Horizon Scan for Private Investment Funds: Key Recent and Expected funds, Regulatory and Tax Developments to look out for (February 2024)

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Topic	Region	Issue	Recent and Expected Developments	Comments/ Impact	In-scope/ Priority
UK/general funds developments		Reform of UK Limited Partnership (**UKLP**) Law Please click here to see our client alert for more detail.	The Economic Crime and Corporate Transparency Act (**ECCTA**) received Royal Assent on 26 October 2023 and introduces significant reforms to UKLP Law for both new and existing UKLPs. See also below for the new failure to prevent fraud offence that ECCTA introduced.	Although the Act is now in effect, most of the provisions require secondary legislation to be brought into force.	Any managers with UKLPs in their fund structures
		The Long Term Asset Fund (**LTAF**) and Theme of Retailisation/Democratisation See our recent client alerts Recent Updates in the UK Venture Fundraising Landscape and The FCA's Final Rules for LTAFs: Distribution to mass market retail investors	There have been several recent developments designed to reduce investment barriers to help drive defined contribution (**DC**) pension investment in long-term illiquid investments such as private equity, venture capital, infrastructure and real estate – therefore with the LTAF in mind. For instance, the Mansion House Compact, removal of carried interest from the cost cap and consolidation of DC funds. Also: • revised guidance for Local Government Pension Schemes (**LGPS**) in England and Wales to implement a 10% allocation ambition for investments in private equity, venture capital, growth capital, private debt etc, and that is estimated to unlock around £30 billion • the establishment of a British Business Bank-backed Growth Fund to provide both expertise and funding to facilitate pension fund investment • an FCA review in the Value for Money (**VfM**) framework for DC workplace schemes, in order to shift the focus from cost to longer-term value and aims to ensure transparency and delivery of the VfM concept	There remain some cultural, operational and structural challenges to DC pension scheme investment in private funds, including a lack of third party fund platforms for illiquid assets (which to date have been predominantly focused on providing access to daily-traded assets) and that there are many small DC funds which cannot scale to allocate sufficient capital to illiquid assets. Wider Government momentum, including to encourage smaller DC funds to consolidate, should help.	Full-scope UK alternative investment fund managers (**AIFMs**) (with permission to manage an authorised AIF)
		Reform of UK Funds Regime and Regulatory Initiatives in general See our October 2023 Horizon Scan on the proposed Reserved Investor Fund regime	The FCA's November 2023 Regulatory Initiatives Grid includes three updates of interest in the pipeline: • the Government is progressing work on proposals on the establishment of an unauthorised contractual scheme for professional investors (i.e. the Reserved Investor Fund) • the FCA is finalising its Policy Statement on proposals to introduce notice periods for open-ended daily-dealt authorised property funds • Stewardship Code – the FRC (supported by the DWP, the FCA and the Pensions Regulator) will review the	Developments in these priority areas, along with the UK's version of AIFMD and potential reform of the UK regime for retail funds, will be important in terms of the UK asset management's direction of travel and extent of future alignment with EU regulation. These need to be considered in the policy context set by the Mansion House reforms, including unlocking investment by pension schemes in unlisted and smaller corporates. The Labour party's stated intentions (should it	FCA-authorised managers and distributors

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			policy and regulatory framework for effective stewardship in the second half of 2024	form a government) to champion the UK's role as a global leader in financial services will be welcomed by the industry.	
		Ongoing work on how to address structural liquidity mismatches in open-ended funds (**OEF**) Our October 2023 horizon scan provides more background	The Financial Stability Board (**FSB**) has published revised recommendations to address structural vulnerabilities from liquidity mismatch in OEFs. These are addressed to financial regulatory and supervisory authorities. To support these objectives and ensure more effective liquidity risk management practices, the International Organization of Securities Commissions (**IOSCO**)'s liquidity management tools (**LMTs**) guidance provides detailed guidance on the design and use of anti-dilution LMTs by OEF managers. The FSB and IOSCO will review implementation progress and, by 2028, assess whether the implemented reforms sufficiently addressed financial stability risks.	Alongside output from other regulators such as the UK's FCA, the message is that firms are not giving sufficient weight to managing liquidity in their frameworks and governance structures. It will be important to monitor any developments in particular for open-ended real estate funds, given ESMA's recent report that liquidity mismatches remain the key vulnerability. In response to feedback received during the consultation stage, the FSB made a number of changes to the revised recommendations, including clarifying the categorisation approach and providing more flexibility to authorities on implementing the framework in their respective jurisdictions.	Managers of OEFs (in particular of illiquid assets)
Sustainable Finance (UK)		FCA rules (PS23/16) on Sustainability Disclosure Requirements (SDR) and Investment Labels See our December 2023 client alert for background and further detail	Following its October 2022 consultation (CP 22/20) (delayed because of the many responses received), the FCA published its response and final SDR rules in its Policy Statement (PS 23/16) on 28 November 2023, along with a consultation for guidance on the new anti-greenwashing rule. The UK's SDR is a set of requirements covering: (i) a new 'anti-greenwashing' rule (that affects all FCA-regulated firms); (ii) a voluntary labelling regime for products with a sustainability objective as part of their investment objective; (iii) product disclosure requirements; (iv) sustainability entity reporting; (v) retail investor-specific requirements on naming and marketing, consumer-facing product-level disclosures and for distributors.	A manager not using a label but still in scope will have to produce the same disclosures as for funds that have a label, alongside a prominent statement to clarify that its product does not use a label and why. Apart from the anti-greenwashing rule, SDR will not apply to non-UK funds marketed in the UK. Neither will it apply to segregated accounts and other portfolio management products and services. However, along with pension products, insurance-based investment products and financial advisers, overseas funds and portfolio management will be brought into scope in due course.	Certain UK AIFMs of UK AIFs with retail investors (phased implementation from 31 May 2024)

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		ESG Sourcebook Task Force on Climate-Related Financial Disclosures (**TCFD**) See our October 2022 client alert for more detail	These rules (set out in the FCA Handbook at ESG2) impose annual disclosure requirements – TCFD entity and TCFD product reports. They have wider scope than SDR, in that they apply to full-scope UK AIFMs, authorised small UK AIFMs, managers that undertake portfolio management and certain asset owners.	Although the rules have applied from 1 January 2022 to larger in-scope managers, from 1 January 2023 they have applied to asset managers and asset owners with ≥£5bn AuM; with a first publication deadline of 30 June 2024.	UK asset managers with ≥£5bn AuM
		UK Green Finance Strategy and sustainability reporting in the UK Our October 2023 horizon scan provides more background, in particular on the development of a UK green taxonomy and new International Sustainability Standards Board (**ISSB**) sustainability standards	In October 2023, the UK Transition Plan Taskforce published its final version of the disclosure framework (**Disclosure Framework**) and has also published sectoral guidance on how it should be implemented in various industries. It is intended to govern the so-called transition plans whereby a company sets out their strategy for transitioning its business towards a more sustainable lower-carbon model. The Disclosure Framework is part of the UK's Green Finance Strategy launched by the government to manage the transition to a greener economy. The Disclosure Framework was designed to provide a set framework of best practices which will help companies to make transition plans which are more readily comparable by investors and other stakeholders. The Disclosure Framework is centered around three guiding principles (i) Ambition, (ii) Action, and (iii) Accountability. Under "Ambition" a company is to disclose the objectives of how its transition plan is to work, including noting the impact it will have on the business. The "Action" principle focuses on the company disclosing how in practice it is going about implementing the transition place. Finally, the "Accountability" principle requires the company to set out the metrics and targets it is going to use to measure its progress.	Despite the publication of the final form Disclosure Framework, adherence to it is not currently mandatory. However, the FCA has signaled its intention to consult on requirements for UK listed companies to publish their transition plan disclosures which must be in line with the Disclosure Framework. The requirements are expected to come into force for accounting periods beginning after January 2025. The UK Government has also said it will consult on requirements for large private companies to also disclose their transition plans. The FCA are advising companies to use the Disclosure Framework now, before mandatory requirements are put in place. We would expect FCA-authorised asset managers and owners to also be brought within scope in due course. It is also likely to be of interest to international regulatory authorities.	UK companies and managers
		IOSCO report on supervisory practices to address greenwashing	On 4 December 2023, IOSCO published a final report on how various jurisdictions were addressing greenwashing in the areas of asset managers and ESG ratings and data product providers. The report noted that the market for ESG ratings and data is still in a phase of rapid growth. However, the market for such data remains largely unregulated. The report identified that there is a lack of transparency in the market on ESG rating methodologies used which can lead to market confusion as to	As well as reiterating the threat of greenwashing, the report also drew attention to other forms of malpractice such as greenhushing (the act of corporate management teams under-reporting or hiding their sustainability credentials in order to evade investor scrutiny) and greenbleaching (when a provider of investment services or	ESG data providers and managers

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			what a rating is aiming to assess and how. The report further noted the potential conflicts of interest that can arise where an ESG rating provider also provides advice to the rated entity on how to improve that rating.	products that is in practice "green" chooses not to claim that it is to avoid extra regulatory requirements and a potential regulatory or legal risk). The report noted that whilst such practices may not currently be in breach of national laws, this is an area where national regulators are increasingly focusing their attention.	
Sustainable Finance (EU)		Sustainable Finance Disclosure Regulation (**SFDR**) See our client alerts on the Seeds of SFDR II, ESG/sustainability-related terms in fund names and our overview guide	The proposed changes to the SFDR Level 2 measures could lead to significant technical revisions and amended disclosure templates. These include additional disclosures for 'sustainable investments' and PAI indicators, for financial products with underlying investment options and for GHG emission reduction targets. More detailed rules are now in force for those with investments that are aligned with the EU Taxonomy. Separate to this, we await output following the SFDR overview consultations that closed on 15 December 2023 and that could lead to significant changes to the current disclosure framework. At the moment there is nothing substantive to illustrate what SFDR II (if there is one) may look like (for instance, legislative amendments or an outline roadmap of what to expect). Also the ESA's final report on greenwashing is expected in May 2024.	For the foreseeable future the current legislative framework remains in place. The possibility of the establishment of an SFDR categorisation system will potentially create the biggest change, in particular the ability for transitional strategies to be recognised as sustainable, and would also more closely align with the UK SDR and labelling regime. A European Commissioner acknowledged in an October 2023 speech that in the relatively new area of sustainable finance: *"Making changes should not viewed as something negative – I think this is just how regulation works. In this relatively new area of sustainable finance, we are literally learning by doing."*	EU managers and advisers and non-EU managers who market to EU investors
		ESMA Consultation on Guidelines on Fund Names Using ESG or Sustainability-Related Terms See our recent client alert ESG / Sustainability-Related Terms in Fund Names: Some News from ESMA	In December 2023, ESMA provided an update on its proposed guidelines on funds' names using ESG or sustainability-related terms (**Guidelines**). The purpose of the Guidelines is to tackle greenwashing risk in funds, by using quantitative thresholds for the use of ESG and sustainability-related terminology in fund names. ESMA has confirmed that it has postponed the adoption of the Guidelines until AIFMD II is published (expected in Q2 2024). The Guidelines will come into force three months after they are published.	Following on from the consultation period and after taking into consideration industry feedback, ESMA has made some changes to what was originally set out in its consultations. Whilst the final text has not been made available, it is expected that: • a fund with a sustainability-related term in its name should: apply a minimum proportion of at least 80% of its investments to meet the environmental or social characteristics	EU managers and advisers and non-EU managers who market to EU investors

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			Managers of existing funds will have a six-month period in which to comply, whilst the Guidelines will apply to new funds immediately following publication.	or sustainable investment objectives; apply the Paris-aligned Benchmarks exclusions; and invest 'meaningfully' in sustainable investments; • there will be a category for 'transition'-related terms to accommodate funds using terms in their names, where such a fund should apply a minimum proportion of at least 80% of its investments that are aligned with the EU Climate Transition Benchmarks, including where used in combination with ESG terms.	
		Corporate Sustainability Due Diligence Directive (**CSDDD**)	The CSDDD seeks to establish a corporate due diligence duty (as well as duties for directors) on companies in relation to actual and potential human rights adverse impacts and environmental adverse impacts. In December 2023, the European Parliament and Council reached a provisional deal on CSDDD. The agreement must now be formally adopted by both institutions.	It will apply to large companies with more than 500 employees and a turnover of more than €150m. Importantly, under the provisional deal, financial services will be temporarily excluded from scope, but there will be a review clause for possible inclusion of the financial downstream sector in the future. Please click here for further information.	Financial services will be temporarily excluded (but note may be included in the future)
		Corporate Sustainability Reporting Directive (**CSRD**) and adoption of the European Sustainability Reporting Standards (**ESRS**)	The CSRD came into force in January 2023. As well as information on financial materiality, companies in scope are required to report on the social and environmental risks they face and the impact their activities have on people and the environment. It will apply to companies in stages: 1. Public interest entities with more than 500 employees must report in 2025 in relation to the 2024 financial year. 2. Large EU companies/groups to report in 2026 in relation to 2025 (defined as those that satisfy two of: (a) a balance sheet of €20m; (b) net turnover of €40m; (c) average of 250 employees in the financial year). 3. Listed SMEs that are not micro-undertakings begin in 2027 in relation to 2026.	The ESRS were finalised on 22 December 2023 and create a common reporting framework for those companies in scope of CSRD. Funds may be indirectly caught under the 'value chain' concept, incorporating impacts that arise through direct and indirect business relationships in an entity's upstream and downstream value chain. Sectoral standards (including for financial services) and guidance are to follow in 2026.	For those in scope (see fourth column and note the value chain concept)

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			4. Non-EU parents with a subsidiary that is either 2. or 3. above, or that has a large EU branch, to report in 2029 in relation to 2028.	Please click here for further information.	
		The German Future Financing Act (Zukunftsfinanzierungsgesetz) entered into force on 15 December 2023. It aims to enhance Germany's attractiveness as a business location for sustainable investments by national and international companies. It amends several key laws for investment funds and their managers in Germany, notably: • the Value Added Tax Act (**UStG**) • the German Investment Code (**KAGB**)	Among the numerous amendments, the following are of particular interest for sponsors and managers of AIFs: • VAT exemption: The management of all types of AIFs will be exempt from VAT according to Section 4 no. 8 lit. h UStG. This broadens the VAT exemption beyond its previous scope, which was limited to the management of AIFs that were comparable to UCITS or venture capital funds. The VAT exemption for the management of AIFs has applied since January 1, 2024. • Crypto assets: In Germany, only general open-ended and closed-ended special AIFs were initially able to directly invest in crypto assets. With the German Fund Location Act 2021 (Fondsstandortgesetz), this option was then also introduced for special AIFs with fixed investment conditions in accordance with Section 284 KAGB, which are frequently found in practice. See our July 2022 client alert for background. The Future Financing Act goes another step further enabling public investment funds (both open-ended and closed-ended) to directly invest up to 10% of their value in crypto assets. • Real estate funds and renewable energy system: Originally, the draft of the Future Financing Act provided for the investment catalog of open-ended real estate funds to be expanded to include systems that generate, transport or store electricity, gas or heat from renewable energies, such as photovoltaic systems. However, these changes were finally not incorporated into the Future Financing Act.	Many fund managers have been disappointed by the fact, that the renewable energy systems have been removed from the Future Financing Act during the course of the deliberations in the Parliament. However, the amendments regarding renewable energy systems have only been postponed. According to the legislator, they will be introduced in the Annual Tax Act (Jahressteuergesetz) that is expected to be passed still 2024. Along with changes to tax law, the planned amendments regarding renewable energy systems could open up new investment opportunities for open-ended real estate funds. For further context on the impact of renewable energy systems for funds, please see our recent publication in the press.	EU managers
Sustainable Finance (US)		SEC Proposed ESG Disclosure Rules	On 25 May 2022, the US SEC proposed ESG disclosure rules that would require funds and advisers that employ ESG strategies in their investment processes to comply with new disclosure requirements, which would vary depending on the extent of ESG factor integration, characterised as "ESG	The proposed rules, meant to address greenwashing, are the US version of the EU's SFDR that has applied since March 2021 and the UK's SDR (both of which are covered above). The focus, however, is	SEC-registered investment companies and

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		See our recent client alert for background	Integration Strategies," "ESG-Focused Strategies," and "Impact Strategies."	solely on disclosures, and the SEC does not promote the adoption of a particular ESG strategy or any ESG strategy at all.	registered investment advisers
		SEC Amendments to Fund Names Rule See our recent client alert for background	On 20 September 2023, the SEC finalised amendments to the Fund Names Rule, which, among other requirements, requires that 80% of assets in a fund with a name that suggests a particular focus, including a name indicating that the fund's investment decisions incorporate ESG factors, be invested in accordance with such focus.	Compliance is required by 11 December 2025 for funds with $1 billion or more in net assets; small fund groups have an additional six months to comply.	Registered Funds
		The US Department of Labor (**DOL**) Released Final Amendments to Its Regulation on Investment Duties See our recent client alert for background	The amendments, effective 30 January 2023, revised the Employee Retirement Income Security Act of 1974 (**ERISA**) regarding the consideration of ESG factors by retirement plan fiduciaries. On 20 March 2023, President Biden vetoed a resolution passed by the US Congress that would have overturned this rule. On 21 September 2023, a District Court ruled against a group of 26 states and other interested private parties that sued the DOL seeking to invalidate the rule. The plaintiffs have appealed this dismissal. A separate case in a different District Court is also ongoing.	The DOL's final amendments expressly reference ESG factors but take a neutral stance on whether investment fiduciaries should consider them and, to the extent they are considered, the weight to be afforded to them, providing investment fiduciaries leeway to determine whether and to what extent ESG factors are relevant in any given case. In keeping the rule in place, the court determined that ESG factors could be considered in certain cases but, as was the case pursuant to prior versions of the rule, the consideration of ESG factors should reflect a reasonable assessment of their impact on financial returns.	Pension fund managers
		Several US States or Groups of States Have Engaged in "Anti-ESG" or "Pro-ESG" Activity See our recent client alert for our thoughts on facing conflicting ESG positions	Certain states have enacted new legislation, investment policies, attorney general opinions, letters, reports, statements, investigations and unilateral state treasurer action, such as divesting from certain high-profile investment managers or threatening to do so. Some states have also "blacklisted" certain companies that they have determined to act contrary to the principles and obligations that are the subject of the anti-ESG or pro-ESG action.	The anti-ESG efforts, though widely acknowledged to promote a "red state" political agenda, are having a practical, if not a legal, impact. For example, multiple global financial services company participants have abandoned their alliances falling under the Glasgow Financial Alliance for Net Zero umbrella, including the Net Zero Asset Manager initiative.	Financial services companies doing business with certain U.S. states
		California Climate-Focused Legislation	A series of bills passed in California require companies that do business in the state to disclose their Scope 1, 2 and 3	"Doing business in California" is not defined in the legislation and could	US-based partnership,

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			greenhouse emissions (compliance required starting in 2025 for Scopes 1 and 2 and 2026 for Scope 3), their climate-related financial risks (first report due in 2026), and certain other information if they make claims regarding significant emissions-reduction and/or "net zero" claims (effective since 1 January 2024). The new requirements apply to both public and private companies but emissions and climate-related financial risk disclosure requirements have annual revenue triggers for coverage of $1 billion and $500 million, respectively.	potentially include simply having customers or investors located in California. The California governor did not fund the bills in the 2024 state budget, calling into question the feasibility of enforcement in the near future. Other states, including New York, are reportedly on the verge of passing similar legislation.	corporations, limited liability companies and other entities
Regulatory Developments (UK)		D&I Standards for Large Firms, Nonfinancial Misconduct Rules for All See our recent alert: The FCA Consult D&I Standards for Large Firms, Nonfinancial Misconduct Rules for All for more	On 25 September, the FCA published its consultation paper CP23/20: Diversity and inclusion in the financial sector – working together to drive change, alongside a similar consultation paper published by the Prudential Regulation Authority (PRA), CP18/23 – Diversity and inclusion in PRA-regulated firms. The CP sets out the FCA's proposals for all firms to better integrate nonfinancial misconduct (**NFM**) considerations into their senior manager and certification regime (**SMCR**), including rules for staff fitness and propriety assessments, the FCA Conduct Rules, and threshold conditions for firms. For firms with more than 250 staff members that are not classified as limited-scope SMCR firms — which includes certain self-managed alternative investment funds and service companies noted in our alert Trading Venues in the UK: Regulatory Clarity for Fintech Providers; Implications for Crypto-Trading and DeFi, the FCA is also proposing diversity and inclusion (**D&I**) requirements that would compel companies to: • report their average number of employees to the FCA on an annual basis • collect, report, and disclose certain D&I data • establish, implement, and maintain a D&I strategy • determine and set appropriate diversity targets	The FCA's proposed imposition of D&I requirements is not as wide ranging as some may have expected and will not apply to most private fund managers. The extent to which out-of-scope firms may seek to follow the requirements as standards of good practice has yet to be seen. The NFM proposals are not new and reflect the FCA's direction of travel in bringing enforcement actions From a practical point of view, NFM will have an effect on questions about notifications to the FCA and the contents of regulatory references, which firms are often forced to grapple with in the context of employment and disciplinary issues.	FCA firms

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			• recognise a lack of D&I as a nonfinancial risk		
		The Consumer Duty See both our September 2022 Back to Work: The FCA'S 2022-23 Priorities for Private Fund Managers and our October 2023 horizon scan for background	The FCA Consumer Duty came into force in July 2023, introduced in a new FCA Principle for Businesses, Principle 12, which states: "A firm must act to deliver good outcomes for retail customers." The implementation and enforcement of the duty continues to be a priority for the FCA. The duty applies to managers who provide services for a retail customer, defined in the context of an alternative investment fund as an investor in the fund or the beneficial owner of interests in the fund, that is not a professional client. The duty will not, therefore, apply to professional investors in respect of whom the AIFMD, by default, limits the marketing of private funds.	Where retail customers are targeted or a manager wishes to offer employee participation to employees who cannot be classified as professional clients, firms should continue to assess their compliance with the Consumer Duty and expect this to be a key area of ongoing FCA scrutiny.	FCA firms who provide services to retail customers
		Financial Services and Markets Act (the **FSM Act**)	The FSM Act received Royal Assent on 29 June 2023 and forms the centerpiece of the FCA's future regulatory framework. Most provisions are now in force. Under The Financial Services and Markets Act 2023 (Commencement No. 4 and Transitional and Saving Provisions) (Amendment) Regulations 2023, the following provisions are still expected: • **1 August 2024:** provisions relating to the FCA and PRA's cost benefit analysis panels • **1 January 2025:** The Bank of England, FCA, PRA and PSR must have regard to the environmental targets under the Environment Act 2021 • **1 February 2025:** HM Treasury's obligation to send written recommendations to the Bank of England's FMI Committee at least once in each Parliament	The sweeping changes brought in by the FSM Act will continue to become effective throughout 2024, progressing a number of the initiatives proposed in the 2022 Edinburgh Reforms and extending the powers granted to regulators. In particular, much has been made of the secondary objective for growth and international competitiveness, which is nearly identical to what was contained in the version of the Financial Services and Markets Act 2000 made over 20 years ago. The full impact of the changes, including the secondary objective on the FCA and PRA rulemaking and policymaking powers, remains to be seen.	FCA and PRA firms
		Changes to The Financial Promotion Approval Regime	In September 2023 the FCA published Policy Statement PS23/13. This sets out a change to the financial promotions regime whereby from 7 February 2024 all authorised persons that want to approve financial promotions for unauthorised persons will need FCA permission to do so (subject to certain exemptions).	Firms that wish to approve financial promotions, as well as those that currently rely on third parties approving their promotions, will need to ensure they comply with the new regime prior to the 7 February 2024 deadline.	FCA firms who approve financial promotions, and those who rely on

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			The FCA began accepting applications in November 2023. Following a firm being granted permission, they will be made subject to certain reporting requirements.	However, it is important to note that the new regime will not affect: (i) authorised persons that only approve their own financial promotions for communication by an unauthorised person; (ii) the financial promotions of appointed representatives relating to the principal's regulated activities they have accepted responsibility for; or (iii) the financial promotions of unauthorised persons within the approver's corporate group.	FCA firms to approve their promotions

		Amendments to UK High Net Worth Individual and Sophisticated Investor Exemptions
		
		For further information on these changes please refer to our article UK HNW and Sophisticated Investor Exemptions: More Financial Promotion Changes
			On 31 January 2024 amendments to the Financial Promotion Order will come into force affecting how funds can rely on the high net-worth individual and self-certified sophisticated investor exemptions. These include (amongst other changes):
			• Raised financial thresholds required for investors to be eligible for the high-net-worth individual exemption to one of the following:
			  ○ Income of at least £170,000 in the last financial year
			  ○ Net assets of at least £430,000 throughout the last financial year
			• Changes to the criteria to be eligible for the self-certified sophisticated investor exemption:
			  ○ Removing the criterion of having made more than one investment in an unlisted company in the previous two years
			  ○ Increasing the company turnover required to satisfy the "company director" criterion to £1.6m (i.e., directors of companies with at least £1.6m turnover will remain eligible for the self-certified sophisticated investor exemption).
			• A new requirement for businesses to provide certain details (including the company address, contact
				Given the large number of funds that rely on the high net-worth individual and self-certified sophisticated investor exemptions, this represents a major change that should be noted by those seeking to continue relying on the exemptions. That being said, the content of the changes is not overly burdensome to comply with and largely reflects the changing economic environment since the thresholds were initially set in 2005.	Managers who rely on these exemptions

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			information, and registration details) in any communications made using the exemptions. • Updated language in the high-net-worth individual and self-certified sophisticated investor statements with the aim to achieve greater engagement from investors and higher awareness of the regulatory protections they will lose.		
		The UK PRIIPS Regulation (Packaged Retail and Insurance-based Investment Products)	On 22 November 2023 HM Treasury published a draft statutory instrument and accompanying policy notice to replace the UK PRIIPS regime with a new UK retail disclosure framework. This was open to comments until 10 January 2024 and, subject to Parliamentary time, will be passed in 2024. Parallel to process for making statutory changes, in H1 2024 the FCA will publish a consultation on accompanying draft rules to replace the PRIIPs Regulation. Following the consultation period, the FCA will pass a Policy Statement with revised language in H2 2024.	The new rules designate certain activities which will require a disclosure to be made to UK retail investors. This has the same scope as the current UK PRIIPs regime, however the new rules will be more “flexible and proportionate” than the requirements under PRIIPS.	Managers of PRIIPs
		Overseas Funds Regime	The Overseas Funds Regime (**OFR**) applies an equivalence regime for retail investment funds and money market funds. Once HM Treasury declares that a country’s regime is equivalent, each individual fund can apply to the FCA for recognition. Following recognition, the retail fund or money market fund may be marketed to UK retail investors. On 19 October 2023 Mhairi Jackson (the FCA policy lead on asset management) stated that the FCA is working to operationalise the OFR from April 2024. In light of this the FCA published consultation paper CP23/26 on 4 December 2023 which closes on 12 February 2024. This sets out the proposed information required to be provided for the application process as well as the proposed initial and ongoing fees associated with an application. On 30 January 2024 HM Treasury declared that the EEA states, including all EU member states, are equivalent under the OFR. In order to enact this decision secondary legislation will be passed when parliamentary time allows. A draft form	The long-awaited operationalisation of the OFR will give overseas retail investment funds and money market funds the opportunity to target UK retail investors. It is important to be aware that, whilst the FCA has stated that it intends to operationalise the OFR from April 2024, this is by no means a set deadline and the exact timing is still to be confirmed.	Managers of non-UK retail investment funds and money market funds

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			of the proposed statutory instrument was published on 31 January 2024 and is anticipated to come into force from 26 February 2024.		
Regulatory Developments (EU)		EU Retail Investment Directive and Regulation (the **Package**) See our recent client alert The EU Retail Investment Strategy and Private Fund Managers	Not only is the Package relevant to private fund managers that wish to bring retail investors into their funds, but it introduces rules that would apply to all investors (i.e. the undue costs requirements). The Package is currently being considered by the European co-legislators. In October 2023 the European Parliament's Economic and Monetary Affairs Committee (**ECON**) published a draft report proposing amendments to the text (including deleting the proposals for value-for-money benchmarks against which an AIFM must compare costs and performance of its AIFs that are offered to retail investors). The Package is unlikely to come into force until 2026.	Managers should keep a watching brief and start to make plans around compliance, in particular: incorporating a more granular approach to costs and charges to supplement their governance structures in providing "value for money"; revisiting fee models for those who provide products via execution-only distribution chains; and considering if the proposed amended elective professional opt-up regime would help to recategorise any retail wealth investors.	EU managers and distributors
		Review of AIFMD Click here to see our latest client alert on AIFMD II	The final compromise amending text of AIFMD II was published in November 2023. It is due to be considered by a committee of the European Parliament in February 2024 and once approved, there will then be a 24 month implementation period. ESMA plans to consult on Level 2 measures to supplement the AIFMD II in Q2/Q3 2024.	There were several amendments in this latest text in relation to delegation, loan origination funds, liquidity management tools and other issues.	Full-scope EU AIFMs
		Cross-border marketing and management of AIFs	The Commission has adopted delegated legislation in relation to AIFMD and the information that is to be provided by managers when notifying regulators of cross border marketing. The draft text can be found here.	The draft text will be reviewed by both the Council and the European Parliament before it is finalised. While not a sweeping change, managers should be aware of the details that will need to be provided when marketing cross border. More detail can be found here.	Full-scope EU AIFMs
		Review of ELTIF Regulation See our recent client alert ELTIF 2.0: ESMA provides some final details	On 19 December 2023 ESMA published its Final Report on the draft revised Regulatory Technical Standards supplementing ELTIF 2.0. The European Commission (**Commission**) has a 3-4 month window to adopt them. In the meantime, the ELTIF 2.0 regulation is in force and applied from 10 January 2024.	Although other (non-ELTIF) AIF structures are likely to continue to dominate the institutional end of the non-listed funds market, the ELTIF may be an appealing option for those managers targeting local government pension schemes, HNWIs, affluent retail markets, charities and institutions as well as conventional	Full-scope EU AIFMs who choose to become authorised as ELTIF managers

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			We would expect that managers of any new ELTIFs will seek to comply with the new RTS pending their approval.	professional investors. A highlight is the fact that the ELTIF marketing passport covers retail investors as well as professional investors.	
		The Digital Operational Resilience Act (**DORA**) For further information on DORA please see our [webpage on Financial Regulations for Critical Third-Party Technology Providers in the EU and UK]()	The provisions of the DORA and the DORA Directive will apply from 17 January 2025, requiring EU member states to apply national measures implementing the DORA Directive from the same date. The Regulation requires the ESAs to develop various delegated acts, technical standards and guidelines to supplement the provisions of DORA. **Delegated acts under DORA** On 16 November 2023 the ESAs published draft delegated regulation on designation criteria and fees. The feedback period for this draft closed on 14 December and Commission adoption is planned for the second quarter of 2024 (prior to the statutory deadline of 17 July 2024). **Technical standards under DORA** The final reports on the first batch of draft technical standards (those made under Articles 15, 16,18 and 28 of DORA) were published on 17 January 2024. These concerned the proposed ICT risk management frameworks, classification of ICT-related risks and contractual arrangements with ICT third-party service providers. The ESAs published consultation papers on the second batch of technical standards (those made under articles 30, 41,20 and 26) on 8 December 2023. These consultations will close on 4 March 2024 and relate to sub-contracting ICT services supporting critical or important functions, oversight harmonization, ICT incident reporting and threat led penetration tests. **Guidelines under DORA** At the same time as consulting on the draft technical standards, the ESAs have published consultation papers on the draft guidelines made under articles 11 and 32. These	DORA and the DORA Directive represent a very significant step up in the regulatory requirements placed on firms' ICT operational resilience. While some financial entities and critical service providers may already be fulfilling some of the requirements as a matter of good practice, many will have to implement significant changes to their systems and controls to comply with the detailed new rules. Given the significant scope of the changes required and the relatively short implementation time frame, it is important that firms undertake a detailed review of their ICT risk management framework and leave adequate time to implement the requirements before they come into force on 17 January 2025.	Managers who use critical third party service providers

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			relate to the estimation of aggregated costs and losses caused by major ICT related incidents and the procedures and conditions for the allocation and execution of tasks under the oversight framework. This consultation also closes on 4 March 2024.		
		EU Foreign Subsidies Regulation	Designed to address "distortions caused by foreign subsidies" and to ensure a level playing field for all companies in the single market, the regulation targets companies that receive "subsidies" from third-country state entities, as subsidies from member states are subject to close scrutiny while those from outside the EU are not. It came into force on 12 January 2023, and from 12 July 2023 applied to EU entities with a turnover of €500 million or more (generated in the EU). The notification obligations applied from 12 October 2023 if the transaction involves a "foreign financial contribution" of more than €50 million. Please click here for more details.	Fund managers acquiring larger companies whose turnover threshold will meet the €500 million test will need to take note of this requirement. It is drafted extremely widely, and those managers with commitments from sovereign wealth funds and potentially public pension funds of non-EU countries may well be caught by the notification obligations. The €50 million test is on a cumulative basis, so all relevant financial contributions must be aggregated. The notifications must be made prior to the transaction, which cannot complete until approval is received.	Managers of funds that invest in EU companies with turnover of €500m or more
		EU MiCA For further information on MiCA, please see our articles Marketing Crypto-Assets in and Into Europe: MiCAR, the EU's New Uniform Crypto Code, Doing Crypto Business in Europe: MiCAR, the EU's New Uniform Crypto Code – Part 2, and Acquiring or Investing in EU Crypto-Asset Businesses: MiCA's Impact.	The EU Markets in Crypto-Assets Regulation (**MiCA**) was published in the Official Journal of the European Union on 9 June 2023. MiCA is a major step toward an EU-wide uniform code governing crypto-assets, such as BTC, ETH, and stablecoins. Although MiCA came into force on 29 June 2023, there is a period of time before its provisions come into effect: • the provisions governing certain stablecoins will apply from 30 June 2024 • the provisions governing the remaining crypto-assets will apply from 30 December 2024 MiCA places obligations on the EBA and ESMA to publish various pieces of secondary legislation to reinforce and provide further detail in relation to the requirements under MiCA. Secondary legislation published so far includes: • On 12 July 2023, the EBA and ESMA both launched consultations on their first set of RTS and ITS under MiCA. The deadline for comments on the EBA	Regulation of crypto-assets in the EU is currently fragmented, with each EU member state having its own regulatory regimes for the regulation of crypto-assets that are not financial instruments within the meaning of MiFID. There is significant variation between the regimes for different member states. The uniform rules governing crypto-assets across the EU therefore present welcome clarity on the treatment of crypto-assets across the EU. However, funds investing in crypto-asset market participants will need to bear the effect of the new regulations in mind.	Managers of funds that invest in crypto-asset service providers (**CASPs**) and managers classified as CASPs

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			consultation papers is 12 October 2023, and the consultation period for the ESMA consultations closed on 20 September 2023. • On 5 October 2023 ESMA published its second consultation on MiCA • On 20 October 2023 the EBA and ESMA published two draft guidelines on suitability assessments under MiCA On 17 October 2023 ESMA published a statement clarifying the timeline for MiCA. This stated that the third and final consultation paper is expected in Q1 2024. The statement also urged market participants and member state regulators to start preparing for the transition after MiCA is brought into force.		
		MiFIR and MiFID II	On 16 January 2024 the European Parliament voted to formally adopt the revised Markets in Financial Instruments Regulation (**MiFIR**) and the Second Markets in Financial Instruments Directive (**MiFID II**). The final compromise text adopted by the European Parliament was published on 18 October 2023. The next stage is for ESMA to prepare the associated technical standards and procedures, which are expected to be published throughout 2024. The preparation of technical standards and procedures are now expected to follow throughout the year.	The revisions to MiFIR and MIFID II include the establishment of the EU consolidated tape, a general ban on "payment for order flow" (**PFOF**) and changes to the regulation of commodity derivatives. The long-awaited ban on PFOF mirrors the UK regime, which banned PFOF in 2012.	EU investment firms
Financial Crime and Sanctions (UK)		The UK sanctions regime continues to evolve. In particular, following Russia's invasion of Ukraine in February 2022, the UK government has continued to expand its sanctions under the Russia (Sanctions) (EU Exit) Regulations 2019 (**the Russia Regulations**), such that they now incorporate a variety of individuals and businesses	Amendments are made to the UK sanctions regime on a frequent basis. The UK has implemented several amending regulations which introduce updates to the Russia Regulations. Amongst other things, those updates include new prohibitions on investment into Russia. The UK government has also introduced the Sanctions (EU Exit) (Miscellaneous Amendments) (No. 2) Regulations 2022 (the **Miscellaneous Regulations**). The Miscellaneous Regulations amend a number of sanctions regimes to incorporate cryptoasset exchange providers and custodian wallet providers within the definition of "relevant firm", thereby rendering such providers subject to OFSI reporting	This is a rapidly evolving area and updates are frequently made to the UK sanctions regime. It is essential that firms remain up to date with developments in order to ensure that that they do not engage in contraventions, which could result in criminal liability. To that end, it is vital that firms regularly review updates to the UK sanctions regime and take appropriate action where necessary.	Persons located within UK territory and UK persons (including UK incorporated entities) wherever they are in the world

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		across a range of sectors and services. Alongside that expansion, the UK government has extended the powers that are available to the UK's sanctions enforcement agency, the Office of Financial Sanctions Implementation (**OFSI**).	requirements. In early January, a number of open general licences were also updated in order to remove certain countries as permission destinations. The introduction of recent legislative changes means that (a) OFSI can now impose a civil monetary penalty on a strict liability basis, and (b) in cases where no monetary penalty has been imposed, OFSI can publish the name of a company or individual which it believes, on the balance of probabilities, has contravened a financial sanction prohibition or failed to comply with an obligation. OFSI has published updated guidance on its new powers.		
		New offence of failure to prevent fraud - the ECCTA contains a "failure to prevent fraud" offence which widens the scope of corporate criminal liability. See also above on UKLP reforms, which also form part of ECCTA.	The offence allows for a relevant body which is a large organisation to be held liable where it benefits from a specified fraud offence that has been committed by an employee or other associated person, and the organisation did not have in place reasonable fraud prevention procedures. A relevant body comprises a body corporate or partnership wherever in the world it is incorporated or formed. Fraud by false representation under section 2 of the Fraud Act 2006 is a specified offence as set out in Schedule 13 to the ECCTA. In-scope organisations are those that satisfy two or more of the following conditions in the financial year preceding the year of the fraud offence: • more than 250 employees; • more than £36 million in turnover; and • more than £18 million in total assets. There is an exemption to liability where an organisation is, or was intended to be, a victim of the fraud offence. It is a defence for an organisation to prove that, at the time that the fraud offence was committed, it had in place reasonable procedures to prevent the offence from occurring. Equally, it is a defence for an organisation to demonstrate that it was not reasonable in all the circumstances to expect it to have any prevention procedures in place. In practice, it is unlikely that organisations that are caught by the threshold criteria will be	If the criteria are met cumulatively across a parent company and its subsidiaries, the group of companies will be in scope and liability will attach to whichever entity within the group was directly responsible for failing to prevent the fraud. Where a fraud is committed by an employee at a subsidiary for the benefit of the parent company, liability can attach to the parent company where the parent company did not have in place reasonable fraud prevention procedures. An organisation that is found guilty of failing to prevent fraud is liable to an unlimited fine. Clarity on what comprises reasonable fraud prevention procedures is due to be provided in guidance that the Government is required to publish before the offence comes into force.	In-scope organisations

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			able to successfully argue the existence of such circumstances.		
Tax Topics (UK)		UK-Luxembourg Double Tax Treaty (**DTT**)	The changes set out in the DTT will take effect from 1 April 2024 in respect of UK corporation tax, and from 6 April 2024 in respect of UK income tax and capital gains tax. The revised DTT will remove protection for Luxembourg investors against UK tax on any capital gain made on the disposal of a UK real estate-rich entity (including gains accrued prior to the amendments taking effect), and will also extend the treaty's benefits to certain Luxembourg corporate collective investment vehicles (**CIVs**), where the relevant qualifying conditions are met.	Fund managers of structures involving UK real estate assets held in Luxembourg companies should ensure they are not caught out by the changes, with less than two months to go until the majority of the new DTT takes effect.	Funds with UK real estate assets
		HMRC revises guidance on foreign entity classification	On 12 December 2023, HMRC published updated sections of its International Manual guidance, concerning the classification of foreign entities for UK tax purposes. In particular, HMRC expands on the factors to be taken into account to determine whether or not an entity is UK tax transparent (this is different to whether an entity is treated, e.g., as a partnership or not). Importantly, HMRC elaborates on its existing position (published in 2015, following the decisions in *Anson v HMRC*) as to why it generally considers US LLCs to be 'opaque', despite the finding of fact by the FTT in *Anson* (as endorsed by the Supreme Court) that the profits arose not to the LLC but to its members (and the LLC was therefore 'transparent' in this regard).	HMRC's revisions to its guidance on *Anson* will be of particular interest to US GPs, who use US LLCs in their house structuring. While the original HMRC response to *Anson* was (broadly-speaking) to try to confine the decision to its context, the new guidance goes significantly further and contends against key aspects of the FTT's factual findings. The guidance explicitly notes that HMRC will "consider opening an enquiry or making a discovery assessment" should a filing position be taken that the LLC profits belong to the members rather than the LLC, such that those seeking to rely on the decisions in *Anson* may now need to reconsider their position.	US LLCs in fund / house structures
		Amendments to the UK's REIT Rules	Following the publication of draft legislation in July 2023, the Autumn Statement confirmed certain proposed changes to the UK's REIT rules in November 2023. The changes in the draft Finance Bill are broader in scope than had originally been suggested. The key amendments include:	These amendments are welcomed amid the growing trend for large and midsize pan-European real estate funds to (re)structure certain eligible UK investments using a UK REIT (see also	UK REITs

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			(i) amending the definition of 'institutional investor' to require authorised unit trusts, open-ended investment companies (including, in each case overseas equivalents), and collective investment scheme limited partnerships to meet a genuine diversity of ownership condition or a non-close condition (ii) various amendments to the 'close company test' and exception to this (i.e. where a company is only close because it has an institutional investor as a participator) including new rules around the ability to trace through intermediate holding companies where an institutional investor is ultimate beneficial owner (iii) preventing investors from being holders of excessive rights where, in accordance with the terms of a double tax agreement they are taxed at a particular rate, or not taxed at all, on REIT distributions, other than where that tax treatment is conditional on holding an interest of a certain size in the REIT The amendments will take effect following the Royal Assent to the Finance Bill 23/24, subject to some helpful grandfathering provisions for existing structures, save for (ii) above, which will be treated as having always had effect.	the comments above on the changes to the UK-Luxembourg double tax treaty). Whilst the changes are generally helpful, one quirk of the Finance Bill in its current form is that, when determining if the non-close condition is met in respect of a limited partnership collective investment scheme (**LP CIS**), it is not sufficient to say (unlike for companies) that the LP CIS is non-close only because it has an institutional investor as a direct or indirect participator. On its face, this appears to be a more restrictive application of the non-close condition than under existing law, but much will depend on HMRC's interpretation of the new rules as a whole. We await HMRC's published guidance on these new rules with interest.	
		VAT Treatment of Fund Management Services	On 14 December 2023, the government published its responses to industry feedback on its consultation on the VAT treatment of fund management services. The proposal aims to codify the UK"s existing policy, and provide greater certainty as to the VAT treatment of fund management. VAT is in principle chargeable on supplies of fund management services to most private funds in the UK (e.g., AIFs), other than certain, limited exempt supplies (including to special investment funds (**SIFs**)). The main proposal was to adopt certain principles-based criteria to identify SIFs (based largely on EU case law) in addition to retaining the current list of exempt fund types (under Items 9 and 10 of Group 5, Schedule 9 of VATA 1994) to which the fund management exemption applies.	The government's willingness to adopt the industry's view, as regards the need for certainty and simplicity in this area, is to be welcomed. However, the rejection of calls to widen the definition of "management" (e.g. to include outsourcing) for the purposes of the fund management exemption, or to introduce a zero rate for the management of UK domiciled funds (so as to put them on the same footing as non-UK domiciled funds) will continue to disappoint many, who will likely view this as a missed chance to make the UK's fund environment more competitive.	UK fund managers (no likely changes to existing law)

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			In its responses, the government has agreed with the majority of respondents to eschew a principles-based approach, in favour of retaining only the existing list-based approach as set out in VATA, on the basis that the current law already offers sufficient clarity and certainty in this area.	The overall effect of the consultation and summary of the responses is that little appears to have changed.	
		Court of Appeal decision in *BCM Cayman LP and BlueCrest Capital Management Cayman Ltd v HMRC*	There are many points of interest in this complex case (whereby structuring aimed to produce a synthetic tax deduction for interest amounts which would not otherwise have been deductible), and too many to explain here succinctly. However, one particular cause for concern, coming out of the Upper Tribunal's findings, related to the correct UK tax treatment of multi-tiered partnership structures. That original judgment had suggested that a person holding an interest in a partnership as nominee or bare trustee for another person should *itself* generally be the person taxable on profits from the partnership (rather than the underlying beneficial owners). The Court of Appeal has, in its judgment, reached the same end point as the Upper Tribunal (finding against the taxpayer), but by applying a more general anti-avoidance principle (known as the *Ramsay* principle).	By deciding this point using the *Ramsay* principle, the Court of Appeal rejected the Upper Tribunal's reasoning and allayed any fears that the structures typically used by funds and their investors could be adversely impacted. Despite producing an unwanted result for the taxpayer, the application of the *Ramsay* principle was ultimately unsurprising on the facts, and the clarifications offered by the Court of Appeal should generally be welcomed.	UK fund structures
Tax Topics (EU)		Anti-Tax Avoidance Directive (**ATAD 3** or "**Unshell**")	On 30 November 2023, the Ecofin Council reported that Member State delegations have been unable to agree various aspects of the proposed ATAD 3 Directive (the latest proposed text having been adopted by the European Parliament in January 2023). In November 2023 the Commission proposed (yet another) alternative approach, based on a 'minimum standards' approach (i.e. allowing for Member States to use their own stricter domestic criteria), and a 'toolbox of consequences' for Member States to apply to entities found to be shell entities (such as denying deductions or the participation exemption, and imposing stricter reporting requirements). However, there has been no consensus on this proposal either, and further discussions will be needed to find workable solutions under the current Belgian presidency.	In light of ongoing disagreements about key aspects of the current draft text (including the proposed exemption for "regulated financial undertakings" (broadly, vehicles established as an AIF managed by an AIFM)), and the debating of new proposals that could serve to reshape the Directive entirely, it is increasingly difficult to see how any final form of ATAD 3 could materially resemble the January 2023 adopted text. As doubts continue to linger, with the real possibility that ATAD 3 could be scrapped in its current form, one concern is that an increasing number of Member States will take matters into their own hands. Any	European fund structures and AIFMs

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				move towards a 'minimum standards' approach would actively encourage differing substance requirements which, if implemented in an uncoordinated way, are likely to create uncertainty and thereby make it more difficult to structure investments effectively and in a way that appropriately manages tax risks.	
		Directive on the Faster and Safer Relief of Excess Withholding Taxes (**FASTER**)	The Commission's proposed Directive (originally published on 19 June 2023) aims to introduce a common EU-wide system for withholding tax (WHT) on dividend or interest payments. The Spanish presidency has proposed a number of amendments, prior to the proposal being submitted to the EU Council. Under FASTER, Member States will need to implement systems under which the correct WHT rate under the appropriate double tax treaty is applied ("relief at source") or the tax is withheld at the higher rate, but with the excess repaid following an appropriate request or report ("quick refund"). The proposal also introduces common reporting obligations, an EU digital tax certificate of tax residence (eTRC) and obligations on "certified financial intermediaries" (CFIs) to verify the tax residence and beneficial ownership of applicant investors.	The amendments proposed by the Spanish presidency include allowing CFIs to become "non-certified" intermediaries, strengthening the information to be reported by CFIs, and clarifying the conditions under which Member States can reject "quick refund" requests. While the exact drafting of the amendments is yet to be seen (pending the proposal being submitted to the Council), it is clear that the Directive remains a priority, with an indicative plenary currently set for 26 February 2024. Particular attention should be paid to whether the next draft addresses certain key issues relevant for the private funds industry, such as how the definition of "residence" and "beneficial ownership" can be applied consistently by Member States, CFIs and investors alike.	Withholding tax claimants, CFIs
		CJEU decision on the VAT treatment of directors' fees (Case C-288/22) See our January 2024 client alert for background and further detail	On 21 December 2023, the Court of Justice of the European Union rendered its decision on the VAT treatment in relation to directors' fees, derived by an individual taxpayer acting as a board member of several public limited companies. As per the arguments of the taxpayer, the directors' fees received for his activities were not a remuneration for an independent economic activity in line with Luxembourg VAT law and Council Directive 2006/112/EC of 28 November 2006 since he did not perform such activities in an independent manner. In light of the facts, the CJEU stated that despite the director having carried-out an economic activity, he should not be	Further to the decision rendered by the CJEU, Luxembourg resident directors in a comparable situation in facts and circumstances should not be considered as a "taxable person" under Luxembourg VAT Law. As a result, no VAT should apply on directors' fees paid by the company.	Luxembourg tax resident directors

Topic	Region	Issue	Recent and Expected Developments	Comments/ Impact	In-scope/ Priority
			considered as acting independently. The rationale of the CJEU mainly derives from the fact that the director does not personally and directly assume any risk or personal obligations with respect to its activity as board member, which is a key factor.		
		Implementation of Pillar 2 by EU Member states (including Luxembourg)	Nearly all EU Members States have implemented Council Directive (EU) 2022/2523 on ensuring a global minimum level of taxation for multinational enterprise groups (i.e. the EU's implementation of the OECD GloBE Rules, or "**Pillar 2**"), prior to 31 December last year, with most local implementations being a 'copy-paste' of the original directive, such that further amendments are expected over the course of this year. In particular, on 20 December 2023, the Luxembourg parliament adopted Bill no. 8292, implementing this Council Directive.	Fund managers will at least need to establish whether their group is in scope, or be able to demonstrate that their group is below the EUR 750M threshold for inclusion. In this regard, it is now clear that unrealized gains (e.g. from group carry/coinvest holdings) must be taken into account. We would not, generally, expect many investment funds themselves to be impacted by the legislation, in so far as consolidated revenues fall below the thresholds and/or fund vehicles and holding companies come within the exclusions. However it may still be possible that portfolio investments will be caught by Pillar 2 as a result of being owned by a fund, SMA or co-investment vehicle; this will depend on the fund structures used, whether large investors consolidate their interest in the fund (i.e. so as to bring portfolio companies into their own Pillar 2 group) and/or the accounting policies adopted. The new EU and Luxembourg rules are highly complex, and we will continue monitoring their effects as fund managers assess the impact of Pillar 2 on their portfolios. Further guidance is anticipated to be released in in the early summer.	All fund managers

US-specific developments for non-US managers		SEC Private Funds Rules For more information please see our client alert summarising the new rules, our comparison of the new rules and AIFM and our review of the legal challenge being made by industry groups.	The new SEC private fund rules were adopted in August 2023. While not as onerous as the original proposal, they still represent a substantial expansion of the SEC's regulation of private fund advisers that will have a significant impact on future SEC examination and enforcement activities.	While many of the new rules do not apply to non-US fund managers, there are still a number of issues to be aware of. For US based managers this represents the largest change in manager/adviser regulation since the Dodd-Frank Act.	US and non-US Registered Investment Advisers and Exempt Reporting Advisers
		Amendments to Form PF Please see our client alert for further information and comment.	On 3 May 2023, the SEC published rules that amend the Form PF, which is a confidential reporting form for certain SEC-registered investment advisers. The new rules came into effect 6 months after that date. Please see our client alert from 2022, covering who is affected by this change and which highlights the fact that terms used such as "hedge" and "private equity" advisers are very broad and not totally aligned with how they are used in the market. For example, some private equity, credit, and real estate funds actually fall within the definition of "hedge fund."	The new requirements include an obligation to report events that could indicate "significant stress at a fund or investor harm." For private equity advisers, this includes reporting within 60 days of a quarter end if there is a removal of a general partner, a fund termination event, or a GP-led secondary transaction. Large private equity advisers will also be required to report annually on any LP or GP clawbacks, and provide more information on their fund strategies and borrowings.	SEC registered investment advisers
Singaporean developments		Repeal of the Registered Fund Management Company (**RFMC**) framework	The Monetary Authority of Singapore (**MAS**) announced its intention to repeal the RFMC licensing framework and is currently considering industry feedback following a public consultation in 2023. Fund managers registered as an RFMC are subject to less stringent reporting and capital requirements than "fully-licensed" fund management companies. The trade-off is that RFMCs are restricted from having AuM exceeding SGD 250 million (USD 186 million) *at any time*, and from managing funds for more than 30 investors (of whom not more than 15 could be other funds). RFMCs that intend to continue carrying on fund management activities after the RFMC regime is repealed will need to apply (at no cost) for a capital markets service license and operate as a licensed fund management company (**LFMC**), although MAS currently intends to maintain a cap of SGD 250 million on the AUM of such "transitioned" LFMCs.	The RFMC regime was introduced in 2012 and was designed to attract smaller fund managers, including hedge fund managers, to Singapore. According to MAS figures, the total AuM of Singapore-based asset managers in 2012 was approximately SGD 1.6 trillion (USD 1.2 trillion). Since that time, that figure has risen to SGD 5.4 trillion (2023) (USD 4 trillion) and Singapore has cemented itself as an asset and fund management hub for the APAC region. The main impact of a repeal of the RFMC regime, would be to raise the hurdle for new hedge fund managers (whom we generally see comprise the majority of RFMC applicants as the cap on an RFMC's AuM makes it ill-suited for managing illiquid assets), who would, if the measures are adopted, be	Fund managers that are licensed in Singapore as a Registered Fund Management Company should familiarise themselves with the increased regulatory and capital requirements

				subject to the same regulatory and capital requirements as larger asset managers.	
		Clarification on Requisite Fund Management Activity to Obtain License	The MAS requires applicants for a capital markets services licence for fund management to conduct "substantive fund management activity" in Singapore. The MAS recently updated its guidelines on the licensing, registration and conduct of business for fund management companies, by providing examples of certain business models that would not constitute "substantive fund management activity". These include persons that: (i) execute trades based purely on customers' instructions, (ii) set up fund structures solely to raise capital for operating businesses run or managed by the same person, (iii) purely engage in marketing activities and/or client servicing, or (iv) ultimately invest in assets that are not "capital markets products".	As Singapore's asset management industry has developed, most institutional fund managers in Singapore would now satisfy the test of conducting "substantive fund management activity" in Singapore, but those who hold a fund management licence and conduct purely marketing activities in Singapore may see their licensing position come under new scrutiny from the MAS, now that the official guidelines have clarified what was, for a long time, a grey area. Fund managers that are licensed in Singapore but only conduct marketing activities from their Singapore licensed entities should be aware that they may cease to qualify for a fund management licence and should reassess their regulatory position in Singapore.	Fund managers licensed in Singapore but only conducting marketing activities from their Singapore licensed entities
		Disclosure of Digital Assets Fund managers have long been required to provide adequate disclosures to investors, including the risks associated with the investment strategy and underlying assets of a portfolio.	The MAS has updated its guidance to fund managers to provide for certain minimum disclosures where a fund invests in digital assets, which disclosures include: (i) the heightened price, liquidity and volatility risks associated with digital assets and (ii) the risks associated with the use of intermediaries such as trading platforms and custodians (including whether such intermediaries are licensed or registered in any jurisdiction). MAS also indicated that it expects that fund managers should store the bulk of their digital assets in cold wallets, and only keep assets in a hot wallet for the purpose of liquidity and operational needs	From a technology and innovation perspective, Singapore is fast becoming a talent centre for digital assets, but this is tempered by MAS' risk averse approach to what it considers to be "high risk" investments. The new guidance represents an effort from MAS to keep Singapore's doors open to innovation in the asset management industry, whilst enhancing the protective measures for investors in these products.	Fund managers investing in digital assets and marketing in Singapore

Priority - Key

Red – Major change that requires action and/or attention

Amber – Important change but not requiring immediate action

Green – Minor change

In this column we have identified those most likely to be impacted by this issue

Other topics

UK	EU
• Transparency of land ownership involving trusts • ECCTA and corporate transparency • Reforms to the identification principle • Consultations on Local Government Pension Scheme (**LGPS**) asset pooling • HMRC consultation on the modernisation of UK stamp taxes on shares (including potential removal of partnership interests from scope) • A review of UK MiFID (including the unbundling of research rules) • FCA and Bank of England Discussion Paper on Artificial Intelligence and Machine Learning (DP5/22) • FCA concerns about sustainability-linked loans market	• Additional requirements for cross-border tied agency passporting • PRIIPS KID • Non Performing Loans Directive • Deforestation Regulation • Forced Labour Regulation • EU Whistleblowing Directive • Proposed BEFIT Directive
General	
• Solvency II reforms • Taskforce on Nature-related Financial Disclosures (**TNFD**): disclosure framework • US governments “Outbound Investment Program” will impact private fund managers investing in China, as US investors will be looking closely at investment restrictions and excuse rights • New California law to require certain firms to disclose founder diversity information	

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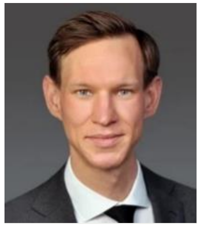

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