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

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Topic	Region	Issue	Recent and Expected Developments	Comments/ Impact	In-scope/ Priority
UK/general funds developments	UK	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. No provisions in relation to UKLPs have yet entered into force and it could be 2025 before this happens.	Any managers with UKLPs in their fund structures
	UK	The Long Term Asset Fund (**LTAF**) and Theme of Retailisation/Democratisation The BVCA Report to the Pensions & Private Capital Expert Panel (by PWC, dated 24 February 2024) identifies some of the problems and solutions for defined contribution (**DC**) pension investment in long-term illiquid investments such as private equity, venture capital, infrastructure and real estate 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 developments designed to reduce investment barriers to help drive DC investment in private capital and accelerate interest in the LTAF. For instance, July 2023 saw the Mansion House Compact (where 11 of the largest DC funds committed to allocate at least 5% of their default funds to unlisted equities by 2030), removal of carried interest from the cost cap and consolidation of DC funds. Also, on the 21 and 22 November 2023 the following initiatives were announced: • the Department for Levelling Up, Housing and Communities issued 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 Chancellor confirmed a plan for the establishment of a British Business Bank-Backed Growth Fund to provide both expertise and funding to facilitate pension fund investment; and • the UK's Financial Conduct Authority (**FCA**) review of 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. The LTAF is subject to an annual "assessment of value" which guards against excessive costs being incurred	Although more LTAF launches are expected (for instance the recent announcement of the WTW private-equity focused LTAF) there has been low take up to date. Alongside the cost and compliance issues that go with LTAF authorisation (the requirement for a full-scope UK alternative investment fund manager (**AIFM**) with permission to manage an authorised AIF) there remain some cultural, operational and structural challenges to DC pension scheme investment in private funds. For instance, how DC schemes that typically invest via 'life platforms' (bundled unit-linked insurance policies that are designed to protect retail investors), can access a broader range of semi-liquid products and how DC providers can more readily accept private capital fee structures. Wider Government momentum should help, including to increase the scale of master trusts (an approach that has more potential investment flexibility and capacity for tailoring than for life platforms), and to encourage smaller DC funds to consolidate into a smaller number of larger pension providers.	Full-scope UK AIFMs (with permission to manage an authorised AIF)
	UK	Reserved Investor Fund regime (**RIF**)	On 6 March 2024 the government published its response to the earlier call for input and announced that legislation for the RIF would be included in the Finance Bill. On 2 April 2024,	The regulations contain the RIF tax rules. They also set out the qualifying criteria to be a RIF (broadly, RIFs must be UK-based	FCA-authorised managers

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		See our October 2023 Horizon Scan on the proposed RIF regime	HM Treasury and HMRC published for consultation the draft regulations. The technical consultation closed on 14 May, and we await the finalised regulations. The date from which the new tax rules are to take effect is currently blank in the regulations. The expectation is that the RIF has to be an AIF (and its 'collective investment scheme' status under s235 FSMA is therefore irrelevant). Along with the other 'collective investment undertaking' AIF requirements is the requirement for third party capital. HM Treasury have helpfully pointed to PERG guidance to confirm that procuring transfers or commitments of capital may take the form of subscriptions or in kind (i.e. transfer of existing assets).	schemes that meet the restriction requirement concerning investments or investors and either the genuine diversity of ownership condition or non-close condition), entry and exit provisions, provisions concerning breaches of qualifying criteria (including a deemed disposal and reacquisition of units by investors if a RIF ceases to meet the criteria) and other requirements (including as to RIF accounts, provision of information and penalties). Further, the regulations provide for the consequences of a RIF holding investments in (reporting and non-reporting) offshore funds (including where the RIF lacks adequate information about the latter).	and distributors
		Reform to the UK AIFM regime	As set out in the FCA's 1 March 2024 letter to asset managers and private market firms, the FCA is planning work to reform the UK AIFMD as part of implementation of the government's Smarter Regulatory Framework (essentially designed to better tailor financial services to the UK following the UK leaving the EU). One area earmarked to be subject to review is the small AIFMs thresholds; with the aim to introduce a more proportionate application of the regulations than the current binary threshold test to be met for UK sub-threshold AIFMs. The FCA is also looking at modifications for full-scope AIFMs to carry out other activities such as MiFID investment services and activities within the same entity.	First mooted in the Chair of the FCA, Ashley Alder's, 11 October 2023 speech, we still await further details and the consultation. The detail remains unclear but the expectation is that there will be further divergence between the EU and the UK regimes, in particular given that the UK seems unlikely to adopt the changes being implemented under AIFMD2 (as set out below).	UK AIFMs and other FCA-authorised managers
		UK AIFM Hosting On 25 March 2024, the FCA published its findings of the 2023 review of AIFM hosting	The Review identified 3 areas of potential harm: • **A lack of oversight of seconded staff**. The FCA found that seconded employees from third parties were supervised remotely and weren't physically working at the offices of the AIFM. This risk is further heightened by potential conflicts of interests for the secondee, where	There is clearly greater scrutiny for the third party host AIFM business model in both the UK and the EU. On the EU side, one of the AIFMD2 changes is for a host AIFM to submit to its home state national competent authority (**NCA**) detailed explanations of how it complies with the AIFMD conflict of	UK AIFMs and other FCA-authorised managers

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			they could prioritise the interests of the third party over those of the AIFM. • **Insufficient involvement in investor due diligence**. The FCA review showed that AIFMs that employed secondees were not typically involved in onboarding checks for investors into funds - they typically use third parties. Firms not directly involved in the due diligence process for new clients or investors should undertake regular reviews and audits of the files of any third parties they delegate these functions to, including fund administration and investor onboarding, to make sure they comply with their financial crime obligations. • **Inadequacies in capital adequacy calculations**. In most cases the FCA reviewed, firms did not directly factor in the number of AIFs or appointed representatives when calculating their capital requirements.	interest provisions, in particular what reasonable steps a white label AIFM has taken to prevent conflicts of interest arising and where it cannot prevent them, how those conflicts are identified, managed, monitored and disclosed. The FCA has said that it is taking action against individual host AIFMs that are not meeting its expectations and will continue to monitor the secondment arrangement in the AIFM sector closely.	
Sustainable Finance (UK)		FCA rules (PS23/16) on Sustainability Disclosure Requirements (**SDR**) and Investment Labels See our recent client alert on Sustainability Disclosure Rules in the UK: extending the FCA's regime to portfolio managers and our December 2023 client alert for background and further detail	In November 2023 the FCA released policy statement PS23/16 on SDR and investment labels. The rules cover: (i) a new 'anti-greenwashing' rule; (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; and (v) retail investor-specific requirements on naming and marketing, consumer-facing product-level disclosures and for distributors. These are due to enter into force on a phased basis, beginning with the anti-greenwashing rule (along with final guidance following the consultation on this) on 31 May 2024 and the labelling regime from 31 July 2024. On 23 April 2024 the FCA published its proposals (CP24/8) to extend the SDR and labelling regime to UK portfolio managers (with the consultation open for feedback until 14 June 2024). This captures those performing services relating to UK portfolio management services provided to clients on a discretionary (and/or advisory for private markets) basis and will encompass those who design and manage model and/or customised portfolios as well as those who provide bespoke	This is an important time to take stock of how the SDR proposals are likely to affect a portfolio manager's structures and products as well as what actions portfolio managers must take so they can comply when SDR is broadened. Under SDR, label use is designed for products marketed to retail investors (in which case the naming and marketing and disclosure rules also apply) but can also be used for products offered to professional investors. The FCA is seeking feedback on the appetite for using labels for professional clients and when offering bespoke services, therefore contemplating how widely these rigorous standards are expected to be adopted. We expect those who do choose to apply a label to use it across the board to maximise the expected benefits. But the extent to which this actually happens will be market-led.	Certain UK AIFMs of UK AIFs with retail investors (phased implementation from 31 May 2024) and UK portfolio managers regarding the proposed extension of SDR in December 2024

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			portfolio management services. It is not, however, intended to apply to UK delegated advisers/portfolio managers of funds. A separate HM Treasury consultation is expected to follow on how to bring non-UK funds marketed in the UK within the framework (as well as bringing pension products, insurance-based investment products and financial advisers in scope). HM Treasury's implementation update on UK sustainability disclosures sets out details relating to economy-wide SDR, including on development of the UK green taxonomy (the design of which is due to be consulted on in 2024), transition plan disclosures and IFRS International Sustainability Standards Board (**ISSB**) baseline sustainability disclosure standards. This is helpful to map the UK's expected approach and pace of developments (also to compare with developments in Europe and elsewhere).	Although a non-UK fund manager can (for now) market its products into the UK without having to comply with SDR, and a UK portfolio manager acting as a delegate as an EU AIFM/EU AIF remains outside scope, the 'anti-greenwashing' rule will still be relevant for financial promotions made in the UK. Therefore all FCA-regulated firms will want to carefully review their communications and marketing materials to ensure that their sustainability claims are fair, clear and not misleading and consistent with the sustainability characteristics of that product or service. For instance, a firm will want to make sure that it has a robust product governance framework in place so that it can substantiate any sustainability claims made in respect of specific products and services.	
		Transition Plan Taskforce (**TPT**) Guidance	On 9 April 2024 and following its consultation, the TPT launched its final set of transition plan resources to help businesses unlock finance for net zero. It published two types of sector guidance to complement the TPT Disclosure Framework: the TPT Sector Summary and the TPT Sector Deep Dives (which includes detailed guidance for the asset management sector). The guidance is intended to complement and build on other guidance such as the ISSB's final standards IFRS S1 and S2 and draws on GFANZ's framework and guidance for creditable, comprehensive and comparable net zero planning. The TPT was announced at COP26 in Glasgow and launched in April 2022 to establish the gold standard for transition plans and produce guidance for preparers and users of climate transition plans.	The TPT has engaged globally with financial institutions, real economy corporates, policymakers, regulators and civil society to develop its materials. This framework is important, because as standards for transition plans emerge, government and regulators will expect transition plans to be published and for firms to take steps to incorporate them into reporting and disclosure frameworks. In the meantime market participants will want to consider the guidance and how they may align their transition plans disclosures with the framework. The idea is that the framework can map into different jurisdiction (for instance the staring point under which the Corporate	Asset managers and asset owners (as well as those working in the other 5 referenced sectors: banks; food & beverage; electric utilities & power generators; metals & mining; and oil & gas)

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				Sustainability Reporting Directive disclosures can then be built in).	
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 Regulatory Technical Standards (**RTS**) were published by the European Supervisory Authorities in December 2023 and still await endorsement by the European Commission (the **Commission**). If adopted, this 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. Separate to this, following the SFDR overview consultations that closed on 15 December 2023, on 3 May 2024 the Commission published a summary report of feedback. This included reference to strong support for a voluntary categorisation system regulated at EU level (with 83% of respondents saying that SFDR is being used as a labelling and marketing tool not solely as a disclosure framework). Although views were divided on whether there should be new criteria or building on the existing Articles 8 and 9 concepts for formal product categories, most respondents emphasised the importance of the categories being focused on retail investors, incorporating international frameworks and leveraging existing national labels. Also, the ESA's final report on greenwashing is expected imminently.	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 (set out above). The Commission's recent report cited overwhelming support (72% of respondents) for creating a specific category for products with a transition focus, aiming to improve the sustainability profile of the assets they invest in. Despite this recent report, there is still nothing substantive to illustrate what SFDR II (if there is one) may look like. The report confirms: *"It cannot in any circumstances be regarded as the official position of the Commission or its services. Responses to the consultation activities cannot be considered as a representative sample of the views of the EU population."*	EU managers and advisers and non-EU managers who market to EU investors
		ESMA Final Report on Guidelines on Fund Names Using ESG or Sustainability-Related Terms	On 14 May 2024, ESMA published its finalised guidelines on funds' names using ESG or sustainability-related terms (**Guidelines**). The guidelines broadly align with ESMA's December 2023 update as set out in our February 2024 horizon scan. 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. The Guidelines apply to EU AIFMs directly (and we would expect them to apply indirectly to non-EU AIFMs marketing in	We would highlight three key points that managers will want to factor into strategy considerations: • 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 or sustainable investment objectives; apply the Paris-aligned Benchmark	EU managers and advisers and non-EU managers who market to EU investors

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			the EU) and establish minimum thresholds and apply exclusion and other criteria for different terms used in fund names. Importantly, they apply to both open and closed-ended funds. Member state interpretation on implementation may provide some clarity on how widely the Guidelines are expected to apply to non-EU AIFMs and closed-ended funds that are no longer open for subscriptions. The Guidelines will come into force three months after they are published (subsequent to being translated). Managers of existing funds will have a six-month period in which to comply (i.e. 9 months from publication), whilst the Guidelines will apply to new funds immediately following publication.	(**PAB**) that include fossil fuel exclusions; and invest 'meaningfully' in sustainable investments; • a new category for 'transition'-related terms to accommodate funds using any terms broadly derived from the base word 'transition' 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 (**CTB**) Benchmark, including where used in combination with ESG terms; and • funds using social or governance terms are subject to the CTB exclusions (as for transition terms), whilst those using impact or environmental terms, the stricter PAB exclusions apply.	
		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. This was then subject to intense political debate which at one point almost led to the proposals being shelved. It has now been adopted by both the Council and the Parliament but the final directive (which is likely to be published in May) is very different to the provisional deal from December. The Directive still needs formal approval by various committees but this is expected by the end of May, after which the 24-month implementation period will commence.	The thresholds for in scope companies has changed from more companies with more than 500 employees and a turnover of more than €150m to 1000 employees and a turnover of €450m, meaning the number of companies in scope will be dramatically reduced. Financial services downstream activities will not be in scope and the review clause in relation to potentially changing this has been removed. However, there is a requirement for a report into potentially introducing this at a later date. Please click here for further information.	Financial services will be partially excluded (but note may be included in the future)
		Corporate Sustainability Reporting Directive (**CSRD**) and adoption of the European	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	The ESRS were finalised on 22 December 2023 and create a common reporting	For those in scope (see fourth column

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		Sustainability Reporting Standards (**ESRS**)	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; or (c) average of 250 employees in the financial year). 3. Listed SMEs that are not micro-undertakings begin in 2027 in relation to 2026. 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.	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. Please click here for further information.	and note the value chain concept)
Sustainable Finance (US)		SEC Final Climate-Related Disclosure Rules See our recent client alert for background	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 Integration Strategies," "ESG-Focused Strategies," and "Impact Strategies."	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 solely on disclosures, and the SEC does not promote the adoption of a particular ESG strategy or any ESG strategy at all.	SEC-registered investment companies and 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.	SEC-registered investment companies and business development companies
		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	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	Pension fund managers

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			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.	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.	
		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 US 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 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.	"Doing business in California" is not defined in the legislation and could 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. Additionally, on 30 January 2024, the U.S. Chamber of Commerce and other industry groups filed a lawsuit challenging the legislation seeking an injunction. The case remains pending. Other states, including New York, are reportedly on the verge of passing similar legislation.	US-based partnership, corporations, limited liability companies and other entities

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Regulatory Developments (UK)		FCA Business Plan 2024/25	The FCA Business Plan 2024/25 was published on 19 March 2024 and sets out the FCA's main areas of focus for the next 12 months, namely: • Protecting consumers • Ensuring market integrity • Promoting effective competition • Embedding the secondary objective of international competitiveness and growth • Ensuring FCA personnel have the right skills to achieve its objectives • Operational resilience	The FCA Business Plan 2024/25 continues to build on the FCA's key themes from the past year. This includes the effort to be a "data-driven" regulator as well as putting the consumer duty at the front and centre of its strategy. Key initiatives to be aware of include: • A review of unit-linked pensions and long-term savings products to test transparency of charges and assessment of product value. • A Financial Inclusion TechSprint to explore the role of technological solutions in enabling financial inclusion. • Support for industry work on T+1 settlement. • Consultations on regulatory changes introducing more options on how to pay for investment research. • Consulting on FCA proposals for the commodity position limits regime. • Supporting the Treasury's opening of the Digital Securities Sandbox which opens for applications during 2024. • Issuing a discussion paper on transferring the MiFID data reporting regimes for transactions (RTS 22), and reference data (RTS 23). • Integration and expansion of the SDR and Investment Labels Regime, including a consultation on Portfolio Management in 2024.	All FCA-regulated firms

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				• Publishing a consultation paper clarifying FCA expectations on how firms should report operational incidents.	
		FCA Regulation of Consumer Credit	As part of the Edinburgh Reforms suggested in 2022 the Government proposed a reform of the consumer credit regime as part of the implementation of the "Smarter Regulatory Framework". A response to HM Treasury's December 2022 Consultation Paper on this topic was published in July 2023 setting out the broader principles and objectives that the government will take into account when proposing the reforms. The response indicated that due to the scale and complexity of the required reforms this will take a number of years to deliver and will likely require primary legislation, a rulemaking process by the FCA and significant transitional periods to allow the industry to prepare for the new rules. The response to consultation indicates that we should expect a second stage consultation including more detailed proposals to be published before the end of 2024.	The current consumer credit regime is often criticised for its lack of consolidation, overly complicated language and harsh sanctions for non-compliance (most notably including agreements being made unenforceable). Against this background, the suggestion of reform is a welcome development.	Firms engaging in consumer credit activities
		FCA Portfolio Letter to Asset Management and Alternatives Supervisory Strategy	On 1 March 2024 the FCA published a Portfolio Letter on their Asset Management & Alternatives Supervisory Strategy. This updates the August 2022 and February 2023 Portfolio Letters and sets out four key areas of focus for the sector for the next year, namely: • **Setting and testing higher standards**- including in relation to valuation assessments (in particular those required under the Consumer Duty and in relation to private assets), ensuring operational resilience is built into the change management process and in the implementation of the various FCA ESG initiatives. • **Reducing and preventing serious harm-** including implementation of systems and controls to counter the risk of financial crime and comply with the sanctions regime.	The Portfolio Letter indicates that the FCA expects the content of the letter to be discussed by the board of the relevant firms and take action where required to work towards the FCA's policy objectives.	Asset Management Firms

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			• **Supporting innovation-** emphasising the work of the Technology Working Group and its involvement in national and international exploration of fund and asset tokenization. • **Promoting competition and positive change**- the letter highlights various regulatory enhancements planned over 2024 including the Smarter Regulatory Framework (focusing on MiFID, AIFMD and UCITs), a replacement for PRIIPs (see *The UK PRIIPS Regulation (Packaged Retail and Insurance-based Investment Products*) below) and implementation of the Fund Gateway to modernise the Fund Authorisation process.		
		FCA Payment for Research Proposals	One of the key recommendations of the Investment Research Review conducted as part of the Edinburgh Reforms was to revoke the prohibition against the bundling of payments for investment research with payments for execution charges that was previously implemented under MiFID (with some applicable exceptions). Following the prohibition coming into effect there has been a significant decline in the payment for and, consequently, production of investment research being produced. On 10 April 2024 the FCA published Consultation Paper CP 24/7 on Payment Optionality for Investment Research setting out the FCA's approach to implementing this recommendation. The consultation paper proposes allowing firms carrying on MiFID business to bundle payments for third party research and execution services in all circumstances. It also proposes allowing firms to provide or receive a "non-monetary benefit" in addition to the permitted inducements for firms dealing with MiFID and insurance-based investment products. The consultation paper suggests the certain requirements which will apply to firms bundling payments, for example firms must: • keep a formal policy on bundled payments including certain specified information;	Permitting the bundling of payments for investment research with payments for execution charges will encourage the production of investment research and potentially increase revenue sources for firms. However, firms taking advantage of the end to the prohibition should be aware of the enhanced regulatory requirements they will become subject to.	MiFID Firms

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			• enter into an agreement with third party research providers setting out the methodology for calculating the cost of research (as already applies to firms exempt from the current prohibition); • Establish systems and controls setting out how payments will be allocated between third party research firms and ensuring the costs incurred by the client are proportionate to the benefit received. • Implement certain operational procedures and an annual budget for the third-party research • Periodically assess the value, quality, use and contribution of purchased third-party research to investment decision making. • Disclose certain specified information to clients		
		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:	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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			• 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 • recognise a lack of D&I as a nonfinancial risk The FCA has indicated that a Policy Statement will be published in 2024 and the changes will be implemented 12 months after publication.		
		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. Most recently, on 1 March 2024, provisions in relation to the accountability of the Payment Systems Regulator and the Bank of England levy came into force. Under The Financial Services and Markets Act 2023 (Commencement No. 4 and Transitional and Saving Provisions) (Amendment) Regulations 2023, and The Financial Services and Markets Act 2023 (Commencement No.5) Regulations 2024 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

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		Amendments to the Financial Promotion Approval Regime	From 7 February 2024 all authorised persons that want to approve financial promotions for unauthorised persons have required FCA permission to do so (subject to certain exemptions). Following a firm being granted permission, they will be made subject to certain reporting requirements.	Firms that wish to approve financial promotions should be aware of, and comply with, the new regime. However, it is important to note that the new regime does 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 who approve financial promotions, and those who rely on FCA firms to approve their promotions
		Reversal of Amendments to UK High Net Worth Individual and Sophisticated Investor Exemptions For further information on these changes please refer to our article Forward to the Past: HNW and Sophisticated Exemptions for UK Investors	On 6 March 2024, the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment and Transitional Provision) Order 2024 (SI 2024/301) was published on legislation.gov.uk. This effectively reverses the changes to the thresholds to meet the high net worth individual and self-certified sophisticated investor exemptions to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the FPO), which came into force on 31 January 2024. The thresholds for a high net worth individual have been reinstated as: • Income of at least £100,000 in the last financial year (down from £170,000 in the January amendments) • Net assets of at least £250,000 throughout the last financial year (down from £430,000 in the January amendments) The following reversals have also been made in relation to the self-certified sophisticated investor exemption: • Reintroduced criterion of having made more than one investment in an unlisted company in the previous two years	The reversal comes following industry criticism of the new thresholds, which were seen as having a significant impact on the funding of start-up companies and early-stage venture capital funds, which disproportionately affected women and ethnic minority investors. It is therefore a welcome development.	Managers who rely on these exemptions

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			• Reduced the company turnover required to satisfy the "company director" criterion to £1 million (down from £1.6m in the January amendments) The changes came into effect on 27 March 2024.		
		The UK PRIIPS Regulation (Packaged Retail and Insurance-based Investment Products)	10 January 2024 was the deadline to submit comments on the HM Treasury draft statutory instrument and accompanying policy notice to replace the UK PRIIPS regime with a new UK retail disclosure framework. Subject to Parliamentary time, this 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 30 January 2024 HM Treasury declared that the EEA states, including all EU member states, are equivalent under the OFR. This was reflected in the publication of the Financial Services Act 2021 (Overseas Funds Regime and Recognition of Parts of Schemes) (Amendment and Modification) Regulations 2024 which came into force on 16 February 2024. The regime has not yet been operationalised. However, on 1 May 2024 HM Treasury and the FCA jointly published a roadmap for implementation setting out the following stages: • **Q2 2024**: Legislation laid to enact the equivalence decision and extend the Temporary Permissions Regime (**TMPR**).	The long-awaited operationalisation of the OFR will give overseas retail investment funds and money market funds the opportunity to target UK retail investors. The publication of a more granular timeline for operationalisation will allow managers to prepare for this development.	Managers of non-UK retail investment funds and money market funds

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			• **July 2024**: FCA's final rules for OFR funds come into effect. • **Q3 2024**: Government to issue consultation on the application of SDR and labelling for OFR funds. • **September 2024**: OFR gateway opens for non-TMPR funds. • **November 2024**: OFR gateway opens for TMPR umbrella schemes, funds will be allocated three month "landing slots" in which they will be invited to apply for OFR recognition. Funds that miss their landing slot will be removed from the TMPR. • **By end 2024**: Government lays any legislation required to implement SDR and labelling for OFR funds. • **2025**: (if applicable) FCA consults on rules and guidance on SDR and labelling for OFR funds. • **H2 2025**: (if applicable) legislative requirements related to SDR and labelling for OFR comes into force. • **December 2026**: TMPR ceases in respect of non-MMF schemes (although note the government can choose to extend the TMPR). • **Before 1 January 2027**: OFR funds will be required to follow FCA rules under the new UK retail disclosure framework. The publication also included a very high level overview of the application process, indicating that the FCA will make a decision within 2 months of receipt of a completed application and payment of the application fee. In addition, it stated that the FCA will publish a policy statement setting out operational rules for the OFR; however, it did not provide a timeline for this other than that it would come into effect "in good time for when the OFR opens to receive applications".		
		FCA Proposed Changes to the Financial Crime Guide	On 25 April 2024, the FCA issued a consultation paper (CP24/9) on its proposed changes to its Financial Crime Guide (**FCG**). These changes are intended to assist firms	FCA regulated firms should consider the effect of the proposed changes on their business and consider what updates to	FCA regulated firms

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			with understanding the FCA's expectations and assessing the adequacy of their financial crime systems and controls, as well as with remedying any deficiencies in these systems and controls. The proposals include amendment in the following areas: • **Sanctions**: increasing the focus on firms' sanctions systems and controls, particularly in light of the sanctions imposed following Russia's invasion of Ukraine. This includes introducing reporting requirements for firms to report sanctions breaches or if a firm is directly or indirectly subject to sanctions, as well as enhanced governance arrangements to oversee sanctions systems and controls; • **Proliferation financing**: reflecting the requirement for firms to identify and assess the risks of proliferation financing to their business; and • **Transaction monitoring**: providing additional guidance to help firms in adopting and maintaining automated monitoring systems, including new self-assessment questions and examples of good and poor practice. The consultation period closes on 27 June 2024, following which the FCA plans to publish the feedback received and the final amended text of the Guide in a Policy Statement.	the firm's systems and controls will be required for the business to remain compliant should the proposed changes be implemented.	
Regulatory Developments (EU)		The Economic Governance and EMU Scrutiny Unit published its in-depth analysis in March 2024: Capital Markets Union: Ten Years Later setting out a revival of the CMU vison	The Capital Markets Union (**CMU**) was born in July 2014 and is rooted in considerations of financial stability, economic efficiency for financing of innovation and investments and fairness in terms of equal access to capital across the Union. This report referred to valuable CMU endeavors to date, including legislative acts on the European Single Access Point, 'consolidated tape' initiatives such as the MiFID/MiFID revisions and the ELTIF framework and its revision. But the report states that the 2014-2024 decade of CMU has failed to materialise into transformational EU policies and structural change in the EU financial system. It concludes that the best chance of revival is a focus on supervisory integration: *"In the heavily regulated financial sector, outcomes depend not*	The role of ESMA, as 'supervisor of supervisors' has been hampered by its unsatisfactory powers and the lack of a level playing field given the individual competent authorities, the report states. The paper discusses potential solutions, including empowering ESMA with more direct supervisory mandates (modelled on the recently-incorporated EU Anti-Money Laundering Authority) in charge of EU-level conduct-of-business supervision across the financial system including the banking and insurance sectors.	EU managers and advisers and non-EU managers who market to EU investors

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			only on the rules but on who is in charge of enforcing them: even fully harmonised rules, if implemented differently under different authorities in different member states, will not deliver European market integration. Conversely, supervisory integration would be insufficient to effect cross-border market integration, but it could play a catalytic role as the empowered EU authority would be positioned to identify the obstacles and provide consistent advocacy for their removal."	This report suggests either better EU-wide integration of the supervisory of capital markets; or possibly the end of the CMU policy agenda.	
		EU Retail Investment Directive and Regulation (the **Package**) See our 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 co-legislators' debate over this Package has been delayed to after the European Parliament elections in early June 2024. The negotiations will be based on the position set out in European Parliament's Economic and Monetary Affairs Committee (**ECON**)'s report that the European Parliament endorsed on 23 April 2024. ECON proposes various amendments to the Commission's original text proposed in May 2023 (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). There is a 12/18 month transposition period for member state implementation once the Package is adopted; therefore it is not expected to be fully in effect until 2026/2027.	Managers should keep a watching brief following the outcome of the EU elections 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. Once the Package is finalised much of the detail will follow in level 2 measures.	EU managers and distributors
		Review of AIFMD Click here to see our latest client alert on AIFMD II	The final compromise amending text of AIFMD2 which was published in November 2023 was approved by the EU Parliament in February 2024. The final text was published in the Official Journal on 26 March 2024, meaning it entered into force on 15 April 2024, which starts the 24 month implementation period. ESMA plans to consult on Level 2 measures to supplement the AIFMD II in Q2/Q3 2024.	There were no changes to the text published in November 2023 which included amendments in relation to delegation, loan origination funds, liquidity management tools and other issues. Our latest client alert (link in the third column) contains summaries of these issues and a blackline document showing all the changes to AIFMD as a result of AIFMD2.	Full-scope EU AIFMs

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		Cross-border marketing and management of AIFs	The Commission 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 delegated legislation was published in the Official Journal on 25 March 2024.	The draft text published in December 2023 has now been adopted. 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 alerts ELTIF 2.0 RTS: Commission Orders ESMA to Think Again and ELTIF 2.0: ESMA provides some final details	ELTIF 2.0 has been available since 10 January 2024 although the revised Regulatory Technical Standards (**RTS**) supplementing the amended ELTIF Regulation (**ELTIF 2.0**), in particular on liquidity management provisions, are still subject to debate. On 6 March 2024, and just before the expiry of its initial adoption window, the European Commission published a Communication in which it states that it "considers it necessary to take a more proportionate approach to the drafting of the RTS, in particular with regard to the calibration of the requirements relating to redemptions and liquidity management tools." ESMA responded on 19 April 2024 with its opinion. It has taken on board the Commission's amendments with a few suggested changes. The key negotiation points relate to the redemption notice period and size limit. The Commission wanted ESMA to remove the requirement of a minimum 12-month notice period (saying it does not sufficiently take into account the specific situation of individual ELTIFs). ESMA's view is that a level of prescriptiveness is needed and sets out an option where an ELTIF's minimum holding in UCITS/liquid assets and maximum amount of liquid assets that can be used to satisfy redemptions are calibrated depending on the length of the notice period. On liquidity management tools ESMA has softened its approach by making their implementation by the ELTIF manager permissive rather than mandated.	This is hopefully a final welcome step towards finalising the regulatory framework for open-ended ELTIFs. We expect Luxembourg ELTIFs to continue to dominate (with a large proporotion of the ELTIF authorisations to date are in Luxembourg) and for the revised ELTIF to be an important contender in the EU funds toolkit. The fact that the ELTIF marketing passport covers retail investors as well as professional investors gives it a structural advantage alongside the detailed consideration that go with eligibility, diversification and liquidity management for evergreen funds.	Full-scope EU AIFMs who choose to become authorised as ELTIF managers
		The Digital Operational Resilience Act (**DORA**) For further information on DORA please see our	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.	DORA and the DORA Directive represent a very significant step up in the regulatory requirements placed on firms' ICT operational resilience. While some	Managers who use critical third

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		webpage on Financial Regulations for Critical Third-Party Technology Providers in the EU and UK	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 22 February 2024 the Commission adopted two delegated acts under DORA: • Commission Delegated Regulation (EU) specifying the criteria for the designation of ICT third-party service providers as critical for financial entities (C(2024)896) • Commission Delegated Regulation (EU) determining the amount of the oversight fees to be charged by the Lead Overseer to critical ICT third-party service providers and the way in which those fees are to be paid (C(2024)902) **Technical standards under DORA** On 13 March 2024 the Commission adopted draft Technical Standards under Articles 15, 16,18 and 28 of DORA. 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 closed on 4 March 2024 and relate to sub-contracting ICT services supporting critical or important functions, oversight harmonisation, ICT incident reporting and threat led penetration tests. On 18 April 2024 the ESAs published Consultation Paper (JC 2024 24) on draft regulatory technical standards on the harmonisation of conditions enabling the conduct of the oversight activities under Article 41(1)(c). The deadline for responses is 18 May 2024. **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	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.	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 closed 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. The statutory deadlines for adopting secondary legislation are staggered between the 30th June 2024 and 30 December 2024. To date a number of consultation papers	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**), Issuers or crypto-asset market participants and managers classified as CASPs

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			have been published including draft guidelines and technical standards as specified under MiCA. On 22 February 2024 the Commission adopted Delegated Regulations in relation to: • the criteria for an asset referenced token to be classified as significant • the criteria and factors to be taken into account by regulators and in determining whether there is a significant investor protection concern or a threat to the orderly functioning and integrity of markets in crypto-assets or to the stability of the financial system • the procedural rules for the exercise of the power to impose fines or periodic penalty payments • the type of fees, matters for which fees are due, the amount of fees and the manner in which they are paid		
		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**). This came into force on 28 March 2024; however, member states have until 29 September 2025 to transpose the requirements of the revised MiFID II into national legislation and many of the provisions of the MiFIR review require the creation of new delegated legislation or amendments to existing delegated legislation. As a result of this ESMA will publish associated technical standards and procedures throughout 2024. On the 27 March 2024 ESMA published a public statement on the transition for the application of the MiFID II MiFIR review and an interpretative draft notice on the transitional provision of the MiFIR review.	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
		Digital Services Act (**DSA**)	On 17 February 2024, the DSA entered into force and now applies to all online intermediaries in the EU.	The DSA has improved the mechanisms for the removal of illegal content and for effective protection of users' fundamental rights online, including freedom of speech. The DSA has introduced easier reporting	All firms offering hosting services, online

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			The DSA aims to create a safer digital space in which the fundamental rights of all users of digital services are protected. While, since August 2023, the DSA had already applied to a first set of services designated as so-called Very Large Online Platforms (**VLOPs**) and Very Large Online Search Engines (**VLOSEs**), the rules now apply to all hosting services, online platforms and other intermediary services offered in the EU.	of illegal content, greater transparency in content moderation, and more options for users to appeal decisions. It also enforces zero tolerance on targeting ads to children and teens and on targeting ads based on sensitive data. The DSA fosters innovation, growth and competitiveness, and facilities the scaling up of smaller platforms, SMEs and startups.	platforms and other intermediary services in the EU
		Digital Markets Act (**DMA**)	The DMA entered into force on 1 November 2022 and became applicable, for the most part, in 2 May 2023. The DMA aims to ensure fair competition and innovation in the digital sector by regulating the practices of large online platforms known as gatekeepers. These platforms are now subject to a set of harmonised rules that prevent them from engaging in unfair practices and ensure they act in a contestable way and transparent manner. The DMA imposes restrictions on social networks, search engines, video-sharing platforms, operating systems, cloud computing services, and online advertising services owned by large digital corporations. Because they have a significant impact on the market, these gatekeepers are subject to specific obligations and restrictions to level the playing field for smaller businesses and protect user rights.	The DMA aims to safeguard a level playing field to foster innovation, growth, and competitiveness, both in the European Single Market and globally. As of 7 March 2024 the European Commission has designated Apple, Alphabet, Meta, Amazon, Microsoft and ByteDance as gatekeepers. The gatekeepers are required to prove their effective compliance with the DMA and outline the measures undertaken in compliance reports. On 29 April 2024 Apple, with respect to iPadOS, its operating system for tablets, was designated a gatekeeper.	Stakeholders in digital markets
		DLT Pilot Regime	The EU DLT Pilot Regime creates a regulatory sandbox for distributed ledger technology (DLT) market infrastructure firms (including DLT multilateral trading facilities, DLT settlement systems and DLT trading and settlement systems) who have applied for and been granted a licence to develop and test business models based on distributed ledger technology. This involves licenced firms being made exempt from certain elements of certain EU regulations such as the Central Securities Depositaries Regulation (CSDR) and the Markets in Financial Instruments Regulation (MiFIR) for up to six years. To limit the risk of disapplying these provisions, certain new requirements will apply to licenced firms.	The DLT Regime is a unique opportunity for DLT market infrastructure firms to explore broader opportunities outside the scope of restrictive regulation designed with traditional financial infrastructure in mind.	DLT Market Infrastructure Firms

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			Member States have been permitted to accept licence applications and issue licences under the DLT Pilot Regime from 23 March 2023. In March 2026 the Commission will review the regime and present a report to the European Parliament and the council deciding whether the regime should be extended for a further period of 3 years, expanded, made permanent or terminated (including in relation to the permissions already granted).		
		AI Act	On 13 March 2024, the European Parliament endorsed the AI Act which aims to safeguard AI use within the EU while prohibiting certain practices outright. It has an extensive scope, applying to providers, deployers, importers, and distributors of AI systems placed on the market or put into service in the EU. The extra-territorial reach even extends to providers and deployers of AI systems established in third countries in situations where the output of the AI system is used within the EU. The AI Act will come into effect two years after its publication (in 2026), with some particular provisions taking effect sooner. Prohibitions will apply after six months, while most rules regarding general-purpose AI (GPAI), governance, notified bodies, and sanctions will apply after 12 months. For product components covered by sectoral legislation, such as toys, cars or medical devices, and for GPAI model already on the market at the date of the IA Act, the implementation deadline will be 36 months.	The AI Act introduces a comprehensive regulatory framework for AI, categorizing systems according to the level of risk they pose and imposing stringent requirement on high-risk applications. This includes mandatory risk assessments, data governance, transparency obligations, and adherence to fundamental rights. The AI Act is set to raise the bar for AI ethics and governance, fostering an environment of trustworthy AI while promoting innovation and economic growth.	Stakeholders in AI
		GDPR 5 years on	The GDPR represents a significant milestone in the evolution of data protection laws in Europe. With its enforcement, the regulation brought forth a new era of data privacy and security, mandating organisations to handle personal data with the utmost care and responsibility. A crucial aspect of the GDPR is its stringent sanction regime, designed to ensure compliance and penalise violations. The enforcement of the GDPR has led to significant fines across various industries, for example Meta was fined a record-breaking EUR 1,2 billion by the CNIL for transferring EU user data to the US without adequate safeguards and	Today the GDPR is having a real impact on the lives of the entities affected by its application. However, the new European regulations (AI Act, DMA and DSA) will imply a new calibration of the GDPR policies of the various entities so that they are adapted to these new European regulations.	All firms

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			processing children's data without valid parental consent (Article 46 § 1 "Transfers subject to appropriate safeguards"). Google received a substantial fine of €50 million also by the CNIL for not making its data processing statements easily accessible and not seeking proper consent for targeted advertising (Article 6 "*Lawfulness of* processing", and Article 13 "*Information to be provided where personal data are collected from the data subject*"). In 2021, Amazon Europe Core S.à r.l. was fined €746 million by the CNPD (Portugal) for tracking user data without acquiring appropriate consent. Today is the time for the strict application of the GDPR, in which case the competent authorities will not hesitate to strongly sanction those which do not comply with this regulation.		
		NIS2	The Directive on measures for a high common level of cybersecurity across the Union (**the NIS2 Directive**) provides legal measures to boost the overall level of cybersecurity in the EU by enhancing: • Member States' preparedness, by requiring them to be appropriately equipped. For example, with a Computer Security Incident Response Team (CSIRT) and a competent national network and information systems (NIS) authority. • cooperation among all the Member States, by setting up a Cooperation Group facilitate strategic cooperation and the exchange of information among Member States. • the culture of security across key sectors that rely heavily on ICTs, such as energy, transport, water, banking, financial market infrastructures, healthcare and digital infrastructure. The Directive splits businesses operating in these key sectors are split into the categories of "important" and "essential" which determines the level of regulatory oversight. Firms will be in scope by default if they have a headcount over 50 or more than €10 million revenue and more stringent rules will apply to large firms with a headcount over 250 or more than	NIS2 builds on the EU's wider effort to improve operational resilience throughout the union (see, for example, the Digital Operational Resilience Act (DORA) above and the Critical Entities Resilience Directive (CER) below). Firms should, as a matter of priority, assess whether they are in scope of NIS2. If they are, they should ensure that they meet the applicable standards for operational resilience.	EU firms will be in scope by default if they have a headcount over 50 or more than €10 million revenue

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			50 million revenue. However, firms falling below these thresholds may still be in scope if a Member State considers that they fulfil a key role for society, the economy or particular sectors. NIS2 came into force in January 2023 but is not required to be implemented into member state law until 17 October 2024.		
		The Critical Entities Resilience Directive (**CER**)	Directive (EU) 2022/2557 on the resilience of critical entities (the **CER Directive**) is another directive entered into as part of the EU's wider effort to improve operational resilience (see, for example, the Digital Operational Resilience Act (DORA) and NIS2 above). This directive focuses on addressing the resilience of critical entities to hazards, including natural hazards, terrorist attacks, insider threats, hybrid attacks, sabotage and public health emergencies. The CER Directive applies to entities designated by a member state as critical operating in 11 key sectors including, for example, (amongst others) energy, banking, financial market infrastructure (including trading venues and central counterparties) and digital infrastructure. As with NIS2, the CER Directive entered into force in January 2023 but is not required to be implemented into member state law until 17 October 2024. Following this, each member state is required to adopt a strategy for enhancing the resilience of critical entities by 17 January 2026 which must include certain specified information. By 17 July 2026 each Member State is required to identify the relevant critical entities. Following identification the critical entities must be informed within one month. Within nine months of identification the critical entities must conduct a risk assessment and within ten months they must comply with the requirements of the directive.	NIS2 builds on the EU's wider effort to improve operational resilience throughout the union (see, for example, the Digital Operational Resilience Act (DORA) and NIS2 above). Firms should, as a matter of priority, assess whether they are likely to be designated as a critical entity and, if they are, they should ensure that they meet the applicable standards for operational resilience.	Entities that may be designated as "critical" by a member state regulator
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	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 prohibitions on investment into Russia. The UK government	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	Persons located within UK territory and UK persons

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		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 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**).	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 crypto-asset exchange providers and custodian wallet providers within the definition of "relevant firm", thereby rendering such providers subject to OFSI reporting 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 recently published updated guidance on its new powers as well as additional guidance by way of a number of FAQs pertaining to UK financial sanctions. The FCA recently published a consultation paper relating to updates to its Financial Crime Guide, which includes updates relating to its section on financial sanctions.	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.	(including UK incorporated entities) wherever they are in the world
		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 is intended to benefit 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;	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.	In-scope organisations

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			• 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 able to successfully argue the existence of such circumstances.	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.	

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Tax Topics (UK)	🇬🇧	Amendments to the UK's REIT Rules	The Finance Act 2024 (FA 2024) received Royal Assent on 22 February 2024, bringing into effect certain amendments to the UK's REIT rules that were initially proposed in the November 2023 Autumn Statement and Finance Bill (as covered in our previous Horizon Scan). The key amendments include: (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; and (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.	One area of uncertainty in the FA 2024 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 the old 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.	UK REITs
		Amendments to HMRC's guidance on LLP "salaried members" rules	HMRC has made an unannounced change to its published guidance on the "salaried member" rules. Broadly speaking, the rules treat certain individual LLP members as employees for tax purposes (i.e. subject to employment income tax and NICs) if economically and holistically their role is more like that of an employee than a partner. Falling within these rules can therefore lead to a significant tax cost. In practice, it has been common for individual members to make additional 'top-up' capital contributions to the LLP in each period (as relevant) to prevent their being treated as a "salaried member". This is because one of the gateway conditions to the rules (Condition C) is failed where the member's "capital contribution" is 25% or more of the amount	This change comes despite HMRC having expressly acknowledged, over a number of years, that it is aware of this practice and not having raised any objections. Whilst many fund managers will not, in practice, have solely relied on the 'top-up' mechanic to fall outside the rules, many houses are expected to be impacted (not least as HMRC's update is framed as having a potential retroactive effect). We will continue to monitor this development as part of our involvement	All UK fund managers structured as LLPs

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			of "disguised salary" the member would have received from the LLP in return for the performance of services. The legislation contains a widely drafted targeted anti-avoidance rule (TAAR), which aims to prevent arrangements the main purpose of which is to ensure that the rules do not apply. HMRC's "new" position is that individual members who 'top up' their capital contribution to the LLP periodically in response to increases in their expected disguised salary to avoid meeting Condition C will trigger the TAAR, and no regard should be had to the additional contribution when considering whether the member meets Condition C.	with industry working groups, but going forward, careful consideration should be given to any arrangements that seek to circumnavigate the 25% threshold in Condition C, notwithstanding that a similar arrangement may have been implemented for a particular LLP member in the past.	
		Reform of the UK's rules relating to non-UK domiciled individuals	The UK government has announced significant changes to the taxation of non-UK domiciled individuals (so called "non-doms"). Assuming the new rules are implemented, then from 6 April 2025: • the current remittance basis of taxation will be abolished for future income and gains arising after 6 April 2025 (subject to transitional arrangements for existing non-doms claiming the remittance basis); • subject to any relevant claim being made, qualifying individuals (i.e. those who have been non-UK resident for at least 10 consecutive years) will not be required to pay UK tax on foreign income and gains (**FIG**) arising in the first 4 tax years after becoming UK tax resident, regardless of their domicile status, and will be able to bring these FIG to the UK free from any additional charges; • current resident non-dom remittance basis users who are not entitled to the new 4-year FIG regime will, for 2025-26 only, pay UK tax on 50% of their foreign income arising in that period. This reduction does not apply to foreign chargeable gains, which will be charged to tax in the normal way, subject to any transitional relief and potential rebasing available as at April 2019. A temporary repatriation facility will also be available at a 12% rate of	The proposed changes will be of particular interest to individual investors and house co-investors / carried interest holders who are UK resident but claiming the remittance basis of taxation on their foreign income and gains, as they may, in due course, become subject to UK tax on their worldwide income and gains on an arising basis (which is the same position as for UK resident and domiciled individuals), as well as becoming subject to UK inheritance tax. On the other hand there may be benefits from the proposed new regimes for some. For carried interest holders the access to the remittance system of taxation had already been significantly reduced alongside the introduction of the UK's disguised investment management fee rules in 2015. The remittance basis system will continue to operate alongside the new regime for pre-2025 FIG, which may lead to complexities in practice.	Non-UK domiciled individuals (investors, carried interest holders).

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			tax for pre April 2025 FIG remitted in 2025/26 and 2026/27; • once an individual ceases to qualify for the new regime (i.e. after the initial 4 years of being UK tax resident), they will pay UK tax on their worldwide income and gains on an arising basis (as is the case for all other UK residents); and • the taxation of FIG arising in certain trust structures will change, with those changes likely to have significant tax consequences. In addition, the government intends to move the UK inheritance tax system from a domicile-based regime to a residence-based regime. However, this will be subject to consultation. It is envisaged that the new rules will charge IHT on worldwide assets owned outright when a person has been UK resident in the UK for 10 years, with a 10-year tail. For property held in a trust it is envisaged that chargeability will depend on settlor residence at relevant times.	The taxation of non-doms is a politically charged topic in the UK, and it remains to be seen whether the proposals will be legislated for in their current form following the 2024 UK General Election.	
		UK government consultation on permanent establishments, diverted profits tax and transfer pricing	In January 2024, the UK government published a summary of responses to its consultation on potential reforms to the UK's diverted profits tax regime (DPT), on the rules relating to permanent establishments (PE) for domestic tax law purposes, and on transfer pricing. The proposals are wide-ranging and in many cases very technical (and more so than can be succinctly summarised here), but in the context of private investment funds it is worth noting, in particular, that the government: • will continue to consider whether to update the definition of permanent establishment for domestic law purposes, including whether to align it with the definition contained in Article 5 of the 2017 OECD Model Tax Convention. Importantly, the government has confirmed that it will retain the "Investment Manager Exemption", with the caveat that, going forward, it will consider whether any changes are needed to clarify the IME's operation; and	The summary of responses suggests there has not been universal agreement as to the PE definition proposals. For example, the proposal to adopt the OECD definition of PE (and thereby expand the meaning of 'dependent agent') had caused some concern, as it was felt this would introduce added uncertainty and complexity (especially around the taxation of offshore funds), and would be out of step with other countries which do not adopt the OECD wording in domestic law (in turn damaging the UK's competitiveness and leading to some investment management activities being moved offshore). The proposed simplification of the DPT regime, and the increased certainty as to	UK funds, and fund structures with UK managers or advisers

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			• intends to remove the DPT's status as a standalone tax and to incorporate it more seamlessly into the UK's corporation tax regime (noting that this should reduce administrative burdens for taxpayers and increase certainty on access to the UK's double tax treaty network).	access to double tax treaties, is generally welcome. However, there remain questions as to the role of the DPT going forward, following advancements in the OECD's transfer pricing guidance and BEPS initiatives (including Pillar 2) since the DPT's introduction in 2015, a point which the government has recognised in its latest responses.	
Tax Topics (EU)		Anti-Tax Avoidance Directive (**ATAD 3** or **"Unshell"**)	The proposed ATAD 3 Directive remains an important topic, given its potentially significant impact on the private funds industry. However, since the current text was adopted by the European Parliament in January 2023, there has been little discernible progress on the topic so far in 2024 (save for a fleeting reference to the draft Directive in the Parliament's recent amendments to the recitals of the FASTER Directive, since dropped in the version agreed by the Council). Clearly it has proven challenging to achieve any meaningful political consensus either on the original draft text, or on the subsequent European Commission proposals put forward in late 2023, and further discussions (and/or a significant re-work) will be needed under the current Belgian presidency if the Directive is to regain momentum. The upcoming 2024 European Parliament elections offer a chance for the bloc to inject political impetus, or materially alter the course of the proposals, and so we await these with interest.	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 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.	European fund structures and AIFMs
		Directive on the Faster and Safer Relief of Excess Withholding Taxes (**FASTER**)	On 14 May 2024, the Council of the EU reached an agreement (general approach) on introducing a common EU-wide system for safer and faster procedures relating to withholding tax (WHT) on dividend or interest payments (FASTER). As a recap, the proposal is limited in application	This latest announcement demonstrates that the Directive remains a priority. However, due to changes the Council made in the Directive during the	Withholding tax claimants, CFIs

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			to payments of dividends (or interest) from publicly traded shares (or publicly traded bonds), and has 4 main features: • Member States will need to implement one or both of two new "relief at source" or "quick refund" procedures; • Common reporting obligations, which require financial intermediaries to report information relating to relevant dividend or interest payments to enable tax authorities to identify abusive practices and confirm entitlements to reduced WHT rates; • An EU digital certificate of tax residence (eTRC), issued by Member States and containing standardised content such as the identity of the requesting taxpayer and confirmation of residence; and • The engagement of "certified financial intermediaries" (CFIs) registered with competent authorities of Member States, who are responsible for obtaining and verify tax residence (and if Member States require, the beneficial ownership information) of investors applying for relief. The recent political agreement was achieved following the European Parliament's approval of a number of amendments in February 2024 to the draft Commission Directive (originally published on 19 June 2023), including (amongst others) extending the time limit by which Member States must issue eTRCs, requiring Member States to introduce coordinated cooperation with tax authorities and law enforcement to detect and prosecute illegal reclaim schemes, and tightening some of the exemptions available to CFIs.	negotiations, the European Parliament will need be consulted again on the agreed text, prior to its formal adoption and publication in the Official Journal. Member States will then have to transpose the Directive into national legislation by 31 December 2028, but the national rules will only have to become applicable from 1 January 2030. Future iterations or discussions to address certain key issues relevant for the private funds industry, such as whether and how the definition of "residence" and "beneficial ownership" can be applied consistently by Member States, CFIs and investors alike, will continue to be of interest. In this regard, we note that the most recent amendments put forward by the Parliament and Council appear to have substantially diluted the requirements around beneficial ownership verification, compared with the original Commission draft, with beneficial owner declarations only having to be obtained by CFIs where required by the source Member State (rather than in all cases) and, if the Member State so chooses, only on an annual basis (rather than payment-by-payment, as was first envisaged).	
		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.	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 from published OECD guidance that unrealised gains (e.g. from group	All fund managers

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			Following the domestic implementation of this Directive in late 2023, the Luxembourg tax authorities issued guidance (on 25 March 2024) regarding Pillar 2 in an FAQ (available here in French). The guidance focuses on questions relating to the required disclosure for certain deferred tax assets (DTAs) and deferred tax liabilities (DTLs), and clarifies that the terms "reflected in the financial accounts" refer to "recognition" of DTAs or DTLs in the balance sheet, while the terms "disclosed in the financial accounts" refer to "disclosure" in the notes to the accounts. The considered DTAs and DTLs shall be reflected in the accounts for the year preceding the transition year 31 December 2023, for taxpayers in scope that have a calendar financial year from 1 January 2024 to 31 December 2024.	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 fund managers should continue to monitor the impact of Pillar 2 on their portfolios.	
		Decrease in the Luxembourg corporate income tax rate announced	As part of the 2024 Budget Law, the Luxembourg Minister of Finance announced that the corporate income tax (CIT) rate would decrease from 17% to 16% from 2025.	The change will mean that the combined income tax rate for companies located in Luxembourg City (comprising CIT and municipal business tax) should amount to 23.87% from 2025, instead of the current combined rate of 24.94%. The change will be welcome news to the industry, given the common use of Luxembourg corporate vehicles in many European fund structures where the vehicle would not otherwise benefit from exemptions from CIT (e.g. through the SIF or RAIF regime).	Fund structures with Luxembourg corporate vehicles
US-specific developments for non-US managers		SEC Private Funds Rules For more information please see our client alert	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	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-	US and non-US Registered

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		summarising the new rules, our comparison of the new rules and AIFM and our review of the legal challenge being made by industry groups.	private fund advisers that will have a significant impact on future SEC examination and enforcement activities. Pending the 5th Circuit Court decision (due out in May), the first compliance deadline for fund managers with $1.5 billion is September 2024.	based managers this represents the largest change in manager/adviser regulation since the Dodd-Frank Act.	Investment Advisers and Exempt Reporting Advisers
		Corporate Transparency Act (**CTA**) For more information please see our website page (which contains a supplement to the toolkit for private investment funds) and FAQs in relation to the CTA.	The CTA came into force at the beginning of 2024 and any US and non-US entities formed or registered to do business with a secretary of state will need to report to the Financial Crimes Enforcement Network (**FinCEN**) before the end of 2024 and identify each "beneficial owner". Newly formed or registered entities will need to identify each "company applicant".	Any fund manager who has US entities (or non-US entities registered in the US) will need to report during 2024.	Managers using US-based vehicles or considering using US-based vehicles
		FinCEN issues a proposed rules that would subject certain investment advisers AML compliance requirements. Please click here for our recent client alert.	In February, FinCEN issued the proposed that would cover both registered investment advisers (RIAs) and exempt reporting advisers (ERAs), whether US or non US, and would require these firms to have a written AML program, a designated AML officer, independent testing of the program and ongoing training. The SEC would have authority to carry out examinations to ensure/verify compliance.	The extension of the proposed rule to non US RIAs and ERAs (even in relation to non US funds and non US clients) would be a significant departure from the SECs position on extraterritorial application. The new Private Fund Advisers Rules (detailed above) are an example of this position and so it is hoped that FinCEN can take a similar approach.	US and non-US Registered Investment Advisers and Exempt Reporting Advisers
French developments		Law of 9 March 2023 regarding various provisions adapting to European Union law in the fields of the economy, health, labour, transport and agriculture	The law of 9 March 2023 implements several directives and brings French law into line with European regulations in a number of areas: protection of savers, businesses, accessibility of Internet products and services, leave for employees who are parents or carers, rail passengers' rights, etc. On 22 April 2024, a law was enacted covering various provisions for adapting to European Union regulations in the areas of economics, finance, ecological transition, criminal law, labour law and agriculture. The law incorporates several directives and brings French law into line with European regulations in a variety of fields (paid leave, consumer law, digital technology, ecological transition, police custody, civil	On the economic and financial front, the law includes provisions to protect savers, in particular to ensure the portability of pan-European individual retirement savings products (**PEPP**). In addition, the rules applicable to companies, particularly those in difficulty, have been clarified. The directives on tax transparency for multinationals and on the publication of CSRD are to be transposed by ordinance. One amendment concerns the adaptation of French law to the future "MiCA" regulation of the crypto-asset market.	All French Firms

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			servants' rights, etc.). The law also authorises the government to legislate by ordinance. On the economic and financial front, the law enhances consumer protection and clarifies various French texts in the fields of banking, monetary and financial law. National rules on the balanced representation of women and men on the boards of commercial companies will be harmonised with European regulations ("Women on Boards" directive) by ordinance. A government amendment has secured this authorisation. Other ordinances will be required to adapt French law to the MiCA regulation on crypto-asset markets and the TFR regulation on information accompanying transfers of funds and certain crypto-assets.		
		Law of 9 June 2023 regarding the regulation of commercial influence and combatting the abuse of influencers on social networks	On 9 June 2023, France adopted a text regarding the regulation of commercial and influence. This text: • defines influencers and influencer agents; • strengthens the obligations of online platforms; • bans certain types of advertising, in particular for cosmetic surgery and medicine, certain financial products and services (including crypto-currencies), therapeutic abstinence, nicotine sachets, and subscriptions to sports tips and predictions; • provides for better information for subscribers regarding the nature of content (advertising, commercial content), or modified or retouched images; and • lays down reinforced and graduated sanctions, with new disqualification penalties and injunctive powers for supervisory authorities. In addition, the powers of the *Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes*	The European Commissioner for the Internal Market, Thierry Breton, has expressed apprehension to the French Minister for European and Foreign Affairs regarding digital age thresholds and commercial influence. Thierry Breton highlighted several discrepancies between these laws and the recently enacted regulation "Digital Service Act" (DSA). He contends that the French laws risk fragmenting the unified European market, which the DSA aims to standardise, by imposing unwarranted constraints on the free provision of services that extend beyond France's borders. Breton urges the executive to revoke specific provisions that have been enacted. Two provisions appear to conflict with the DSA: • the legislation regarding the digital age threshold seeks to compel social networks to verify parental consent for	All French Firms

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			(DGCCRF) to impose fines and formal notices on influencers have been strengthened. With this law, France is the first European country and one of the first country in the world to introduce a comprehensive regulatory framework for the commercial influence sector.	users under 15 before their registration; and • the legislation concerning commercial influence mandates platforms to identify and remove illicit content. Presently, the conformity of the legislation with European law remains undecided, yet the legislation remains enforceable in France.	
German Developments		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 catalogue 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	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 publication in the press.	EU managers

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			changes were finally not incorporated into the Future Financing Act.		
Luxembourg developments		Amended law of 30 May 2005, consolidated version applicable on 5 September 2023 regarding specific provisions for the protection of individuals with respect to the processing of personal data in the electronic communications sector	The consolidated version of the law of 30 May 2005, in the version applicable on 5 September 2023, incorporates the Act of 1 August 2018, as it regulates the transfer by air carriers of passenger name record data and the processing of such data for the purposes of preventing, investigating, establishing and prosecuting terrorist offences and serious crime.	The Law of 30 May 2005 transposes European Directive 2002/58/EC into national legislation. It governs the protection of personal data in the field of telecommunications and electronic communications and takes recent and foreseeable developments in the field of services and technologies involving electronic communications into account. This law of 1 August 2018, which was consolidated in the 2005 law, governs the transfer by air carriers of passenger name record data and the processing of such data for the purposes of preventing, investigating, establishing and prosecuting terrorist offences and serious crime.	Luxembourg Investment Firms
		Circular 24/856 on investor protection in the event of NAV calculation errors, non-compliance with investment rules and other errors replacing Circular 02/77	On 29 March 2024, the CSSF published a public statement regarding a revised version of the Circular 02/77 on NAV calculation errors, non-compliance with investment rules and other errors, the Circular CSSF 24/856. The new circular replaces Circular 02/77 and will apply to UCITS, UCI Part II, SIFs and SICARs as well as to ELTIF, MMF, EuVECA and EuSEF (which are not UCITS, UCI Part II, SIF and SICAR) for which the CSSF is the competent authority in accordance with the applicable laws. The Circular centralises the guidance provided by the CSSF over recent years, including information previously dispersed across CSSF FAQs and activity reports into a single document. Additionally, it offers further guidance on specific topics, such as distinguishing between active and passive breaches, and incorporates the administrative practices adopted by the CSSF.	The new circular extends the scope of vehicles to which the CSSF guidance applies, covering all funds subject to CSSF supervision. In addition to addressing NAV calculation errors and non-compliance with investment limitations, the scope of coverage extends to encompass other errors such as those related to cost/fee payment, swing pricing, accounting allocation and application of cut-offs.	Managers of Luxembourg Investment Firms

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			The Circular CSSF 24/856 will come into effect from 1 January 2025, the date on which Circular CSSF 02/77 will be repealed.		
Singaporean developments		Repeal of the Registered Fund Management Company (**RFMC**) framework	The Monetary Authority of Singapore (**MAS**) targets to repeal the RFMC licencing framework on 1 August 2024. Fund managers registered as an RFMC are subject to less stringent reporting and capital requirements than "fully-licenced" 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 licence and operate as a licenced fund management company (**LFMC**) by 30 June 2024. RFMCs that do not obtain a licence to operate as an LFMC will no longer have a valid regulatory status to carry out fund management when the repeal takes effect. The MAS will maintain a cap of SGD 250 million on the AUM of such "transitioned" LFMCs, although the MAS will review and may lift this cap upon request by an LFMC.	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 subject to the same regulatory and capital requirements as larger asset managers.	Fund managers currently operating in Singapore as a Registered Fund Management Company should familiarise themselves with the increased regulatory and capital requirements and submit a licence "upgrade" application if required.

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 • FRC review of UK Stewardship Code • ECCTA and corporate transparency/key corporate reforms • 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 • Proposed ESG Regulation on ESG rating activities
General	
• Solvency II reforms • Taskforce on Nature-related Financial Disclosures (**TNFD**): disclosure framework • US government's "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 • Singaporean rules for segregation and custody of blockchain tokens	

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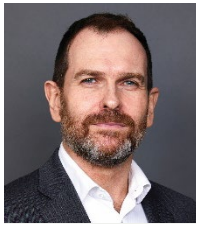

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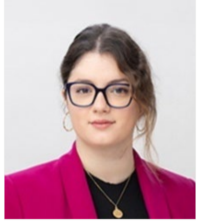

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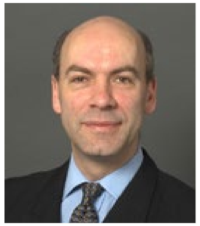

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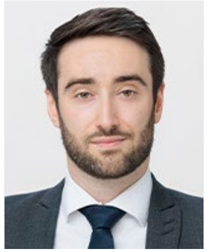

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