclosures of liquidity management tools under the purview of ESMA and National Competent Authorities (NCAs).

Cross-Border Distribution Framework (CBDF)
In July 2023, the ESMA published its second report on the marketing of investment funds under its regulation of cross-border distribution of funds regime.[68] The report provides an overview of the marketing requirements across Member States, and analyses the effects of national laws, regulations and administrative provisions governing marketing communications for investment funds. The CBDF Regulation requires ESMA to report on this topic once every two years. The Commission is also required to conduct an evaluation of the application of the CBDF by August 2024.

A greater consumer focus for EU retail investment strategy
In May 2023, the European Commission published a retail investment package to help empower and protect retail investors in the EU and put consumers at the heart of retail investing.[69] It aims to ensure consumers can make investment decisions that are aligned with their needs and preferences, and that they are protected and treated fairly. The package includes a legislative proposal to make targeted amendments to various aspects of the PRIIPs Regulation, including changes to modernise the PRIIPs Key Information Document (KID).[70]

The proposed measures are subject to change and are expected to be introduced by 2025 or early 2026. Firms should treat 2024 as an opportunity to fully familiarise themselves with the new requirements and start considering any significant gaps in their operations.

European Long-term Investment Fund (ELTIF)
ELTIFs are a type of fund dedicated to long-term investments that can be distributed on a cross-border basis within the EU to both professional and retail investors. The ELTIF regulatory framework sets out detailed fund rules on eligible assets and investments, diversification and portfolio composition, leverage limits and marketing. Following a review of the ELTIF Regulation, revisions to the regulation can into effect in January 2024 under "ELTIF2.0". The Commission is expected to adopt the supplementing draft RTS presented by ESMA in H1 2024.[71]

Enhancing the UK regulatory regime for asset management
In the UK, changes are underway to regulations concerning the improvement of its regime for asset managers. In October 2023, the FCA outlined its intention to update the regime for retail funds and make it more proportionate for alternative fund managers, while increasing capacity to support technical innovation.[72]

For alternative fund managers, the FCA intends to introduce a set of rules to the AIFMD regime that would apply across all alternative fund managers, rather than those with assets above the current threshold. It is also considering modifying the current stipulation that prevents full scope alternative fund managers from carrying out other activities within the same legal entity and to ease the AIFMD's current reporting burden. The FCA is also considering how it can simplify the rules for non-UCITS funds. An FCA consultation paper is expected in 2024, amending the AIFMD regime and re-evaluating the AIFMD rules for non-UCITs retail funds.[73] A planned review of the AIFMD reporting regime is expected in 2025.[74]

66 https://www.consilium.europa.eu/media/67845/st14932-en23.pdf
67 https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729321/EPRS_BRI(2022)729321_EN.pdf
68 https://www.esma.europa.eu/press-news/esma-news/esma-publishes-second-overview-national-rules-governing-fund-marketing
69 https://finance.ec.europa.eu/publications/retail-investment-strategy_en
70 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023PC0278
71 https://www.esma.europa.eu/press-news/esma-news/esma-finalises-technical-standards-under-revised-eltif-regulation
72 https://www.fca.org.uk/news/speeches/updating-and-improving-uk-regime-asset-management-our-priorities
73 https://www.fca.org.uk/firms/repeal-replacement-retained-eu-law
74 https://www.fca.org.uk/news/speeches/updating-and-improving-uk-regime-asset-management-our-priorities

UK Overseas Funds Regime
As part of the UK's Brexit transition plans, the UK Government established the Temporary Marketing Permissions Regime (TMPR) for EEA-based investment funds that were marketed via a passport in the UK.[75] The TMPR will remain in place until 31 December 2025, allowing funds to be marketed in the UK in the same manner as they were before the transition period ended, and until the funds are recognised for offer in the UK, following an equivalence determination by the Treasury under the Overseas Funds Regime (OFR).

The OFR is a new UK regime introduced to simplify the process through which non-UK funds could be marketed to UK investors. The regime provides HM Treasury with the power to determine that other jurisdictions' regimes for investment funds are equivalent to that of the UK. Retail and money market funds domiciled in an 'equivalent' jurisdiction will then be able to use a simplified process to apply to the FCA for the recognition needed for the fund to be marketed to applicable UK investors. In December 2023, the FCA launched a consultation paper on operationalising the regime, setting out how overseas funds will be permitted to be marketed to UK retail investors.[76] The FCA intends to publish a final policy statement and final Handbook rules in the first half of 2024.

Embedding the UK Consumer Duty
In July 2023 a new Consumer Duty legislation came into effect requiring all financial services firms to deliver good outcomes for retail consumers, to ensure they get appropriate levels of support in a timely manner, are receiving communications they can understand, and have access to products and services that offer fair value.[77]

The biggest challenge for firms has been ensuring they share information effectively across value chains and accurately assessing price and value. A requirement is also in place for an annual board report detailing evidence and analysis of how outcomes have been delivered. The first such report is due in July 2024, with a deadline for closed products due in the same month.

UK retail disclosure framework
On withdrawal from the EU, the UK onshored the EU PRIIPs Regulation and subsequently made a series of targeted amendments to the UK PRIIPs regime, including extending the exemption from PRIIPs requirements for UCITS until the end of 2026. Since then, further assessments of the regime for retail disclosures have been conducted with the aim to repeal and replace the UK PRIIPs regime.[78] Rule proposals from the FCA are expected during 2024.

Asia's fund development gap

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 with their Connect system and are considering revisions to mainland China's Mutual Recognition of Funds (MRF) and Greater Bay Area (GBA) regimes to help boost cross-border investment and financial integration.

- In a bid to encourage greater foreign direct investment in mainland China, authorities relaxed rules on capital controls in 2023.[79]
- Singapore signed a new ETF Connect agreement with mainland China in May 2023 to allow for the trading of Exchange-Traded Funds (ETFs) between the two countries.[80]
- In March 2023, mainland China expanded the number of cross-border trading programs by more than 1,000 stocks and enabled the inclusion of shares of international companies with primary listings in Hong Kong within southbound trading.[81]

75 https://www.fca.org.uk/brexit/temporary-permissions-regime-tpr
76 https://www.fca.org.uk/publication/consultation/cp23-26.pdf
77 https://www.fca.org.uk/news/news-stories/consumer-duty-higher-standards-financial-services
78 https://assets.publishing.service.gov.uk/media/655ca4c2544aea0019fb31aa/UK_Retail_Disclosure_Framework_Policy_Note__8211_.pdf
79 https://edition.cnn.com/2023/09/22/economy/china-loosens-capital-controls-intl-hnk/index.html
80 https://www.ft.com/content/903a6b2b-10e4-4c0b-a911-60a053e42155
81 https://asia.nikkei.com/Spotlight/Caixin/Hong-Kong-Shanghai-Shenzhen-connect-lists-add-1-000-stocks

Securities markets: reforms to bring greater efficiencies

Securities market regulations are now under review to foster more streamlined regimes with greater regulatory protections.

UK reforms
The UK is reforming its financial services regulation, with the aim of creating a 'Smarter Regulatory Framework' for the UK post-Brexit.[82] As part of this, in December 2023, on the anniversary of the Edinburgh Reforms, the Treasury announced further changes to financial services.[83] This included a commitment to delivering on the final nine reforms (22 of 31 have already been delivered) as well as proposals to help support consumers with financial decision making and begin to close the "advice gap" between the kind of "holistic financial advice" that is unaffordable to many and free guidance that is not personalised to the consumer.

This commitment to fully delivering on the Edinburgh Reforms underscores the UK's desire to realise its vision for an open, sustainable UK financial services sector that can deliver for all communities across the UK. Firms will need to pay close attention to the changes brought about by the Edinburgh Reforms as it will mean UK financial services legislation may diverge from aspects of EU law as the reforms roll out in the coming years.

EU reforms
Changes to the Central Securities Depositories Regulation (CSDR) – dubbed the 'CSDR Refit' – took effect in January 2024, with some measures to be introduced in May this year, and others to come into force in 2026.[84] The changes included 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.[85]

Reporting under the new standards of the EMIR REFIT – designed to amend and simplify the European Markets Infrastructure Regulation (EMIR) to tackle excessive compliance costs, transparency issues and counterparty clearing access – will begin in April 2024.[86]

Proposed EU revisions to MiFID3/MiFIR2 were finalised in 2023.[87] The changes aim to help investors, particularly smaller and retail investors, 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 – The Single Collateral

82 https://www.gov.uk/government/collections/a-smarter-regulatory-framework-for-financial-services
83 https://www.gov.uk/government/news/anniversary-of-edinburgh-reforms-marks-further-progress
84 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ%3AL_202302845&qid=1704278729794
85 https://www.europarl.europa.eu/news/en/press-room/20230227IPR76594/meps-adopted-changes-to-financial-instruments-settlement-regime
86 https://www.esma.europa.eu/sites/default/files/library/esma74-362-2281_final_report_guidelines_emir_refit.pdf
87 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0726

Management Rulebook for Europe (SCoRE) – which defines common rules for managing collateral, is also delayed.[88] The first wave is expected by April 2024, with the second wave not before November 2025.

European Single Access Point (ESAP): The EU is creating a single point of access to public financial and sustainability related information about EU companies, including SMEs, and investment products.[89] The European Single Access Point (ESAP) will make it easier to find and compare investment products and companies that are sustainable and prosperous and help facilitate decision making for a broad range of investors. The ESAP platform is expected to be available from summer 2027 and will be gradually phased in.[90]

Shareholder Rights Directive 2: In July 2023, an ESMA and EBA report assessed the implementation of the Shareholder Rights Directive.[91] The report will serve as the basis for the European Commission's assessment of the review and implementation of the SRD2 that will likely take place during 2024.[92] The report found that the framework provided robust guidance for proxy advisors, although advancements could be made in areas such as conflicts of interest. It also proposed a mechanism for registering proxy advisors at the EU level.

Shortening settlement cycles

Many jurisdictions are looking at reducing settlement times for transactions. The US SEC has finalised rules 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).[93] 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 is examining the move to a T+1 standard settlement period and a full report and recommendations will be made by December 2024.[94]

The EU is also considering a move to a T+1 settlement cycle and ESMA will publish the results of a consultation assessing the benefits and costs of such a move during 2024.[95]

In 2023, India moved to a T+1 settlement cycle for listed equities and is planning to introduce same-day settlement by March 2024, with instantaneous settlements phased in within a year.[96] Other Asian markets are also considering improvements to their settlement cycles. Malaysia has established the Post-Trade and Settlement working group to improve the institutional clearing and settlement process. 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.[97]

In the MENAT region, Qatar has plans to move from a T+3 to T+2 cycle to provide early liquidity to investors.[98]

88 https://www.ecb.europa.eu/paym/integration/collateral/html/index.en.html
89 https://www.consilium.europa.eu/en/press/press-releases/2023/05/23/easy-access-to-corporate-information-for-investors-provisional-agreement-reached-on-the-european-single-access-point-esap
90 https://www.europarl.europa.eu/legislative-train/theme-an-economy-that-works-for-people/file-european-single-access-point
91 https://www.esma.europa.eu/press-news/esma-news/esma-and-eba-assess-implementation-revised-shareholder-rights-directive-and
92 https://www.eba.europa.eu/publications-and-media/press-releases/eba-and-esma-assess-implementation-revised-shareholder-rights
93 https://www.sec.gov/news/press-release/2023-29
94 https://www.gov.uk/government/publications/accelerated-settlement-taskforce
95 https://www.esma.europa.eu/press-news/esma-news/esma-consults-potential-impact-shortening-standard-settlement-cycle
96 https://www.reuters.com/markets/asia/india-moving-towards-t0-market-settlement-before-end-fy24-regulator-2023-12-08
97 https://www.pse.com.ph/sccp-migrates-to-new-clearing-and-settlement-technology
98 https://www.qcsd.gov.qa/en/news/980-t-2

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

- South Korea introduced new rules on foreign exchange transactions in December 2023, which allowed the participation of foreign financial institutions in the country's forex market to help improve foreign access to its stock market.[99]

- Mainland China is seeking to become more investor friendly and deepen its connections with Hong Kong to create a more integrated market. It is providing additional policy support for Chinese enterprises wishing to issue bonds in Hong Kong, having joint-signed a memorandum of understanding promoting the development of the Hong Kong bond market.[100] It also seeks to open up to overseas institutional investors by facilitating their access to the exchange bond market.

In February 2023, mainland China issued rules for its new Stock Issuance Registration System, which now apply to the entire securities market and are a boost for securities reform in the jurisdiction.[101] It also opened up access to the derivatives market for Hong Kong and international investors with the introduction of Swap Connect in 2023.

Mainland China

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

- The Beijing Stock Exchange was set up to be the base for innovative SMEs, allowing investors to access companies that have the potential to grow into larger entities.[102]

Hong Kong

- eMPF, which is an electronic infrastructure to enable standardising, streamlining, and automating of the MPF scheme administration, is underway, steered by a working group formed by the government with MPF trustees.[103] The completion of the platform is targeted for 2025.[104]

- HKEX has decided to adopt proposals to revise the position limit regime for Single Stock Options (SSO) and Single Stock Futures (SSF), and to remove the additional position limits for its Mini-HSI Futures and Options and Mini-HSCEI Futures and Options (collectively, flagship-minis) contracts. However, the Exchange will not at this stage proceed with a proposal to revise the Large Open Position (LOP) reporting requirements for its flagship minis contracts. The effective date of the revised position limits will be announced following regulatory approval.[105]

Indonesia

- In 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, including banking, money market, capital market, deposit insurance, insurance, non-bank financial services and consumer protection.[106]

Australia

- Australia introduced a Financial Accountability Regime that strengthened its responsibility and accountability framework for banking and insurance firms, which aimed to improve Australia's risk and governance culture.[107] It also extended transitional tax relief to foreign financial services providers to March 2025 and is consulting on introducing licensing exemptions for comparable entities.[108]

99 https://www.reuters.com/markets/asia/skorea-scrap-foreign-registration-rule-share-trading-thurs-regulator-2023-12-13
100 https://www.hkma.gov.hk/eng/news-and-media/press-releases/2023/10/20231019-3
101 https://www.china-briefing.com/news/chinas-ipo-reforms-registration-based-mechanism
102 https://www.reuters.com/world/china/xi-says-china-set-up-stock-exchange-beijing-2021-09-02
103 https://www.mpfa.org.hk/en/empf/overview
104 https://www.mpfa.org.hk/en/info-centre/press-releases/20230716
105 https://www.hkex.com.hk/News/Market-Communications/2022/220728news?sc_lang=en
106 https://ssek.com/blog/indonesias-financial-sector-omnibus-law-securities-crowdfunding
107 https://asic.gov.au/regulatory-resources/financial-services/financial-accountability-regime
108 https://www.financemagnates.com/forex/no-afs-license-needed-until-2025-asic-extends-ffsps-transitional-relief-again

MENAT market reforms sweep the region
In MENAT, existing platforms and processes are being enhanced to bring markets in line with global standards and enable streamlined investor access by the introduction of measures such as simplified IPO processes (UAE and Saudi Arabia), English language announcements (Kuwait), and the introduction of CCPs (Saudi Arabia, UAE, Qatar, and Kuwait), while also updating trading and post-trade practices to international best practice. 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.

The majority of members of the GCC, with the exception of Bahrain and Oman, are now listed in Emerging Market (EM) indices.[109] This has boosted investment activity in the region, with the newly listed GCC countries aspiring to upgrade to the category of a developed market and working to increase the efficiency of transactions in alignment with global standards. Meanwhile, Bahrain and Oman are working towards implementing market reforms that will allow their respective countries to also become indexed as emerging markets.

Stock Exchanges and Depositories in the GCC are introducing major transformation programmes to upgrade their market infrastructure and improve the investor experience. Examples include Saudi Arabia's Post Trade Transformation Program[110], the UAE Central Bank's digital banking transformation strategy,[111] and Qatar's CSD system upgrade designed to introduce T+2 settlements in March 2024.[112]

These ambitious programmes are fostering greater efficiencies that can help investors and market participants better manage risk while also creating new market opportunities for investors, such as securities lending and borrowing, derivatives trading, and ETFs.

Elsewhere in MENAT, Egypt has established the Egyptian Central Securities Depository (ECSD) to help manage the registration deposit and settlement procedures for government debt and to facilitate access to the local market through International Central Security Depositories. Meanwhile, Kuwait is implementing net settlement and has recently introduced partial settlement of trades.

109 https://www.gbm.hsbc.com/en-gb/insights/market-and-regulatory-insights/mena-securities-market-on-the-rise
110 https://www.gbm.hsbc.com/en-gb/insights/international/saudi-arabia-post-trade-transformation-program
111 https://dig.watch/updates/uae-banks-federation-accelerates-digital-transformation-for-banking-services
112 https://www.thetradenews.com/qatars-edaa-postpones-t2-switch-until-march

Global tax reforms continue to intensify

Globally tax reforms continue apace as regulations increasingly look to enhance reporting requirements, curb tax avoidance and respond to pressure to take action on global inequality.

BEPS 2.0 Pillars One & Two
Today, 145 jurisdictions have signed up to the OECD's Base Erosion and Profit Shifting (BEPS) Inclusive Framework. BEPS 2.0 Pillar One aims to align taxing rights more closely with the location of customers and its scope covers all industry sectors with the exception of regulated financial services and extractive industries. This pillar will only initially apply to multinationals with an annual global turnover exceeding €20 billion and a profit before tax of at least 10%. While there are uncertainties as to whether global agreement can be reached on Pillar One, companies within the scope should continue to monitor developments in this space, including the introduction of jurisdictional-specific Digital Services Taxes (DST).

Pillar Two of BEPS 2.0 has a much broader application than Pillar One and introduces a 15% global minimum tax aimed at multinational companies with revenue of at least EUR 750 million.[113] However, the complexity of the qualifying criteria is such that companies below this threshold may incur a top-up tax in certain circumstances. A number of entity types are out of scope for Pillar Two, including government entities, international organisations, non-profits, pension funds, investment and real estate funds. Nonetheless, 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.

In contrast to Pillar One, implementation of Pillar Two continues to gather pace globally across Europe, the Middle East, Asia Pacific and the Americas. In Europe: the EU, UK, Norway, Switzerland and Liechtenstein will implement at least some element of the Pillar Two rules from 1 January 2024, while the Channel Islands and Gibraltar have also announced their intention to implement legislation. Across the Middle East both Qatar and the United Arab Emirates are expected to develop detailed provisions and regulations. In Asia Pacific: Australia, South Korea and Vietnam will implement at least some elements of Pillar Two from 1 January 2024, with Singapore and Hong Kong SAR following a year later. Across the Americas: Canada and Barbados have implemented draft legislation and Bermuda has announced a corporate income tax of 15% effective from 1 January 2025. Latin American countries including Mexico and Brazil are also considering implementing Pillar 2 rules. Finally, while implementation of Pillar Two remains stalled in the US, the US Global Intangible Low-Taxed Income (GILTI) regime will be treated favourably under Pillar Two rules at least until 2026.

With BEPS Pillar Two now in force, to at least some extent, in many jurisdictions globally and with developments continuing apace, impacted entities should continue to monitor developments closely.

113 https://www.ey.com/en_gl/tax/why-a-15-percent-financial-statement-tax-rate-may-not-avoid-global-minimum-tax.

Withholding tax reforms in the EU

In Europe, the European Commission's proposed Faster and Safer Tax Excess Relief (FASTER) directive was issued in June 2023.[114] The proposed Directive is focused on EU cross-border tax efficiency and aims to remove barriers to cross-border investment, improve processes for global portfolio investors, and strengthen the ability of Member States to prevent and combat tax avoidance and fraud. By standardising and modernising withholding tax relief processes across the EU, the aim is to lessen the burden for stakeholders and reduce the risk of double taxation that results from applications for refunds.[115]

The European Parliament approved the EU FASTER Directive on the 28th February 2024. The European Council still has powers to make changes to the text within the Directive and to the 1 January 2027 implementation date. It is understood that the European Commission has been working with the EU Member States to get consensus and agreement from each of the 27 EU Members. The market is anticipating a revised text and a later implementation date beyond 2027, with further information expected to be released by H1 2024.

Germany's Withholding Tax Modernization Act in focus

Germany's Withholding Tax Modernization Act came into law on 9 June 2021. The purpose of the new tax law is wholly focused on strengthening fiscal controls to combat tax avoidance and fraud. This is being achieved by creating new tax reporting requirements that will be legally enforceable on local banks and through the global custody chain.

The new tax regulations will apply to all German dividends or dividend equivalent corporate actions paid on or after 1 January 2025. The dividend/ tax vouchers currently issued for German dividend corporate actions will be abolished for non-German investors and will be replaced with what is known as a Universally Unique Identifier (UUID).

There will be a separate UUID issued per investors' corporate action event. The UUID is a prerequisite for non-German tax resident investors to qualify procedurally for any tax reclaims after 2025.

Tax transparency for cryptoassets

Several jurisdictions are also taking action to boost tax reporting regarding the exchange of information relating to digital assets and to clamp down on tax evasion.

The OECD's Crypto-Asset Reporting Framework (CARF) seeks to introduce standards for the global tax transparency of crypto assets and is due to be implemented by 48 countries by 2027.[116] Similarly, in October 2023 the European Council adopted the DAC8 Directive in a bid to boost cooperation between national tax authorities.[117] The US has announced that it intends to introduce legislation to implement CARF with the IRS introducing a new form 1099-DA which is designed to capture more detailed information regarding annual crypto asset gains and losses; this will provide greater information from investors and help prevent the use of digital assets in hiding taxable income.[118]

Common Reporting Standards (CRS) compliance

The OECD is increasing scrutiny regarding Common Reporting Standard (CRS) compliance, urging tax authorities to implement reviews and in-person audits in order to ensure compliance.[119]

114 https://www.ey.com/en_gl/tax-alerts/european-commission-publishes-draft-directive-on-faster-and-safe
115 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13031-Withholding-taxes-new-EU-system-to-avoid-double-taxation_en
116 https://www.oecd.org/newsroom/secretary-general-mathias-cormann-welcomes-pledge-by-48-countries-to-implement-global-tax-transparency-standard-for-crypto-assets.htm
117 https://www.consilium.europa.eu/en/press/press-releases/2023/10/17/council-adopts-directive-to-boost-cooperation-between-national-taxation-authorities-dac8/
118 https://www.irs.gov/newsroom/treasury-and-irs-issue-proposed-regulations-on-reporting-by-brokers-for-sales-or-exchanges-of-digital-assets-new-steps-designed-to-end-confusion-help-taxpayers-aid-high-income-compliance-work
119 https://www.ey.com/en_gl/tax/how-financial-institutions-can-stay-crs-compliant

Australian developments

Australian AEOI compliance update

From July 2023, it is expected that the Australian Taxation Office (ATO) will focus on compliance and stronger enforcement following the release of the AEOI self-guide and toolkit in 2022. The compliance toolkit provides Australian Reporting Financial Institutions (RFIs) self-assessment of their compliance against ATO expectations prior to a review.

ATO compliance reviews will focus on data quality, with the ATO investing heavily in data analytics and now able to quickly review and identify data issues in CRS reports. Typically, these data quality issues will highlight deficiencies in upstream due diligence processes and controls.

The ATO has publicly stated they will enforce the reporting deadline of 31 July going forward. Extensions will be granted in only very limited circumstances. Automatic penalties may also be levied for non-compliance.

ATO will review methodology for RFIs
Using data analytics and risk modelling, the ATO will identify various RFIs in need of a review by looking at risk factors including whether there are inconsistent volumes of reporting; the reporting of incorrect tax identification numbers, including non-reportable entities; and the inclusion of account holders in non-tax jurisdictions.

The ATO will conduct its review in accordance with the Guide checklist and application of the risk rating:

- Operating as required: The AEOI framework has been properly designed and appropriately executed. Periodic reviews and regular testing occur, and any areas for improvement have been satisfactorily resolved.
- Operating in part (requires improvement): The AEOI framework has been properly designed, but one or more of its core elements require work. Gaps or deficiencies have been identified and require resolution.
- Not operating as required or not in place: A proper AEOI framework is not evident, and/or there are significant concerns that information is not accurately recorded and reported.

These ATO reviews are expected to be conducted in a rolling 4-year period. Any findings must be addressed by the RFI and the RFI is expected to continue monitoring its AEOI framework with errors being remediated

Australian Tax Office third-party data governance

The Australian Taxation Office released its guidance in relation to governance over third-party data for the investment industry in 2022, and this will come into force on the 1 July 2024. The supplementary guide's application extends to superannuation funds, managed funds and insurance companies who have outsourced part of their tax reporting obligations.

The guidance sets out four fundamental controls that the ATO expects over investment data management where an outsourced provider provides services to an investment entity:

- Defined role and responsibilities between investment entities and third-party provider
- Tax Policy of third-party provider is in accordance with law
- Returns and tax outcomes properly reflected in tax reporting
- Independent Assurance

Compliance with the guidance will be part of the general ATO Strategic Assurance Reviews (SAR) conducted over investment entities. It is expected that from 2024 a Third-Party Data Questionnaire will be included in the ATO requests for information at the start of their SAR.

Third-party data providers will be expected to have a properly designed controls framework over the data management on which an independent assurance is conducted.

Australian Privacy Act Review Report

In March 2023, Australia's Attorney-General's Department released a report following itsreview of the 1998 Privacy Act.119 It included 116 recommendations that could be transformative for how Australia handles data. This comprehensive reform package clarifies and broadens the scope of information protected by privacy laws and enhances privacy protections to protect and empower individuals with a stronger, more responsive enforcement and compliance toolkit.[120]

120 https://www.ashurst.com/en/insights/overhaul-of-australian-privacy-laws-imminent/

Asia's tax modernisation drive
While many jurisdictions in Asia Pacific are committed to implementing both BEPS Pillar Two and CARF, reforms to existing tax regimes are also being introduced in a bid to modernise and simplify rules and attract foreign investment to the region. In some jurisdictions transaction taxes such as stamp duty have become an area of increased focus. In 2023, mainland China reduced stamp duty from 0.1% to 0.05% and Hong Kong introduced stamp duty reduction (from 0.13% to 0.1%) for stocks trading on the Hong Kong Stock Exchange (HKEX). In South Korea, the government has scrapped taxes on foreign income from government bonds.[121] In Thailand, the Ministry of Finance has proposed measures to re-introduce stamp duty at the rate of 0.11%. However, the proposal has been put on hold given the current economic conditions.

Hong Kong continues to expand its tax treaty network. In January 2024, the Hong Kong Government signed a double tax treaty with Croatia. The treaty will become effective after completion of ratification procedures by both jurisdictions.[122]

In January 2024, the Philippines signed a new tax bill into law to modernise and streamline tax payments and extended this simplified regime to non-residents in a bid to further attract foreign investment.[123]

In October 2023, Malaysia introduced a Capital Gains Tax (CGT) that places a 10% levy on net gains derived from the transfer of shares in unlisted companies effective from 1 March 2024.[124] The expectation is that unlisted securities, and potentially property-rich global securities, will fall under the scope of the CGT.

121 https://www.reuters.com/markets/asia/skorea-scrap-taxes-foreigners-income-bonds-minister-2022-10-16/
122 https://www.ird.gov.hk/eng/ppr/archives/24012401.htm
123 https://www.reuters.com/markets/asia/philippines-enacts-new-law-that-makes-paying-taxes-easier-2024-01-07
124 https://www.internationaltaxreview.com/article/2ccewd80bhh2f3wa11pfk/this-week-in-tax-pwc-announces-strategic-ai-alliance-to-boost-client-service

Final thoughts

We are seeing increasing pressure to accelerate sustainability regulation to meet global climate objectives. This is leading to steady but increasingly comprehensive initiatives that impact companies across the value chain and across jurisdictions.

Regulators are also responding to the rapid advancement and deployment of innovative technologies — creating new rules to support innovation while protecting consumers and market participants. There is also a renewed focus on accountability in the form of tax rules that seek to improve outcomes for citizens and streamline cross-border information exchange.

These developments represent three core policy pillars that set the foundations on which policy makers will build in the coming months and years. To understand their relationship to this evolving regulatory landscape, businesses can benefit from closely watching these developments to ensure they are operationally ready to enter a new era of sustainable growth and prosperity.

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