Financial Institutions Horizons 2021

Contents

Introduction 4

Chapter 1
Accelerated Change in the Financial Institutions Sector 6

The acceleration of digital channels: Managing the fraud and cybersecurity risks 7
Biden's China policy: No details, but several clues on approach 9
UK sanctions legislation post-Brexit: Analysis of new statutory instruments 11
COVID-19 relief efforts spark litigation and investigations in the U.S. 13

Chapter 2
Focus 15

Compromising debts in the COVID-19 era 16
Sustainable finance disclosures 25
Remaining steps along the road to LIBOR transition 30

Chapter 3
About Hogan Lovells 36

Why Hogan Lovells 37
Our Global Financial Institutions Team 38
Added value 39
Legal Tech 40
Hogan Lovells Impact Financing & Investing 41
Hogan Lovells Consulting 42
Engage 43
Hogan Lovells LIBOR Tool 44
Blockchain Hub 45
Global Guide to Electronic Signatures 47
Online resources 48
Diversity 49
Citizenship 51
Pro bono 52

Introduction

Financial Institutions Horizons is a snapshot of key legal topics and market trends across the globe, shaping the future of the financial institutions market.

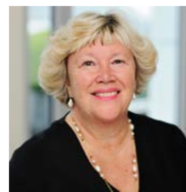
When we conceived the Horizons series in 2018, the financial institutions industry was already contending with numerous changes, among them the shift to digital channels and the emergence of FinTechs, escalating trade wars, Brexit, challenging debt financing obligations, and mounting pressure to embed environmental, social and governance principles in investment decisions, corporate strategies and operations.

It comes as no surprise that COVID-19 has accelerated these changes. And yet the cross-border, fast-moving nature of the financial institutions industry has perhaps made it particularly vulnerable to disruption in a global pandemic.

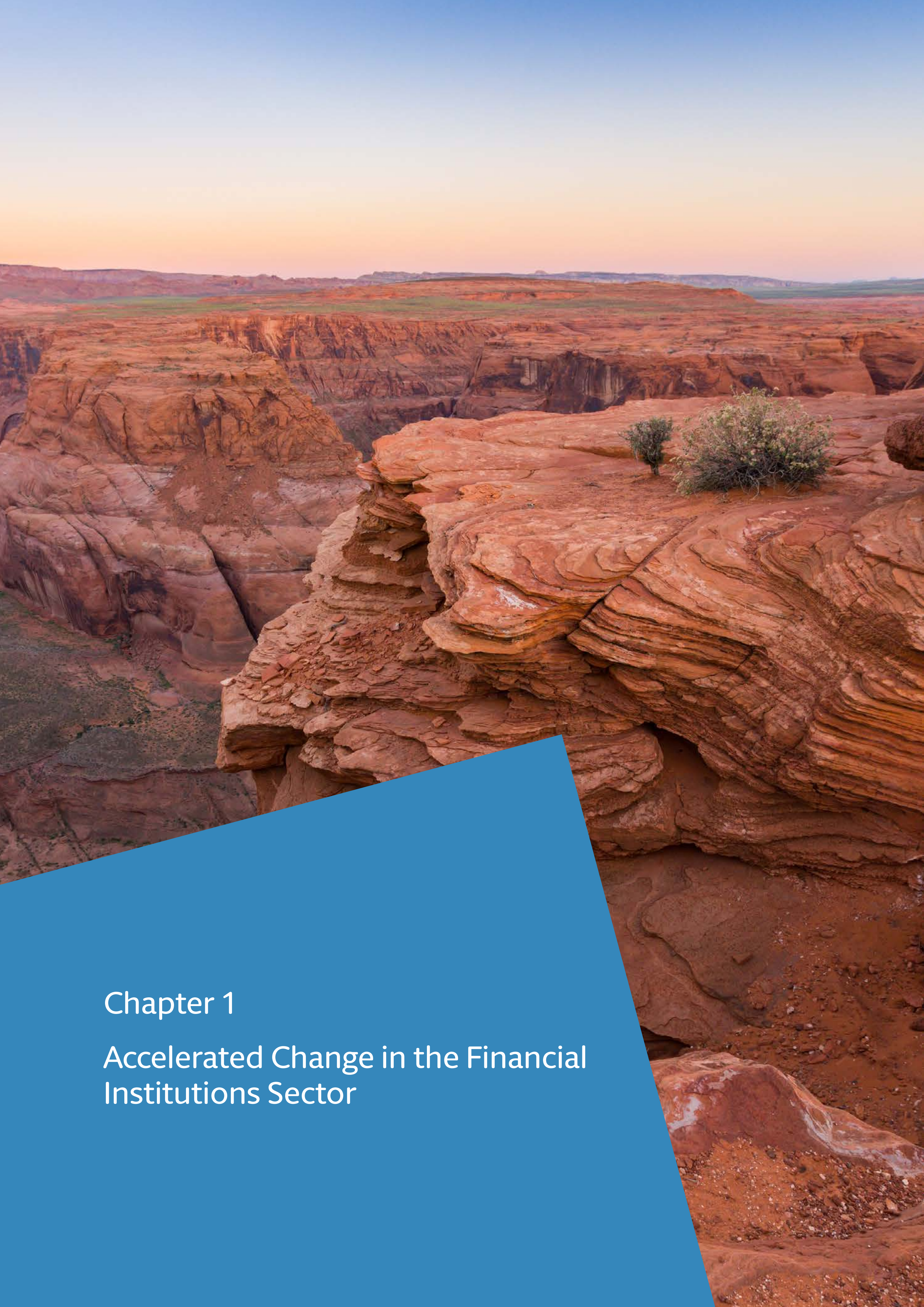
In the articles that follow, we address critical questions surrounding these emerging risks and opportunities. For instance, as more customers have embraced digital out of necessity during the pandemic, how can financial institutions keep themselves and their customers safe from fraud and cyber-attacks? Will U.S. trade and economic policies towards Hong Kong and China see significant changes under the Biden administration? And despite many courts scaling back their work to only critical cases, how has the litigation landscape changed?

We also address key themes and trends that could lead to opportunities and risks for our clients in the financial institutions sector, including the implication of UK sanctions legislation in a post-Brexit environment; the avalanche of sustainable finance legislation from governments and the shift from voluntary guidance to mandatory measures, reflecting the urgency of global climate concerns; and the remaining steps that financial institutions should be taking to ensure an orderly LIBOR transition by the end of 2021.

No one can predict how COVID-19 will ultimately reshape our world. We hope, however, that this collection of insights will offer a touch of clarity as industry leaders seek progress in 2021 and beyond. If you would like to explore any of the issues mentioned in the publication further, please speak to one of the contacts listed, or to any member of our global industry sector.



Sharon Lewis
Global Head of Financial Institutions & Insurance, Paris, London
T +33 (1) 5367 4704 (Paris)
+44 20 7296 2474 (London)
sharon.lewis@hoganlovells.com



Chapter 1

Accelerated Change in the Financial Institutions Sector

The acceleration of digital channels: Managing the fraud and cybersecurity risks

The shift to digital channels – which has been ongoing for many years with the emergence of FinTechs, the needs of a new digital-savvy generation of customers and the desire to manage costs – has accelerated rapidly during the pandemic. With customers and staff unwilling or unable to visit physical locations, institutions have seen customers who have previously avoided digital switch to online and app-based channels. How can institutions keep themselves and their customers safe from fraud and cyber attacks in this new world?

For a number of years now, financial institutions have been embracing digital but some customer demographics have been resistant to change. The pandemic has led many more customers, including those who were traditionally wary, to embrace digital out of necessity during lockdown or self-isolation. A recent survey of regulators around the world had 60% reporting strong increases in the use of digital payments and remittances and 20% reporting strong increases in the use of digital banking services and digital savings platforms. COVID-19 has forced a rapid acceleration of a trend that would ordinarily have taken many years to reach this point.

While this may be good news for institutions looking to drive down costs, and good news for customers who learn to embrace the benefits that digital channels can bring, it also comes with a potential threat. Cyber criminals are also aware of the shift and are keen to exploit the opportunities that digital channels can bring for the unwary. These attacks can take many forms from simple phishing emails seeking to exploit confusion about COVID-19 in an attempt to uncover login details, to more sophisticated impersonation fraud, to ransomware attacks.

Against that backdrop, what should institutions be thinking about to counter this threat? Some key steps include:

- **Consumer and employee education:** What steps can you take either alone or on an industry basis to keep consumers and employees educated about the latest scams and help them protect themselves and the organization?
- **Fraud prevention:** Are your fraud controls sufficient to mitigate fraud? Is the balance between fraud prevention and frictionless customer experience set right? Is management information monitored to alert you to the need for possible changes at an early stage?
- **Be prepared:** Make sure you have a robust cybersecurity incident plan so you know how to respond. And test that plan in a fully-remote working environment. Do you for example know who needs to be involved in the response and who to contact in law enforcement and at regulators? Does your plan reflect latest U.S. government advisories on the financial crime implications that could apply if you choose to make a ransomware payment to end an attack?

Band 1 for FinTech

Chambers Global 2020

- **Focus on the future:** Don't just focus on being good at the things you're currently aware of. Be aware that your adversary is working on new ways to attack and try to stay a step ahead. Any new innovations bring about new threats and risks, so seek to understand and monitor those risks.
- **Consider the weak links:** As the financial ecosystem becomes more collaborative and interdependent, bad actors will look for the weakest link. This may be a less mature start-up who may have prioritised getting up and running over state of the art security. Consider whether there are any such weaknesses in your supply chain and broader ecosystem and what impact that could have on you if they were compromised. What mitigants could be put in place to limit the impact?

Whatever the risks that exist for a particular business, it is unfortunately increasingly a case of "when" not "if" an incident will occur. Taking some practical steps now will help businesses counter the increasing risks that exist in a digital world.

Authors:

Jonathan Chertkow
Partner, London
T +44 20 7296 2191
jonathan.chertkow@hoganlovells.com

Peter Marta
Partner, New York
T +1 212 918 3528
peter.marta@hoganlovells.com

Biden's China policy: No details, but several clues on approach

When Mr. Joseph Biden takes office on 20 January 2021, he will be a seasoned foreign policy hand facing a new, challenging landscape in U.S.-China relations. His policy-making process will be a return to the familiar – working with allies, renewing U.S. leadership in multilateral institutions, and dogged classical diplomacy at all levels – but he faces a changed bilateral relationship that will make abrupt shifts to existing policies hard to pursue or enact. He will also face bipartisan domestic pressure to take stronger actions against China. As a result, the U.S.-China relationship is likely to remain contentious. However, the return to traditional policy-making means financial institutions and other companies will have more ways to influence policy and navigate what will continue to be a challenging regulatory environment.

During his presidential campaign, Mr. Biden largely avoided direct skirmishes with the Trump Administration on China policy, knowing that the muscular approach under President Trump towards China is popular in political battleground states and on both sides of the aisle on Capitol Hill. Instead, he criticized President Trump for not being strong enough on China and for his scattershot approach to tariffs. Still, he declined to specify how his potential future Administration would approach the relationship differently, apart from working more closely with U.S. allies. Mr. Biden benefited from this approach politically, as it kept the focus on the domestic issues of the pandemic response and lagging economy, two areas that were winners for his campaign. But this tactic leaves the business community wondering how, precisely, Mr. Biden will approach the U.S.-China relationship and how they should respond.

An incoming Biden Administration will be under pressure to maintain a foreign policy that confronts China on national security and trade matters. As such, it is unlikely that a Biden Administration will make significant shifts in current U.S. policies towards China, at least in the first few months of 2021. Any effort to roll back the Section 301 tariffs on Chinese goods, for example, would require a *quid pro quo* from China, which would then likely involve at least some effort to deal with difficult systemic issues that were mostly put aside in President Trump's "Phase One" deal. Similarly, some Biden (campaign? Future Administration?) foreign policy advisors have called for an effort to work with China on climate change, but it is not clear how much can be achieved in terms of substantive changes in Chinese domestic policies. Much like President Trump, who found himself flanked on either side by China hawks and doves, urging him to go further or cautioning him against going too far, Mr. Biden may also find himself stuck between wanting to have a more collaborative relationship with China and needing to take decisive action to address unfair trade practices and national security concerns.

Therefore, we largely expect many of the Trump Administration's policies on China to continue, barring any unforeseen changes to the systemic dynamics between the two countries. Based on a review of Mr. Biden's public statements, here are a few policy specifics that financial institutions can expect:

- Mr. Biden has been highly critical of the Trump Administration's response to human rights concerns in Xinjiang and Hong Kong SAR. Companies should expect more sanctions on targeted Chinese companies and persons, making compliance in this space more complicated, including potential reporting obligations to the SEC for U.S. listed companies.
- Expansion of export controls of dual-use items, stricter scrutiny of end-users of technology, export control restrictions on Chinese nationals in the U.S., and existing actions against large Chinese companies are likely to stay in place or be expanded. The focus on commercial and military fusion will continue, with U.S. companies needing to restrict exports to military end users in China.
- Pending legislation restricting Chinese companies listing on U.S. stock exchanges could be passed and supported by a Biden Administration.
- Sanctions on Hong Kong SAR and Chinese financial institutions under the Hong Kong Autonomy Act will remain a threat for anyone doing business with persons identified under the law as undermining democracy and the rule of law.
- Efforts to reduce U.S. reliance on China for critical goods and to compete with China in emerging sectors such as artificial intelligence and 5G wireless networks are likely to continue, as will "clean network" initiatives seeking to exclude Chinese companies from U.S. networks.
- Mr. Biden will likely use executive orders and regulations to limit Chinese products and services in U.S. critical infrastructure, including U.S. information technology, telecommunications, bulk power networks, the use of critical minerals, and emerging technologies.
- A continued heavy scrutiny of Chinese investments in the CFIUS review process.
- Mr. Biden said that Section 301 tariffs on Chinese goods have been "disastrous for business and farming" and that President Trump is going after China "in the wrong way". However, he did not promise to remove the tariffs and is unlikely to remove the tariffs without China making reciprocal changes in other areas of focus, like intellectual property protections for U.S. companies. Companies may find more success in filing product exclusion requests than they did during the Trump Administration.

Even if the politics and policy towards China do not change much, a Biden Administration committed to traditional avenues of governance and diplomacy should lead to a more predictable policy-making process and more ways for companies to shape his Administration's China policy. Companies should start working on their trade policy wish lists now, as this process is already underway.

Authors:

Andrew McGinty
Partner, Hong Kong
T +852 2840 5004
andrew.mcginty@hoganlovells.com

Ben Kostrzewa
Registered Foreign Lawyer
Hong Kong, Washington, D.C.
T +852 2840 5080 (Hong Kong)
+1 202 637 5600 (Washington, D.C.)
ben.kostrzewa@hoganlovells.com

UK sanctions legislation post-Brexit: Analysis of new statutory instruments

With only months to go until the end of the Brexit transition period, many of us are turning our attention to what UK sanctions legislation will look like post-Brexit. EU sanctions have previously been implemented in the UK through a patchwork of legislation under the European Communities Act 1972 (the "ECA"). However, from 11pm on 31 December 2020, sanctions previously introduced in this manner will be brought over into law under the Sanctions and Anti-Money Laundering Act 2018 ("SAMLA").

In preparation, the UK Government has been publishing a range of sanctions-related statutory instruments (SIs) under SAMLA covering the different country and activity-based sanctions programmes that derive from EU law. Hogan Lovells, in partnership with UK Finance and other law firms has reviewed these newly-published statutory instruments made under SAMLA as against the restrictions and obligations that previously have been in force, regime by regime.

Whilst the UK Government has stressed that current compliance requirements are being maintained and there is consensus that the UK's approach towards the imposition of sanctions will not change radically, at least in the short term, the publication of new and wide-ranging statutory instruments under SAMLA to replace those made under the ECA has significant potential to alter settled practice surrounding UK sanctions compliance (including in the financial services sector).

Whilst the new statutory instruments carry over all of the existing European sanctions legislations implemented through the ECA[3], the effects are most likely to be felt in relation to those countries that are affected by the most complex and wide-ranging sanctions measures, such as (for example) Iran, Syria and North Korea. Some of the impacts affect how to approach sanctions screening and beneficial ownership checks as well as the scope of activities that are likely to be caught by UK sanctions.

This in-depth review sets out the differences between the previous and new positions which could have those impacts.

The review will be updated as additional statutory instruments are published under SAMLA, however it should provide companies with a helpful starting point in mapping out what impact Brexit will have on their sanctions and export control obligations, which in turn should inform how businesses prepare for an altered post-Brexit sanctions compliance environment.

3 Afghanistan, Belarus, Bosnia & Herzegovina, Burundi, Central African Republic, Chemical Weapons, China, Cyber Attacks, Democratic Republic of the Congo, Egypt, Republic of Guinea, Global Human Rights, Guinea Bissau, Haiti, Iran (Human rights and WMD), Iraq, Lebanon, Libya, Mali, Moldova, Montenegro, Burma/Myanmar, Nicaragua, North Korea, Russia, Serbia, Somalia, South Sudan, Sudan, Syria, Terrorism (inc. ISIL), Tunisia, Turkey, Ukraine, United States, Venezuela, Yemen and Zimbabwe.

Authors:

Jamie Rogers
Partner, London
T +44 20 7296 5795
jamie.rogers@hoganlovells.com

Aline Doussin
Partner, London, Paris
T +44 20 7296 2961 (London)
+33 1 53 67 47 47 (Paris)
aline.doussin@hoganlovells.com

Louise Lamb
Partner, London
T +44 20 7296 5770
louise.lamb@hoganlovells.com

Sarah McQuillan
Associate, London
T +44 20 7296 2525
sarah.mcquillan@hoganlovells.com

Ellie Rees
Associate, London
T +44 20 7296 5929
ellie.rees@hoganlovells.com

Toolkit

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

hoganlovellsbrexit.com

Click **here** to download the UK Sanctions Statutory Instruments Review.

COVID-19 relief efforts spark litigation and investigations in the U.S.

In the U.S., the government response to COVID-19 has prompted numerous litigation claims from a diverse set of plaintiffs. Many of these claims relate to the federal Paycheck Protection Program (PPP), which was created by the federal CARES Act and distributed $660 billion in forgivable business loans. The PPP, which ended 8 August 2020 was administered by the Small Business Administration (SBA), although private sector banks processed applications, disbursed the loan proceeds, and were paid a processing fee for doing so.

Some PPP applicants used agents to help prepare their applications. More than 60 lawsuits, many of them class actions, have been filed on behalf of such agents, claiming that the banks are required to share their CARES Act processing fees with the agents. More than 100 banks have been named as defendants in “agent” lawsuits. In August 2020, the Judicial Panel on Multidistrict Litigation declined to consolidate these cases. At least two federal courts have dismissed the agents’ claims on the ground that the CARES Act does not require banks to pay agents a portion of the PPP processing fees absent an agreement between the agent and lender. *See Johnson v. JPMorgan Chase Bank, N.A.*, No. 20-cv-04100-JRS, 2020 WL 5608683 (S.D.N.Y. Sept. 21 2020); *Sport & Wheat, CPA, PA v. Servisfirst Bank, Inc.*, No. 3:20CV5425-TKW-HTC, 2020 WL 5507551 (N.D. Fla. Sept. 4, 2020). An appeal of the decision issued in *Johnson v. JPMorgan* is pending before the Second Circuit Court of Appeals, and dozens of these cases continue to work their way through the courts.

A number of small businesses that failed to obtain PPP loans, or were delayed in securing such loans, have also sued banks. In general, the claims in these cases are that the banks fraudulently or negligently delayed processing applications or failed to process PPP loans on a first-come, first-serve basis. In particular, many plaintiffs have alleged that banks improperly prioritized applications for existing customers or larger companies in order to maximize their processing fees.

Litigation has also arisen out of the CARES Act requirement that borrowers with federally backed mortgages may obtain forbearances if they are experiencing a financial hardship during the COVID-19 emergency. The CARES Act amended the Fair Credit Reporting Act (FCRA) to require that financial institutions making an “accommodation” to a consumer’s payments on a credit obligation report such credit obligation or account as “current”, and not in “forbearance,” during the period of the accommodation. Numerous suits are pending in which consumers allege that they were: (1) not granted the forbearance required by the CARES Act; (2) “opted in” to a voluntary mortgage forbearance program without proper notification; or (3) negatively impacted by reports made to credit reporting agencies that did not comply with FCRA as amended by the CARES Act. Litigation related to credit reporting was already on an upswing before the pandemic. We expect this trend to accelerate after the CARES Act-mandated forbearance periods end and credit reporting obligations are removed, allowing lenders to make more negative credit reports.

We have also seen some litigation concerning competition for government contracts that relate to government response to COVID-19 and expect to see more. Moreover, state and local orders that limit business activities in an effort to control the spread of COVID-19 have given rise to a massive wave of insurance litigation, including over 450 actions in federal courts seeking to establish insurance coverage for loss suffered as a result of business closures related to COVID-19, as well as hundreds of other such suits in various state courts.

Finally, federal authorities have reported widespread borrower fraud related to the PPP process and applications for a separate SBA loan and grant program, the Economic Injury Disaster Loan (EIDL) program and its companion grant program, EIDL Advance. In a 7 October 2020 speech, Deputy Attorney General Jeffrey A. Rosen announced that the Justice Department has brought criminal charges against 65 people for defrauding, or attempting to defraud, the PPP program of nearly $227 million. Banks and credit unions, too, have reported skyrocketing levels of suspected business loan fraud filing 1,922 suspicious activity reports with FinCEN (the U.S. Department of Treasury Financial Crimes Enforcement Network) in August 2020; that is roughly 14 times the monthly average number of such reports made over the last six years. The SBA's inspector general, Hannibal Ware, warned in July 2020 that "pervasive fraudulent activity" affected the EIDL. Such widespread fraud is likely to result in future enforcement activity as well as related civil claims.

Authors:

Marc Gottridge
Partner, New York
T +1 212 909 0643
marc.gottridge@hoganlovells.com

Rebecca H. Umhofer
Knowledge Lawyer, Washington, D.C.
T +1 202 637 6939
rebecca.umhofer@hoganlovells.com

Allison Funk
Senior Associate, New York
T +1 212 918 3065
allison.funk@hoganlovells.com

Band 1 for Dispute Resolution

Chambers Global 2020

Chapter 2

Focus

Across the different industry sectors of our firm, we look out for themes and trends that could lead to opportunities or threats for our clients in the financial institutions sector. By monitoring and keeping abreast of future changes we make sure our teams are prepared to help you get a grasp of the legal consequences these might bring. Meaning you can get your business ready to face and even embrace those changes.

Here are some of the areas we have front of mind and would be delighted to discuss with you.

Compromising debts in the COVID-19 era

The social and economic consequences of the COVID-19 pandemic continue to create shock waves throughout the world. When implementing emergency measures to address the pandemic, many governments have tried – and are still trying – to balance the risk to lives from the pandemic against the risk to livelihoods from the restrictions imposed on business in an attempt to contain the virus. In a number of jurisdictions, temporary and permanent changes have been made to insolvency and restructuring laws with the aim of giving struggling but ultimately viable companies a breathing space in which to restructure and recover. One of the new tools introduced in a number of jurisdictions is an ability for a corporate creditor to impose a compromise of its debts on dissenting creditors. Some of these new processes have been in the legislative pipeline for some time but have been fast-tracked this year; they come at an important time for borrowers and creditors alike as many businesses will need to reshape their finances in the face of declining 2020 revenues and an uncertain road to recovery in many sectors, combined with escalating debts from deferred liabilities and extra liquidity borrowed to survive the pandemic.

In this article we look at new compromise proceedings in four different jurisdictions: Australia, Germany, the Netherlands and the UK.

Australia

On 24 September 2020, the Federal Government announced plans to implement a new small business restructuring regime, which will adopt certain key aspects of the US Chapter 11 bankruptcy process. The announcement represents the biggest change to Australia's insolvency laws since the early 1990s.

The SME sector is of vital importance to the Australian economy, and SMEs have been hit particularly hard by the COVID-19 pandemic. 97.5% of businesses in Australia employ fewer than 20 employees and small businesses in Australia employ approximately 4.7m people (44% of the total number of people employed in the private, non-financial sector).

The proposed regime is intended to be faster, less complex, more efficient, more flexible and more cost-efficient than the current liquidation and voluntary administration regimes, and aims to maximise small businesses' chances of survival. Critically, and most radically in the context of the existing "creditor in possession" options for external administration in Australia, the new regime will provide a "debtor in possession" framework.

The intention is for the new regime to come into effect on 1 January 2021, following the expiration of the extended COVID-19 insolvency relief measures on 31 December 2020.

Key components of the proposed regime are as follows:

- Directors of debtor companies owing less than AUD 1 million (as currently proposed) will be able to appoint a Small Business Restructuring Practitioner (SBRP) (a registered company liquidator, who must be and remain independent), who will assist the directors with the development of a "restructuring plan". The SBRP will then report to the company's creditors on whether to approve the plan.
- A restructuring plan is to be developed within 20 business days of the appointment of the SBRP. If satisfied with the plan, the SBRP will "certify" it and submit it to the creditors for consideration. Any employee entitlements that are due and payable must be paid out before the plan is put to a vote – this may present an obstacle for many small businesses which have made use of the Government's emergency Jobkeeper support measure since the pandemic started.
- The creditors have 15 business days to vote on the plan electronically.
- The plan may be approved by a majority of creditors in value, with no class voting and with related party creditors being prohibited from voting.
- If a majority of creditors vote for the plan, the plan can commence and the SBRP will oversee it. The plan is binding on all unsecured creditors, and on secured creditors to the extent their debt exceeds the realizable value of their security interest.
- If the majority of creditors vote against it, the process ends and the directors may choose to enter another insolvency process, such as voluntary administration or using a new simplified liquidation process to allow a faster and lower cost winding up.
- Directors will remain in control of the management of the company (as opposed to the traditional 'creditor in possession' model that applies in other Australian insolvency regimes), except as to transactions which are outside of the ordinary course of business which will require authorisation from the SBRP or a court.
- Once a SBRP is appointed, unsecured and some secured creditors cannot take action against the company, nor can a personal guarantee be enforced against a director, or an ipso facto clause be triggered. Rights of secured creditors and the statutory priority afforded to certain creditors such as employees will remain unaffected.
- Protections will be built into the framework to prevent its potential misuse as a means of "phoenixing". Related party creditors will be prohibited from voting on the plan, companies and directors will only be permitted to use the scheme once in a given timeframe (seven years is currently being suggested) and powers will exist to stop the process if deliberate misconduct is identified (although it is not yet clear who will conduct this process).

Further details of the new regime are still the subject of submissions and discussion, including the AUD 1 million debt threshold, what debts will be included in that threshold (such as contingent debts or related party debts), the specific procedural obligations, the anti-phoenixing measures described above, and the interaction with other insolvency laws such as voidable transactions and directors' duties (including their duty to prevent insolvent trading).

Public consultation on the exposure of this new draft legislation and explanatory material has now closed. The *Corporations Amendment (Corporate Insolvency Reforms) Bill 2020* was introduced to Parliament on 12 November 2020, and the corresponding Regulations and Rules (in which much of the substance of the new regime will be contained) are expected to be released in the coming days.

Germany

Germany's new restructuring regime is expected to come into force on 1 January 2021. At the heart of the new regulation is the introduction of a so-called stabilization and restructuring framework ("**SRF**") for companies. In a sea change to the traditional approach, the SRF enables a company to be restructured before insolvency proceedings have to be initiated. It is therefore expected that this new regime will have a major impact on German restructuring practice.

The core element of SRF is the submission of a restructuring plan (the "plan") by the company and its acceptance by affected creditors.

- The plan allows far-reaching arrangements to be made affecting not only the debts of the distressed company but also its shareholder structure. The decision as to which creditors will be affected by the plan and whether the plan should affect shareholders remains with the company.
- The plan can be used to restructure the debts owing to affected creditors (for example by imposing a haircut or a deferral), intervene in the rights of shareholders, alter creditors' claims under security provided by other entities within the group and/or implement a new financing.
- Claims of employees must not be changed under the plan.
- The creditors affected by the plan must be divided into groups according to appropriate characteristics and treated equally within their groups. If the plan intervenes in the rights of shareholders, the shareholders must form a separate group.
- In order to become effective the plan must be accepted by each creditor group by a majority within that group of at least 75 % by value, whereby the voting right depends on the amount of the claim held by each creditor. Dissenting creditor groups can be crammed down under certain conditions.
- It is possible to implement the plan without the involvement of the court. The new restructuring law thus gives the debtor a comparatively discreet opportunity for restructuring both its debts and its capital on a confidential basis. A successful restructuring, though, requires a structured and precisely planned preparation.
- Involving the restructuring court may, however, be advantageous. The plan will only bind dissenting creditors if it is approved by the court. Under certain conditions, the court may also terminate mutual contracts and order stabilization measures (such as a cessation of enforcement measures), neither of which can be done under a plan without court involvement.

If the court is involved, the following limitations of liability will also apply:

- Relaxation of the general prohibition on payments pursuant to section 15b of the Insolvency Code (previously section 64 of the Limited Liability Company Code) if the company has notified the court of its subsequently occurred illiquidity and/or over-indebtedness.
- Provisions of a legally binding plan and legal actions taken in the implementation of the plan are generally not contestable in a subsequent insolvency.

In certain cases, a restructuring officer must be appointed, to whom the court can transfer various rights of control. Alternatively, it is also possible to enter into a consensual settlement with different creditors with the support of a restructuring moderator.

The Netherlands

Due to the effects of the COVID-19 pandemic on businesses the Dutch government is accelerating the introduction of a new piece of legislation, the Confirmation of Extrajudicial Restructuring Plans (*Wet Homologatie Onderhands Akkoord*) ("**WHOA**"), that provides for both public and private pre-insolvency restructuring proceedings which in essence allows debtors (or their creditors) to compromise certain debts. This new piece of legislation has been passed by both the House of Representatives and the Senate. This act has been published in the Bulletin of Acts and Decrees on 3 November 2020 and will enter into force on 1 January 2021.

The new process, sometimes known as the "Dutch Scheme", is inspired by and based upon the experience of composition plans in the UK and the US. As soon as the legislative proposal enters into force, it will enable debtors to force dissenting creditors within the scope of the composition plan to comply with the plan, provided that the majority of the creditors have approved the composition plan. More detail is set out below:

- In essence, the WHOA introduces an efficient debtor-in-possession ("DIP") procedure which allows legal entities and individuals which conduct an enterprise or an independent profession and which believe they are likely to be unable to pay their debts in the future to present a debt restructuring plan to their creditors and/or shareholders. The plan can then be submitted to the court for approval. Although creditors, shareholders or works council representatives cannot themselves propose a restructuring plan, they can petition the court to appoint a restructuring expert who may propose such plan on their behalf. The debtor can propose an alternative plan to the restructuring expert's plan. However, the debtor's consent is not required for the restructuring expert's restructuring plan, unless the debtor is a small or medium-sized enterprise ("**SME**").
- The restructuring plan can be either a public or a non-public procedure. Non-public procedures are confidential to the parties, will not be covered by the Recast Insolvency Regulation[1] and can be entered into by any debtor with sufficient nexus to the Netherlands. Public procedures are – as the name suggests – public so all hearings and judgments are public, will be listed in and so recognized under the Recast Insolvency Regulation, are registered in the Dutch trade register and the Dutch Central Insolvency Register and are open to entities whose COMI is in the Netherlands.
- Once the plan has been drafted, those creditors and/or shareholders affected must vote on it (although the debtor can go to court before the voting takes place to ask for a ruling on matters such as valuation, class formation and sufficiency of information). Creditors will be placed into classes, depending on their respective legal positions. As a minimum, each creditor must be placed in a class which under the plan has the same ranking vis-a-vis other creditors as the creditor would have had in the insolvency of the debtor. Secured creditors will generally be classed together but only for that part of their claim which is "in the money", based on a liquidation valuation. The remainder of the claim will be treated as unsecured.
- The plan will be treated as approved by a class if more than two-thirds in value of the creditors voting in that class vote in favor. For shareholder classes, the threshold is two-thirds of the issued capital of those that voted within that class.

1 Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings

- Once the class votes have taken place, the plan is submitted to the court for approval. Where all classes have voted in favor of the plan, the plan will bind all creditors/shareholders in each class, regardless of whether they voted in favor (a horizontal cram down). Provided the plan has been approved by at least one "in the money" class, the court can also approve the plan at which point the plan will be binding not only on those classes which voted in favor but also those which did not (a "cross-class cram down").
- However, the court can refuse to approve the plan in certain circumstances:
  - If procedural requirements have not been met or if the classes have not been properly constituted, the court can refuse to confirm the plan either of its own volition or at the request of a creditor or shareholder;
  - Creditors who voted against the plan can ask the court to refuse to confirm the plan on the grounds that the plan does not meet the best interests of creditors test, which requires that creditors or shareholders would receive no less under the plan than they would on the liquidation of the debtor.
  - Where a creditor has voted against the plan and is part of a class which has voted against the plan, the creditor can ask the court to refuse confirmation of the plan if:
    - the value distribution under the restructuring plans deviates from statutory or contractual arrangements and, as such, impairs the opposing creditors;
    - the relevant creditor is a SME creditor and has not been offered an amount representing a value of at least 20% of its outstanding claims (subject to certain exceptions); or
    - the creditor is a secured creditor and has only been offered shares in the restructuring plan.
- If an unsecured creditor class has not approved the restructuring plan, the creditors in that class are entitled to receive a cash distribution equal to the amount they would have received in a liquidation of the debtor. If the court approves the restructuring plan, the relevant creditors have the option to opt for the cash distribution or to stick with the plan.
- The court can also make other orders as part of the WHOA process:
  - The debtor (or, if appointed, the restructuring expert) can ask for a moratorium of up to eight months during which time it will remain entitled to conduct its business as usual, as long as the interests of the creditors are safeguarded. This also results in creditor enforcement action being stayed during this period. A moratorium can be granted in two situations: (i) the debtor files a restructuring statement with the court and offers or intends to offer a restructuring plan within two months, or (ii) a restructuring expert is appointed.
  - If the plan entails the amendment or termination of long-term contracts such as leases or supplier contracts, the court can approve such steps where counterparties refuse to cooperate.
  - The debtor (or, if appointed, the restructuring expert) can also ask the court to grant a stipulation or preliminary injunction to safeguard the interest of the creditors and shareholders, after it has filed a statement in which it declares that the negotiation has commenced. For example, the court can impose a condition that the restructuring plan must be voted on within a specified period or that the debtor must regularly inform the creditors, shareholders and the court about how the process is progressing.

– The debtor can ask the court to pre-approve the contractual arrangements it intends to enter into after it has launched its restructuring efforts pursuant to the WHOA. If the court grants this pre-approval, the debtor is protected from clawback and challenge actions if the debtor were to become insolvent. Such pre-approval would enable the debtor to grant security and attract (bridge) financings without the risk of clawback and challenge actions.

The WHOA, unlike similar schemes in other jurisdictions, has an advantage when it comes to the restructuring of a multinational group of companies. Not only does the WHOA provide a platform for the restructuring of group liabilities through a single procedure (regardless of the guarantors' home jurisdiction), the court-approved restructuring plan will be automatically recognized within the EU under the Recast Insolvency Regulation (applying to the public procedure). A group of companies may combine the public procedure and the non-public procedure. All this means that the WHOA is a state-of-the-art law that allows for global restructurings with the flexibility of a UK Scheme, combined with the moratorium and certainty of the US Chapter 11, but at a lower cost and within a short time frame.

The UK

On 26 June 2020, the Corporate Insolvency and Governance Act 2020 ("**CIGA**") came into force, a mere 37 days after the first draft was published. One of the permanent measures introduced as Part 26A of the Companies Act 2006 (**CA06**) is the restructuring plan (**plan**). The plan process is similar in many respects to the current scheme of arrangement (**scheme**) process under Part 26 CA06 (which will remain in place and remains an option for companies seeking to compromise their debts). This is intentional – the explanatory notes to CIGA states that the overall commonality between Part 26 and Part 26A will enable the courts to draw on the existing body of Part 26 case law where appropriate. This has certainly proved to be the case in the two plans which have so far gone through the courts[2]. In summary:

- The plan process is open to UK companies and unregistered companies liable to be wound up under Part V of the Insolvency Act 1986 (**IA86**) and so will be open to overseas companies provided certain conditions are met, including that they have a sufficient connection to this jurisdiction. In the last decade, a significant number of overseas companies have used an English scheme to effect a restructuring and it is likely that the plan will also prove popular, given its additional features.
- Unlike the scheme requirements, to be eligible a company must show that it has encountered or is likely to encounter financial difficulties that are affecting or will or may affect its ability to carry on business as a going concern and there must be a compromise or arrangement proposed between the company and any of its creditors or members which is intended to eliminate, mitigate or prevent the financial difficulties.

2 Virgin Atlantic and PizzaExpress

- As with a scheme, the court will convene creditor and member class meetings to vote on the plan, provided it is satisfied that the classes have been properly constituted and that there are no jurisdiction issues. However, unlike a scheme, the company can apply to court to exclude any class of creditor or member from participating in the meetings where it can be shown that the class has no genuine economic interest in the company. This creates the possibility for the rights of creditors who are out of the money to be altered (or even eliminated) without them being allowed to vote on the plan. The ability to exclude out of the money creditors together with the cross-class cram down (on which see below) are two of the key features of the plan that are not available in the scheme process. Excluding creditors will no doubt give rise to disputes as to the nature and value of excluded creditors' interests and it will be interesting to see whether companies use this ability to exclude - yet bind - out of the money classes or whether they will rely on the court's ability to cram down dissenting classes.
- The plan will be treated as having been approved by a class if at least 75% of that class present and voting votes in favor. In an important difference from the scheme of arrangement, there is no 50% numerosity test which may make it easier for large debt holders to push through a restructuring using a plan rather than a scheme.
- Once the class meetings have been held, the plan must be presented to the court for sanction. As with a scheme, where all classes have voted in favor of the plan, the court will sanction the plan provided procedural requirements have been met, each class was fairly represented at the class meetings and the court is satisfied that the scheme will have effect in relevant jurisdictions and is "fair".
- However, in the much-advertised "cross-class cram-down" process, the court can still sanction a plan if not all classes have voted in favor of it if:
  - The court is satisfied that none of the creditors or members of the class would be any worse off under the plan than they would have been under the relevant alternative, and
  - the plan has been approved by at least one class of creditors or members which would receive a payment, or have a "genuine economic interest in the company", in the event of the relevant alternative.
- The "relevant alternative" is whatever the court considers would be most likely to occur if the plan were not sanctioned. This will be fact-dependent – it could be a sale, an administration, a liquidation or even a different restructuring proposal. This is likely to be a key battleground as different creditors may want to argue different relevant alternatives to suit their commercial objectives. Valuation evidence to determine whether creditors are worse off or not in the relevant alternative will be essential where a company is seeking to use the cross-class cram-down in a disputed plan process.
- Unlike certain other jurisdictions, such as the U.S., there is no absolute priority rule and so it is possible for junior creditors to impose a plan on dissenting senior creditors, provided the court is satisfied that the senior creditors are no worse off under the plan than they would have been in the relevant alternative. This is what some people are calling the "cram up" as opposed to the "cram down".

The absence of a "cross-class cram-down" mechanism has long been seen as a weakness in the scheme process. Having a new process that allows a company to cram down not only a minority of dissenting creditors in a class but also entire creditor classes, both secured and unsecured, should open up many more possibilities for a company to effect a deep and lasting restructuring of its capital and balance sheet.

Authors:

Scott Harris
Managing Partner, Sydney
T +61 2 9093 3510
scott.harris@hoganlovells.com

Dylan Goedegebuure
Counsel, Amsterdam
T +31 20 55 33 625
dylan.goedegebuure@hoganlovells.com

Christian Herweg
Partner, Munich
T +49 89 290 12 242
christian.herweg@hoganlovells.com

James Hewer
Counsel, Perth, Sydney
T +61 8 6208 6559 (Perth)
+61 2 9093 3500 (Sydney)
james.hewer@hoganlovells.com

Wouter Jongen
Partner, Amsterdam
T +31 20 55 33 663
wouter.jongen@hoganlovells.com

Margaret Kemp
Counsel Knowledge Lawyer, London
T +44 20 7296 2546
margaret.kemp@hoganlovells.com

James Maltby
Partner, London
T +44 20 7296 5631
james.maltby@hoganlovells.com

Sustainable finance disclosures

Environmental, Social, and Corporate Governance (ESG) refers to the three central pillars in measuring the sustainability and societal impact of an investment. ESG investing first appeared on the global stage in 2004 when former UN Secretary General Kofi Annan wrote to over 50 CEOs of prominent financial institutions urging them to integrate ESG into the capital markets.

Since then, ESG has moved to the forefront of the political stage as noted by the UN adoption of Sustainable Development Goals and the subsequent landmark signing of the UN Paris Agreement in 2016. The recent avalanche of sustainable finance legislation by governmental organisations marks a shift from voluntary guidance to mandatory measures; reflecting, in particular, the urgency of global climate concerns. These regulatory measures are focused on creating an equilibrium in the financial services sector, by necessitating industry-wide harmonization on how ESG factors are measured and incorporated into the existing governance and risk framework of financial institutions.

Greenwashing

Adopting ESG policies has demonstrated financial benefits for firms, with evidence suggesting that companies integrating sustainable practices outperform companies that do not consider environmental or social factors. In one meta-analysis, 88% of studies found that companies with an ESG framework demonstrated better operational performance, and 80% of studies showed a positive effect on their stock price[4]. In addition, 71% believe companies that focus on the environment and social factors will yield better returns.[5]

Following this increase in demand from investors on ESG considerations, there is a risk that products and services are being presented as more environmentally friendly than they actually are – this is known as "**greenwashing**". Greenwashing is the marketing tactic of falsely conveying or exaggerating the environmental characteristics of a service or product, with the intention to deceive investors. Similar concerns arise about over-selling of products focused on social benefits.

Investors and investment advisers are very alert to the risks to them of green- (or social-) washed investment products. If a product is not as green as it was sold as being, there is a risk that the market value of the product may be negatively affected. Furthermore, such washing may mislead investors as to the resilience of the underlying business and assets to ESG-related risks. Many are improving their due diligence and research capacities and demanding better-quality disclosure by corporates with clear and measurable information about ESG performance.

Regulatory developments in the EU

The introduction of the EU's Sustainable Finance Disclosure Regulation 2019/2088 (**SFDR**) and Taxonomy Regulation 2020/852 (**TR**) will introduce objective ESG metrics and indicators. The aim of these incoming Regulations is to actively combat greenwashing and misleading marketing claims, providing clarity to the end-investor. Financial Market Participants (FMPs) will be subject to rigorous reporting requirements at both product and entity level to avoid falling foul of the Regulations. Consequently, this is likely to limit willingness of FMPs to engage in greenwashing tactics for fear of being liable for mis-selling.

Overview of the Sustainable Finance Disclosure Regulation and the Taxonomy Regulation

The development of a coherent framework for sustainable investing is a priority on the EU's agenda for financial services regulation. To this end, the SFDR and TR form part of the European Commission's action plan on sustainable finance.

4 Gordon L. Clark, Andreas Feiner and Michael Viehs, 'From The Stockholder To The Stakeholder: How Sustainability Can Drive Financial Outperformance' [2014] SSRN Electronic Journal.

5 'Millennials Drive Growth In Sustainable Investing - Morgan Stanley' (Morgan Stanley, 2020) <https://www.morganstanley.com/ideas/sustainable-socially-responsible-investing-millennials-drive-growth> accessed 2 November 2020.

SFDR

The SFDR imposes ESG-related disclosure requirements on FMPs and financial advisers (**FAs**), including asset managers, AIFMs and insurance undertakings, even those which do not have an ESG-focus.

The SFDR aims to harmonize and standardize ESG-disclosures across the EU in order to make it easier for investors to identify impacts of their investments on sustainability factors and the associated risks and opportunities. Broadly, firms subject to the SFDR will be required to: (i) disclose and maintain certain information on their website; (ii) provide ESG-related pre-contractual disclosures to investors; and (iii) include ESG-related disclosures in periodic reports provided to investors. These key disclosures will apply: (i) at a firm level; (ii) in respect of any financial products that they make available, even where the products do not have an ESG-focus; and (iii) at an enhanced level in respect of financial products which have an ESG-focus. The manner in which these requirements apply to firms that are subject to the SFDR will depend on whether the firm constitutes an FMP and/or FA.

Taxonomy Regulation

The TR complements and amends certain provisions in the SFDR on environmentally sustainable activities. Similarly, this regulation applies to and prescribes disclosure requirements for: (i) FMPs that make available financial products described as environmentally sustainable; and (ii) entities which are subject to non-financial statement requirements under the Accounting Directive.

The TR establishes the criteria to determine which economic activities qualify as environmentally sustainable to make it easier for investors to compare different investment opportunities. This includes whether the activity does not significantly harm or contribute to specified environmental objectives. Although the scope of the TR currently applies to environmental objectives, it is envisaged that the scope of the TR may be expanded beyond environmentally sustainable activities, including social objectives.

Timeline

On 10 March 2021, the majority of Level 1 SFDR requirements begin to come into effect. This includes obligations on FMPs to publish how they integrate sustainability into their risk framework and to provide sustainability-related pre-contractual disclosures. Certain provisions requiring disclosure of adverse sustainability impacts will come into effect after this date.

The TR entered into force on 12 July 2020 but many key provision will not apply until a later date and will be further developed by delegated acts. The majority of obligations apply from 1 January 2022. From this date, the first two climate change related objectives (climate change mitigation and climate change adaptation) will apply. The remaining four environmental objectives will apply from 1 January 2023.

Regulatory Technical Standards Delay

On 20 October 2020, the EU Commission confirmed in a letter that the regulatory technical standards (**RTS**) which supplement the SFDR disclosure requirements will be delayed due to the economic and market stress caused by the COVID-19 crisis. The RTS will specify requirements on the content and presentation of the SFDR disclosures, and clarify the standards of the underpinning methodologies. The letter does not specify the revised compliance date for the RTS, although this is widely thought to be in early 2022. Importantly, however, the application dates under the SFDR remain in effect and therefore FMPs and FAs that are subject to the SFDR will need to comply with its principle based requirements from 10 March 2021.

Non-Financial Reporting Directive, EU

There is industry concern about the level and type of ESG information that is currently available to FMPs in light of the extensive disclosure requirements imposed by the SFDR and the Taxonomy Regulation, and the reliance that FMPs will need to place on corporates in order to comply with those requirements. Many financial institutions have said that it will be challenging to comply with these requirements if the information that they need cannot be consistently obtained from their investee companies and clients.

The Non-Financial Reporting Directive (**NFRD**) has been predominantly held out as one of the key ways for FMPs to obtain the data that they will need to enable them to make the relevant disclosures under the SFDR and the TR. The NFRD requires companies that fall within its scope to report on ESG information, both in terms of how sustainability issues impact them and also on how they impact such issues.

However, at present, the NFRD applies to EU public interest corporates (which can include organizations in the financial and non-financial sectors) that have more than 500 employees and are therefore considered as “large”. As a result, there is a gap between those who are subject to the NFRD and the data disclosed pursuant to the NFRD, with the requirements of the SFDR and the TR. As such, the European Commission launched a consultation in February 2020 which proposes to significantly expand the scope and content of the NFRD in an attempt to reconcile the disclosure requirements of the NFRD with the disclosure requirements of the SFDR and TR. Amending the NFRD in the proposed manner could result in additional ESG information being made available to FMPs by corporates, as more listed and unlisted companies would fall within its scope.

However, some of the responses to the consultation paper identified a timing discrepancy between the application deadlines for the SFDR and the TR, and the anticipated timing of the first reporting cycle under any amended NFRD. Currently, the Commission expects to adopt a proposal regarding the NFRD in the first quarter of 2021. Even with the proposed timing, it seems likely that the data gap, the mismatch between the SFDR and Taxonomy deadlines, and any revisions to the NFRD are not going to be rectified any time soon. This ultimately leads to a significant outstanding question amongst FMPs on how they are going to satisfy their own disclosure obligations given their reliance on information being made available from investee companies and clients.

Brexit

SFDR

As it currently stands, the transition period under the UK’s Withdrawal Agreement is due to end on the 31 December 2020, with the SFDR coming into effect after this date. The government is still considering its wider approach to sustainable finance disclosures and will set this out in due course.

In October 2020, the draft Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020 (**Draft EU Exit Regs**) provides that certain articles of the SFDR which were inserted as a result of the TR are “omitted”. Additionally, the Financial Services Bill 2019 – 2021 (**FS Bill**) which was published in October 2020, does not contain any references to the SFDR.

On this basis, it seems unlikely that the SFDR will become part of UK law following its departure from the EU.

UK firms may nonetheless wish to include certain SFDR-related disclosures on a voluntary basis while they await details of the approach that the UK will take to sustainable finance disclosures. Such an approach would enable UK firms to remain consistent with any EU group companies and conversely with EU competitors, which is particularly important given the increasing investor pressure on firms to provide sustainability-related disclosures. Otherwise, UK firms will need to consider the practical and reputational implications if they choose not to adopt any of the disclosure requirements under the SFDR.

TR

The Draft EU Exit Regs contain minor amendments to the TR. The explanatory memorandum to the Draft EU Exit Regs provide that elements of the TR which will form part of retained EU law are those that relate to the criteria for the future development of green performance thresholds for specific economic activities. The Draft EU Exit Regs provide that the implementation of certain provisions relating to such criteria will be delayed in the UK by two years, to allow adequate time to consider whether they are appropriate for the UK.

On 9 November 2020, Chancellor of the Exchequer Rishi Sunak MP announced the UK's green ambitions for the future and confirmed that the UK will implement a green taxonomy which will introduce a common framework for determining which activities can be defined as environmentally sustainable. The UK taxonomy will take the scientific metrics in the TR as its basis and a UK Green Technical Advisory Group will be established to review whether these metrics are appropriate for the UK market. The Chancellor also announced that the UK will become the first country in the world to make Task Force on Climate-related Financial Disclosures (**TCFD**) fully mandatory across the economy by 2025.

In addition, the FCA announced that it will introduce rules requiring premium listed companies to make better disclosures about how climate change affects their business in accordance with recommendations made by the TCFD and will also consult on extending the rules to apply to asset managers, life insurers and pension providers in the first half of 2021.

Accordingly, the Chancellor's announcement is a clear indication that the UK will diverge with the EU on its implementation of the TR, however the extent of any divergence is unclear. However, the work which the UK Green Technical Advisory Group has been tasked with suggests that any deviation is unlikely to result in a reduction of disclosure requirements for the UK. As such, given the UK's green ambitions announced by the Chancellor, it is possible that the UK may introduce disclosure requirements that go beyond those of the TR.

Authors:

Andrew Carey
Senior Counsel & Co-Head of Impact Financing & Investing, London
T +44 20 7296 5949
andrew.carey@hoganlovells.com

Sukhvir Basran
Senior Legal Director & Co-Head of Impact Financing & Investing, London
T +44 20 7296 2506
sukhvir.basran@hoganlovells.com

Dominic Hill
Consultant, London
T +44 20 7296 2297
dominic.hill@hoganlovells.com

Yvonne Clapham
Senior Knowledge Lawyer, London
T +44 20 7296 2101
yvonne.clapham@hoganlovells.com

Rita Hunter
Senior Associate, London
T +44 20 7296 2931
rita.hunter@hoganlovells.com

Paida Manhambara
Associate, London
T +44 20 7296 2181
paida.manhambara@hoganlovells.com

Remaining steps along the road to LIBOR transition

With just over a year to go until the expected demise of LIBOR, the Financial Stability Board (**FSB**) recently published its Global Transition Roadmap for LIBOR. Their short document aims to inform those with exposure to LIBOR of prudent steps they should be taking to ensure an orderly transition by the end of 2021. Being a coordinator at international level of the work of national finance authorities and of international standard setting bodies, the FSB's roadmap is designed to supplement the existing timelines and milestones issued by industry working groups and regulators.

We have put together a timeline which can be read here and which sets out the FSB's "prudent steps"alongside the different national working groups' aims and priorities and ISDA's work in the derivatives space.

Whilst we have included information on the benchmarks relevant to the euro in the table, we do not focus on them in this article. This is because most euro-denominated financial transactions rely on EURIBOR which has been reformed to be compliant with the EU Benchmarks Regulation and is not currently expected to be discontinued, albeit that it is currently the subject of work to develop more robust fallback rates.

Financial institutions should be a long way along the road already

It is worth summarizing for the benefit of any non-regulated firms who have exposure to LIBOR, including debt funds, and who may not be as advanced in their planning as regulated firms what action should already have been taken:

- a full "drains up" review of all existing LIBOR exposures and impacted LIBOR products, both within financial contracts but also elsewhere across the business;
- development of a comprehensive transaction project plan, building in relevant industry and regulator recommended best practices and incorporating customer/investor communications explaining the impact of, and intended route to, transition; and
- consideration of what operational and accounting systems and processes will need to be updated to enable use of new risk free rates (**RFRs**).

What is the impact of the ISDA 2020 IBOR Fallbacks Protocol on transition progress?

Adherence to the ISDA IBOR 2020 Fallbacks Protocol (the **IBOR Fallbacks Protocol**) is seen by regulators across the world as a key part of firms' LIBOR transition plans and was described by Andrew Bailey, Governor of the Bank of England, as an important step in the LIBOR "endgame" and by the Board of Governors of the Federal Reserve System (the **Fed**) as playing an important role in an orderly transition away from LIBOR.

By adhering to the IBOR Fallbacks Protocol, derivatives counterparties would be incorporating the new robust fallback rates that would apply in the event of a permanent cessation of a key interbank offered rate (**IBOR**) and upon a non-representative determination for LIBOR into legacy derivatives contracts with other adhering counterparties. The new fallback rates will be calculated by combining the relevant RFR compounded in arrears over the relevant IBOR period with a spread adjustment based on a five year historical median of the differences between the IBOR in the relevant tenor and the relevant RFR over the relevant corresponding period.

The FSB released a statement welcoming ISDA's announcement and encouraging adherence:

"The FSB encourages adherence to the Protocol as a tangible step that can be taken by both financial and non-financial firms to avoid disruptions in covered derivatives contracts if the IBOR they currently reference is discontinued or, in the case of LIBOR, becomes non-representative."

The IBOR Fallbacks Protocol takes effect on 25 January 2021 and although adherence is voluntary, regulators across the globe have said that they expect regulated entities to be adhering in a timely manner. Firms that are not regulated by a financial regulator, such as commercial end-users, can expect their dealer counterparties to contact them regarding adherence to the IBOR Fallbacks Protocol and commercial end users should expect to be encouraged to adhere.

For more information please see our client alert: ISDA 2020 IBOR Fallbacks Protocol: What you need to know

Hogan Lovells LIBOR Tool

The Hogan Lovells LIBOR tool tracks the latest regulatory developments across the major currency benchmarks, enabling you to keep on top of the evolving picture as you prepare for transition.

Firms should now be in a position to offer non-LIBOR linked cash market products to their customers

In the international bond market, there have been significant volumes of new SOFR and SONIA-linked Floating Rate Notes (**FRNs**); indeed public issuances of sterling LIBOR-linked FRNs and securitizations maturing after the end of 2021 has all but ceased. According to the recent newsletter from The Working Group on Sterling Risk-Free Reference Rates (**£RFRWG**), the cumulative subtotal of outstanding SONIA-linked FRNs is 149 deals, totalling around £64.7 billion.

The loans market is a little behind the international bond market, largely because of the additional structuring complexities created by loan mechanics. The FSB's Roadmap states that *"at a minimum"* lenders should be *in a position to offer* non-LIBOR linked loan products to customers by the end of 2020.

The published timeframe of the £RFRWG set this goal a little earlier - at the end of Q3 this year - so this should already be in place for regulated lenders in the UK.

The £RFRWG's publications in September of its recommendations based on market feedback to its consultation on preferred SONIA compounding methodology in the loans market and on credit spread adjustments in the cash markets should have helped institutions to meet this aim by enabling them to finalize necessary changes to their template documentation and operational systems to cater for lending in SONIA. It has been made clear by the working group that these methodologies are not the only viable options, however, and, in particular, some firms may instead prefer to adopt an observational lag with a shift compounding methodology. The work currently being done by various publishers of compounding calculation tools (as outlined in the £RFRWG's summary also published in September) should also smooth transition progress by helping to make calculation of RFR compounded in arrears interest rates for particular interest periods simpler and more transparent.

If a borrower does not want to take an RFR linked product at this stage, firms are instead able to:

- provide products which are linked to alternative rates, such as to a central bank base rate or a fixed rate; or
- (in the words of the FSB) *"work with borrowers to include language for conversion by end 2021 for any new, or refinanced, LIBOR referencing loans, for example if systems are not currently ready"*.

In the UK, the £RFRWG timetable provides for regulated lenders from 1 October 2020 to include contractual conversion mechanisms in all new or refinanced products. This can be done in various ways.

Hard-wiring a replacement rate:
The method which delivers the most certainty for the parties is to "hardwire" into a LIBOR-linked loan transaction a move to the appropriate RFR (for example, for sterling that would be to SONIA) upon the occurrence of agreed trigger events. The Loan Market Association (**LMA**) recently published an exposure draft Rate Switch Agreement for market comments which documents such a hardwire mechanism.

In the US, the Alternative Reference Rates Committee (**ARRC**) also recommended SOFR in arrears rate conventions and this summer issued recommended hardwire benchmark replacement language for bilateral loans and syndicated business loans. The ARRC hardwiring language specifies a switch rate for USD LIBOR which is determined by a waterfall selection and a spread adjustment (also determined by a waterfall selection). At the top of that waterfall is a Term SOFR rate (being a forward-looking rate, which as yet does not exist) followed by daily simple SOFR in arrears for the interest period, although ARRC acknowledges that syndicated loans may be based on either compounded or simple interest. On a multi-currency loan which incorporates both SONIA and SOFR rates it is likely to be administratively easier to select compounded interest for both RFRs adopting the same compounding methodology. A hot topic in the U.S. at the moment is whether it should be possible for the parties after a trigger event has occurred to later "climb up the waterfall" in order to deselect simple SOFR in favor of a Term SOFR rate as and when that rate becomes available.

Amendment process: The alternative to a hardwire approach to meet the regulators' requirements to include language for conversion, is to incorporate contractual provisions to amend the agreement away from LIBOR at a future date which falls before the end of 2021.

In the UK, this approach was the favored route until very recently, with the LMA's "Replacement of Screen Rate" wording being the usual route to achieve this for syndicated loans. On 24 August 2020, the LMA issued guidance to include new detailed language within this provision to specify when the parties would start good faith negotiations to make these amendments. This change is to ensure that the language would be construed as an agreed contractual method of transition by the FCA. The LMA has said that they will also shortly be issuing a heads of terms document which will further bolster that provision if the parties use it to document an outline of the basis of the agreed RFR replacement at the outset.

In order to make sure that this provision is compatible with the new ISDA IBOR fallbacks in cases where the loan is linked to a derivative which incorporates the new ISDA IBOR fallbacks, and to avoid potential interest rate mismatch, consideration should be given as to whether, in the case of any LIBOR rate, to include a so-called "pre-cessation" trigger event in this drafting. This would be in addition to the existing triggers which (broadly) occur upon an announcement by the benchmark administrator (or by that administrator's regulator) that it has, or will cease to provide the benchmark permanently or a practice statement from the administrator's regulator that the benchmark is no longer representative.

In the U.S., the ARRC amendment approach was initially the more popular approach compared to hardwiring, but recently with the market coalescing around SOFR calculation conventions following the ARRC recommendations, the hardwire approach is gaining traction and the working groups are proclaiming that the safer and more robust hardwire approach is best practice.

When should firms stop issuing new LIBOR linked loan products?

Whilst the FSB's roadmap states that firms should "*aim to use robust alternative reference rates to LIBOR in new contracts whatever possible*" by mid-2021 (and this broadly matches the ARRC requirement), the £RFRWG timetable provides for lenders and borrowers to have taken necessary steps by the end of Q1 2021 to cease issuance of LIBOR-linked loan products that expire after the end of 2021.

The £RFRWG acknowledged at the start of this year that certain cash market products are not suited to a backwards-looking interest rate. These include lower value loans to a wide range of smaller borrowers, including SMEs with no dedicated treasury function and being less able to adapt to the technology/process changes required to accommodate SONIA compounded in arrears (and who value simplicity and payment certainty). Export finance, emerging markets, retail mortgages, trade and working capital products (including discounting/LCs/supply chain finance) and Islamic finance are also expected to require an alternative rate.

To the extent that a base rate or fixed rate is not commercially attractive, then these types of products may require a forward-looking "Term RFR" and such rates are currently in development in the UK, U.S. and in Europe.

The £RFRWG published a paper in October 2020 summarizing the key attributes of "Beta versions" of the term SONIA reference rates published by independent benchmark administrators. It is currently expected that discussions around the removal of the Beta tag will happen towards the end of this year. In the U.S., ARRC has said that it will seek to recommend a forward-looking SOFR term rate by the end of June next year. The FCA has been consistently clear that term RFRs are only appropriate for very limited types of cash market products (both new and legacy ones) and that outside of these categories it expects firms to move to the more robust and transparent compounded RFRs.

Starting to repaper legacy LIBOR products

The £RFRWG requires firms to have established a clear framework to manage transition of legacy LIBOR products which will expire after 2021 and to have started to accelerate reduction of sterling LIBOR referencing contracts by the end of March 2021. The FSB and the ARRC timetables set an aim of mid-2021 for this to commence. This should give firms sufficient time to finish the huge task of reviewing and sorting legacy product types and preparing template amendment agreements to enable the most efficient repapering mechanism possible. In all but the smallest of legacy back books, efficiency will demand the use of artificial intelligence, documentation automation and other and other legal tech products such as the Hogan Lovells LIBOR tool.

There is still a significant number of legacy LIBOR-referencing FRNs, capital securities and securitisations that are due to mature after the end of 2021, with many containing either no fallbacks at all or inadequate fallbacks which will need to be transitioned. The £RFRWG's October paper on Active Transition of GBP LIBOR-Referencing Bonds sets out practical considerations in relation to consent solicitations and a recent International Capital Markets Services Association (**ICMSA**) bulletin contains a useful timeline of a consent solicitation.

The UK government has said:

"The active transition of legacy contracts remains of key importance and provides the best route to certainty for parties to contracts referencing LIBOR. Parties who rely on regulatory action, enabled by the legislation the Government plans to bring forward, will not have control over the economic terms of that action. Moreover, regulatory action may not be able to address all issues or be practicable in all circumstances, for example where a methodology change is not feasible, or would not protect consumers or market integrity".

What about the "tough legacy" contracts?

It will not be possible to transition all legacy products. This is most likely to be the case for older, widely distributed syndicated loans which require unanimous lender consent to amend and in the case of certain bonds where a consent solicitation process is just not feasible. Firms are in the process of collating details of their impacted legacy contracts during the on-going due diligence phase of their transition projects.

The FSB roadmap mentions the need for parties to take into account the scope and impact of any steps taken by authorities to support tough legacy contracts.

The UK government has incorporated this type of legislation in its recent Financial Services Bill published on 23 October 2020. The application of the legislation is not limited to contracts governed by the law of a member country of the UK, although the FCA may also consider international aspects before exercising its new powers.

If it becomes law in its present form, in summary, in order to assist tough legacy contracts, the legislation will give to the FCA new powers to (as its supervisor):

- direct the administrator of LIBOR to change the methodology of LIBOR (and previous statements would indicate that this is likely to be made up of a forward-looking RFR plus the ISDA type credit spread adjustment, although this is not confirmed at this stage); and
- extend the period of publication of that rate for a set time (of up to 10 years).

Use of this 'synthetic' LIBOR by UK regulated entities will be prohibited except in the case of those specific tough legacy type exemptions prescribed by the FCA. The meaning of tough legacy contracts is not defined in the legislation, but the related policy statement confirms that the government and the FCA consider tough legacy contracts to be those which *"genuinely have no realistic ability to be renegotiated or amended to transition to an alternative Benchmark"*. Further information as to what will be included in the definition of tough legacy contracts will be provided when the FCA issues its expected policy statements. What those exemptions should be is likely to be the subject of hot debate.

The UK government's approach is markedly different in nature to that being actively pursued in Europe where the European Commission is proposing a statutory override to LIBOR references in legacy contracts. A more limited statutory override has also been under discussion in New York. The UK government acknowledges in its policy statement that *"as the home jurisdiction of LIBOR's administrator, the UK has a distinct role to play in minimizing financial stability risks and disruption to financial systems from LIBOR wind-down in the UK and globally. Alongside the FCA and the Bank of England, the government stands ready to work with our international partners to coordinate respective legislative and regulatory approaches to support an orderly global wind down of LIBOR."*

It is to be hoped that such coordination will result in a coherent international response to deal with the tough legacy issue.

What is clear is that firms should not rely on the future availability of any legislation which will only likely apply in narrow circumstances and should retain control of the economics of their returns on their investments and continue to take every step to actively transition their legacy books in good time before the end of next year. As Edwin Schooling Latter, Director, Markets and Wholesale Policy at the FCA said: *"the only way for contractual counterparties to have certainty and control over the future of their obligations is to convert them by mutual agreement."*

This is a fast moving area. The positions described in this piece are correct as at 9 November 2020. Please get in touch with your usual Hogan Lovells contact or any of the contacts named in this piece if you would like to discuss any of the issues raised in this piece further.

Authors:

Susan Whitehead
Senior Consultant, London
T +44 20 7296 2635
susan.whitehead@hoganlovells.com

Charlotte Bonsch
Knowledge Lawyer, Paris
T +33 1 53 67 47 47
charlotte.bonsch@hoganlovells.com

Hali Katz
Knowledge Lawyer, New York
T +1 212 918 3681
hali.katz@hoganlovells.com

Michelle Rich
Regional Head of Knowledge
Hong Kong
T +852 2840 5616
michelle.rich@hoganlovells.com

Isobel Wright
Counsel Knowledge Lawyer, London
T +44 20 7296 2610
isobel.wright@hoganlovells.com

Chapter 3

About Hogan Lovells

Why Hogan Lovells

Our vision is to be a bold and distinctive law firm creating valuable solutions for clients.

Our expertise is well-balanced across practices and jurisdictions allowing us to deliver high quality advice. We pride ourselves on our culture which is ambitious, committed and supportive.

Innovation means different things to different people. At one level, innovation simply means the ability to approach a project with an open mind, to adapt to what a particular client needs and to identify ways in which we can improve. We also include the following under innovation:

Helping our clients innovate
We focus on areas where law and regulation are changing, helping our clients realize the potential of a wide-ranging set of developments, market shifts and new technologies, whether that is Big Data, blockchain or Brexit. We also work to help in-house legal teams innovate and drive outcomes within their businesses.

Innovating in how we deliver our services
As our clients' priorities change, we are always looking to enhance our mix of services and the way we deliver them. Part of this involves thinking about ways we can use advanced technology or alternative delivery models. But it also involves thinking about the way in which we engage and collaborate with our clients at all stages of a project in order to develop new approaches, improve decision-making and maximize value for the in-house legal team.

Innovating in how we run our business
Our people are our most important resource. Talent-focused innovation in relation to diversity and inclusion, legal learning and citizenship initiatives are therefore all central to our approach. We also operate an internal innovation hub and business incubator, focused on helping our people to test and develop their ideas.

The following pages set out details of some of the areas where we can provide further support to you, such as tailored training and ways to leverage new technology. However, we would welcome a discussion and ongoing dialogue with you about your legal and business needs and the ways in which we can support you.

Top 10 most innovative law firms in Europe, North America and Asia

Financial Times – FT Innovative Lawyer Awards 2019 & 2020

Our global Financial Institutions team

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

700+

Lawyers

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

50+

Ranked lawyers

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

10+

Jurisdictions

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

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

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

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

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

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

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

Added value

Bespoke client training

We regularly provide in-person and remote bespoke training for our clients on topics that are relevant to their particular needs and requirements.

We also host numerous events on a monthly and quarterly basis, covering hot topics and new regulations as they arise. We deliver these in a variety of formats, from traditional "chalk and talk" presentations to roundtable discussions, mini-theatres and e-learning.

Digital transformation of financial institutions requires new legal skills

Hogan Lovells can provide comprehensive digital training for your in-house legal team, customised for your lawyers.

Our training offer is based on a series of modules that can be broken into separate master classes.

We can also help you to develop a suite of online training tools through short videos. The training focuses principally on EU-legislation, but can cover other jurisdictions as required. On request, we can also involve a leading university so that participants receive certification.

Each module can be provided (and purchased) separately. You can also purchase multiple modules or the whole training programme comprised of a series of master classes.

Legal project management

Our extensive experience of working with our clients and executing projects gives us considerable expertise in legal project management ("LPM"), which we use to improve efficiency and assist our clients with the management of their projects. We have also developed a dedicated internal LPM team in order to identify and share best practice across our different client teams and to provide practical support to fee-earners. This helps ensure even the most complex projects can be delivered efficiently and to plan.

Project resourcing

We can deliver the services we offer to you in a number of different ways, to achieve the right balance of expertise and cost-effectiveness. These resources include lawyers and paralegals from:

- Our Legal Delivery Centre ("LDC") in Birmingham
- Our partner flexible resource providers, such as Elevate and Cognia
- Our alumni network

These different resources allow us to provide appropriate and cost-effective support across a range of different types of matter, including detailed document reviews for business reorganizations, product reviews and litigation.

Our LDC has both lawyers and paralegals and can scale up to a team of just under 120.

Leveraging new technology

In order to deliver our services as efficiently as possible, we are always looking to identify new technology that can help us work and collaborate with our clients more effectively. You can find out more about some of the legal tech we are using on page 40.

Legal tech

On this page we have summarised some of the key technology tools which we are using to improve the way we deliver legal services and collaborate with our clients. We would be happy to discuss further the way any of these might be used by you.

Collaborate

We have long used custom-built extranets as a repository for project documentation and information. Collaborate is the next step forward in this area, an innovative platform that combines the traditional functions of a data room with an online interface that enables live collaboration between the in-house and Hogan Lovells teams and makes it easier to capture and share knowledge as projects develop.

Due diligence and contractual analysis - Kira

Kira is a contract review tool that, when trained, identifies and extracts legal concepts from contracts to speed up and make more efficient due diligence and document review exercises. Information is extracted into a searchable format that links back to the original document and enables the review to identify documents that contain relevant clauses that may require more in-depth review without the need to read through all the documents.

We have also partnered with FTI Consulting to combine our talents in legal analysis with their expertise in mining information from large volumes of contracts and other data sources. Our collaboration produces sophisticated results while facing tight deadlines and cost constraints.

Contract generation - DraftXpress

Our document automation service, DraftXpress, helps to automate the repetitive elements of transactional documents, allowing the in-house and Hogan Lovells legal teams to focus on bespoke drafting. By answering a simple online questionnaire, you can quickly and easily generate a first draft. This significantly reduces drafting time, creates a consistent approach to document drafting across teams and jurisdictions, enables suites of documents to be automated and provides quality assurance.

Litigation outcomes

We are also employing cutting edge tools to conduct research and assess potential outcomes in litigation, including Ravel Law, Lex Machina and Prism. Prism is our Early Case Assessment (ECA) service, which provides early in-depth analysis of a dispute for a fixed fee within 30 days. Using online software we take instructions, agree the scope, the action points, the timetable and fix the price of the ECA. A note of all of this is generated immediately and given to the client. Prism won the British Legal Awards 2016, Innovation Legal Services category, where it was described as “something genuinely new that actually helps clients”.

Hogan Lovells Impact Financing & Investing

Financial institutions and the products and services they offer have a central role in delivering the UN Sustainable Development Goals and supporting the goals of UN Global Compact. Hogan Lovells Impact Financing & Investing is a unique global platform launched in 2019 to ensure that we are offering our clients best-in-market support in this mission-critical area.

At Hogan Lovells, we have a long history of collaborating with our clients on transactions that promote positive social and environmental impact – often high profile and/or innovative transactions. However, we felt we needed to do more to help our clients stay ahead in this rapidly evolving and increasingly regulated space.

Impact Financing & Investing at Hogan Lovells covers every aspect of the relationship between the providers and the users of financial and risk-mitigation products. That relationship is now rapidly evolving in response to the global demand for financial products that are both responsible and sustainable.

We support our clients as they navigate across a wide spectrum of products, which range from social and development bonds, green finance, financial inclusion products, green infrastructure transactions to gender lens investing. Yet our offering extends beyond the purely legal; for example, we are working with a number of clients developing detailed and transformational internal ESG investment policies.

Finding innovative solutions to the challenges facing the impact financing and investing sector is a priority for us. We work with our clients to share knowledge, raise awareness and navigate the challenges and opportunities resulting from financing with impact. Our goal is to create strong partnerships and collaborations in order to develop innovative and efficient financial solutions to overcome the challenges facing the impact economy.

Contacts:

Andrew Carey
Senior Counsel & Co-Head of Impact Financing & Investing, London
T +44 20 7296 5949
andrew.carey@hoganlovells.com

Sukhvir Basran
Senior Legal Director & Co-Head of Impact Financing & Investing, London
T +44 20 7296 2506
sukhvir.basran@hoganlovells.com

Hogan Lovells Consulting

New business seeking to understand the regulatory landscape? Established business navigating regulatory change and oversight? Identified an actual or potential regulatory issue? Or just want some assurance that you're meeting your regulatory requirements? From the first step of getting to grips with the compliance, risk and legal implications to planning and implementing any operational changes, we're here to help you.

End-to-End Service

We offer interpretation, planning, and implementation as an end-to-end service. You receive an efficient and effective solution that achieves your business and regulatory objectives at a lower cost than specialized consulting groups. All delivered under one roof, by deeply experienced specialists.

When regulatory requirements drive changes to business operations, we integrate and leverage technology and data driven solutions where required. You benefit from a seamless process provided by one firm, lowering the risk of project slippage and giving time back to your key stakeholders.

Our Consulting Team

Specialist team of operational and regulatory consultants, with a broad range of backgrounds. Our people have worked for Regulators, large consultancies and a wide range of financial services institutions. We work with you to understand the operational, risk and compliance needs of your business. Our unique blend of experience then gives us the knowledge and insight to provide innovative and tailored solutions, with support from our market leading legal practice, where required.

Contact:

Matthew Porter
Senior Director, London
T +44 20 7296 5516
matt.porter@hoganlovells.com

Engage

Engage is here

Engage is your Hogan Lovells news, insights and analysis platform all in one place.

We have moved away from our bulletins and blogs, and have changed how we share our updates, newsletters, alerts, publications and other pieces of legal content and thought leadership, and have brought this into one place: Hogan Lovells Engage.

Engage is our dedicated content and thought leadership site and has been set up with our clients in mind, with clear sections that are easy to navigate. The site puts you in charge of the content you see and receive.

All you need to do is to register (for free) and customise your account with the topics that are of interest to you. You will then receive a regular email alert with news, insights and analysis relating to the topics of your choice.

What should you do?

If you're not already registered on Engage, just click here and fill in the short form.

You can use the 'remember me' function to save your login details and access the site with ease later. Use the 'tailor your alerts' function to set your email preferences.

However, you can customize your account at any time, updating both how often you hear from us and the topics that appear on your homepage and email alerts.

Some high-value content on Engage is only for registered users, so make sure you complete your registration to take advantage of all our content.

Watch this space

Some of our practice areas, industries and sectors are already on Engage and, in the coming months, the site will gradually expand to include the rest.

Our ambition is to give you information and analysis that help you stay on top of developments and make the best choices for your business, so we hope you enjoy using the site.

For questions or feedback about Engage, please contact us here.

Hogan Lovells LIBOR Tool

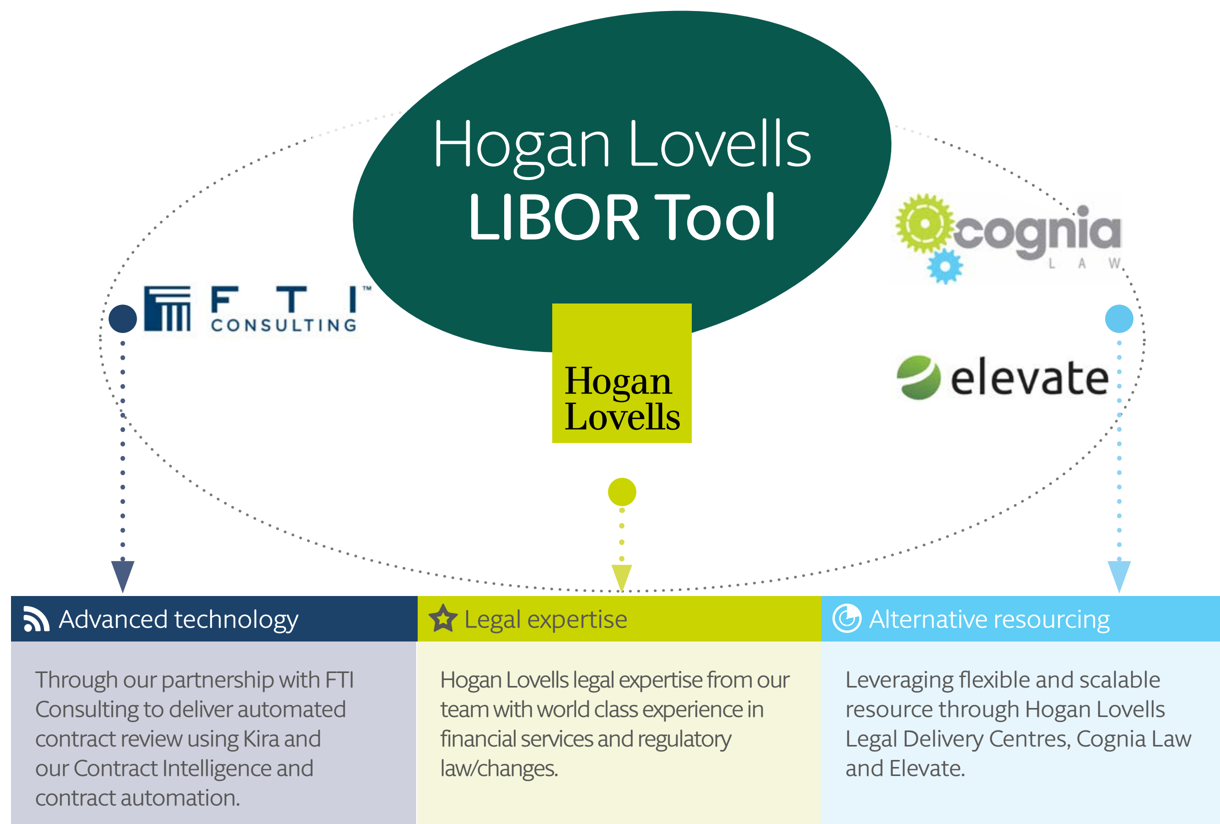
The legal and operational issues surrounding a transition from LIBOR (including litigation risk) to new risk free rates (RFRs) are complex and wide ranging. A successful repapering exercise requires a precise understanding of those legal issues in the context of the client's business, as well as the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

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

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

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

We would be delighted to discuss this solution with you in more detail. Please contact any of our core team members to learn more.



Contacts:

Sharon Lewis
Global Head of Financial Institutions & Insurance, Paris, London
T +33 (1) 5367 4704 (Paris)
+44 20 7296 2474 (London)
sharon.lewis@hoganlovells.com

Susan Whitehead
Senior Consultant, London
T +44 20 7296 2635
susan.whitehead@hoganlovells.com

Penny Angell
Partner, London
T +44 20 7296 5786
penny.angell@hoganlovells.com

Isobel Wright
Counsel Knowledge Lawyer, London
T +44 20 7296 2474
isobel.wrigh@hoganlovells.com

James Doyle
Partner, London
T +44 20 7296 5849
james.doyle@hoganlovells.com

Rachel Dabydoyal
Head of Alternative Delivery Solutions, London
T +44 20 7050 3417
rachel.dabydoyal@hoganlovells.com

Innovation in Collaboration for LIBOR Tool

Financial Times Innovative Lawyer Awards, North America, 2020

Legal Operations Team of the Year for the Engage: LIBOR Tool

The Lawyer Awards, 2020

Blockchain Hub

Your global guide to developing regulatory requirements within the financial services industry sector and beyond.

Blockchain technology could revolutionize supply chains, agreements, contracts, currencies and more. With the Hogan Lovells Blockchain Hub you can take advantage of the technology's huge potential and disruptive impact, while avoiding falling foul of ever developing regulatory and legal requirements.

The finance industry is arguably one of the sectors that stands to be the greatest beneficiary of blockchain technology. With characteristics of an immutable ledger, real-time tracking, and a single version of the truth, it is ideal for the future of the financial services industry. Some of the ways blockchain technology can support financial services companies are in the exchange of cross-border payments and P2P transfers, securities trading, Know Your Customer – client identity verification, record-keeping, and crowdfunding, among others. The immutable ledger will be able to trace every transaction and be able to ascertain what is valid and invalid. At the same time, it will be able to prevent the duplication of records and operate at a speed the industry has yet to experience or truly monetize on.

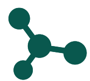
While the benefits of blockchain technology outweigh the challenges, the legal challenges cannot be ignored and will need to be thoughtfully considered and addressed in a timely manner. Many of these challenges stem from new and evolving multi-jurisdictional regulations. Governments adopt individualized, unique regulations on blockchain and digital assets, such as GDPR, and these will affect blockchain configurations and how you conduct business domestically and globally. Our Blockchain Hub and lawyers can assist financial services industry players in navigating the regulatory landscape and latest legal developments, ensuring that efforts and adoptions are compliant with any current and future regulatory and business needs.

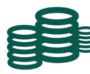
The Blockchain Hub covers:

- 300+ regulators
- 120+ jurisdictions and supranational organizations
- 20+ applications, topics and industry sectors

Use the Hub to:

Keep up to date with the latest legal and regulatory developments


See where blockchain is shaking up industries


View the legal positions and restrictions for cryptocurrency and the FATF travel rule in various countries

Compare regulatory developments across the world and see how regulatory approaches are evolving over time

Create bespoke reports with developments across multiple countries

Access useful blockchain resources, including reports, in-depth articles and more

Contact:

John Salmon
Partner, London
T +44 20 7296 5071
john.salmon@hoganlovells.com

Hogan Lovells Blockchain Hub

Helping you take advantage of blockchain technology's huge potential and disruptive impact.

Access the Blockchain Hub here.

Global Guide to Electronic Signatures

An indispensable cross-border guide to the use of electronic signatures by corporate entities in commercial agreements

Produced by our transactional lawyers across our offices, this guide provides answers to those questions which frame whether or not, and if so how, commercial agreements can be electronically executed by corporate entities in various jurisdictions. We also consider the cross-border aspects to this issue.

Explore and contrast the key legal and practical considerations relating to the electronic signature of commercial agreements around the world:

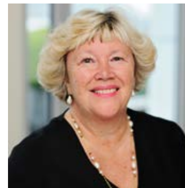
Use our interactive map to select one or more jurisdictions

Then compare and contrast the legal and practical considerations

Review the entire guide for each jurisdiction or filter for the issues that matter most to you

Our color-coded rating system quickly indicates relative ease of the electronic signature process

Contacts:


Sharon Lewis
Global Head of Financial Institutions & Insurance, Paris, London
T +33 (1) 5367 4704 (Paris)
+44 20 7296 2474 (London)
sharon.lewis@hoganlovells.com

John Salmon
Partner, London
T +44 20 7296 5071
john.salmon@hoganlovells.com

Susan Whitehead
Senior Consultant, London
T +44 20 7296 2635
susan.whitehead@hoganlovells.com

Hogan Lovells Global Guide to Electronic Signatures

Find out more about the cross-border guide on Engage Premium here.

Online resources

COVID-19 Topic Centre

Our COVID-19 topic center rings together teams from employment, health and safety, government affairs, data and cyber security, healthcare, real estate, crisis communications and many other areas to produce guidance notes and information to keep you up to speed.

The global coronavirus pandemic is having an impact on businesses in every industry sector in different ways. Whether you are considering the impact on the scope of your operations and transactions, the complexity of your supply chains and the potential for disputes, the shape of your employee networks, or the markets in which you operate, we can help you to strategize, find solutions and implement them.

There are still evolving issues from COVID-19 that need immediate action, activity that can be anticipated to remain operationally effective and longer term issues to be considered now, to allow your business to adapt and be fit for the future. Responding quickly and adapting effectively will help you to stay ahead of the competition.

You'll need to keep on top of government responses differing around the world, constant changes to policy and legislation in each country, specific issues relevant to your industry and the PR implications of your decisions. We continue to create insights, guides and products to support you and we have built teams from across practices, jurisdictions and industries to develop unique solutions that each business needs.

COVID-19: Financial Institutions & Insurance Interactive Map: Governmental and Regulatory Responses

Click here to access our guide to view and compare global governmental and regulatory responses to the coronavirus pandemic, relevant to the Financial Institutions and Insurance sectors, compiled and updated by our global team of cross-disciplinary lawyers.

Compare national responses on issues including capital reliefs, monetary policy, insolvency, payment holidays, operational requirements and more.

Deal Dynamics

Deal Dynamics is a powerful interactive data tool with exclusive editorial content providing analysis and insights on global M&A. Deal Dynamics combines interactive deal data by markets and sectors with exclusive editorial content to provide insights on cross-border M&A.

The Deal Dynamics tool allows users to mine cross-border data set by date range, geography, sector, value and volume to create market snapshots, compare activity levels and assess cross-border and domestic deal flows. The data reaches back to Q1 2010 and offers global market trends across ten industries and seven regions.

Click here to access Hogan Lovells Deal Dynamics

Brexit

We have been leading analysis of Brexit since before the referendum was promised. We have been collaborating with our clients and other experts to provide a holistic view of the risks and opportunities. We are ready to help you to make the best of it by delivering sound legal analysis, global perspective and active engagement with policy makers.

Click here to access Hogan Lovells Brexit Hub

COVID-19 Topic Centre

Click here to access our COVID-19 topic-centre to view global governmental, regulatory, and other legal responses to the pandemic, compiled and regularly updated by our global team of cross-disciplinary lawyers.

Diversity

One Hogan Lovells: Many perspectives

We know that diversity makes us a better law firm and helps us to attract the best talent, drive innovation, and deliver the best experience for our clients. We are committed to nurturing an inclusive working environment where all of our people can be themselves and feel empowered to succeed.

Promote responsibility

Ensure that we have governance structures in place to deploy our strategy with effective monitoring on progress, and clear accountability across our regions, practice groups, and Business Services.

Embed our culture

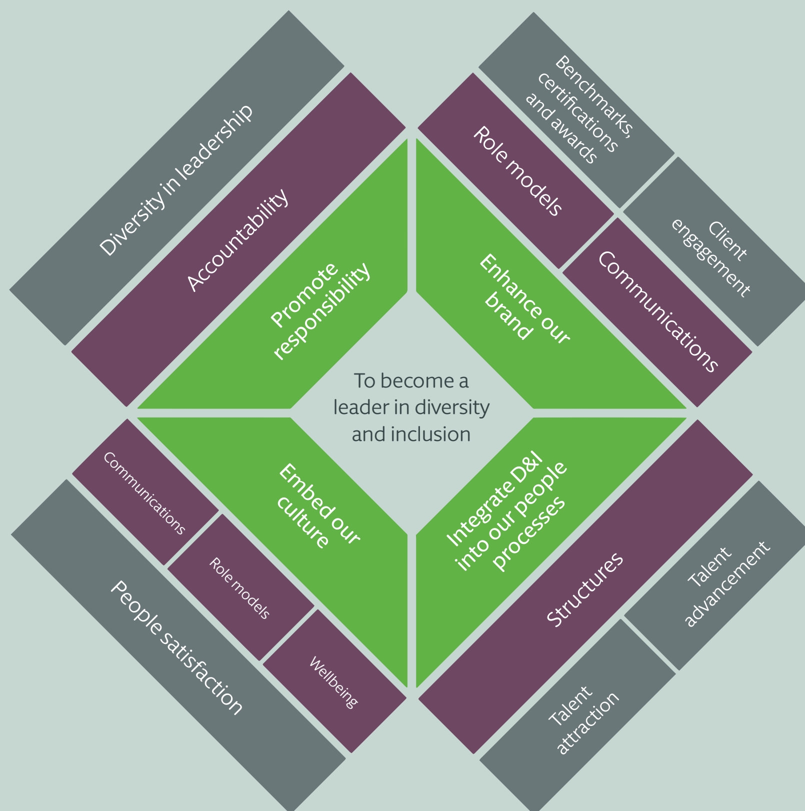
Provide all of our people with the training, tools, and environment needed to empower them to be their authentic selves in the firm and with clients.

Integrate D&I into our people processes

Ensure that our entire infrastructure supports our diversity and inclusion aims to attract, recruit, retain, and advance our people.

Enhance our brand

Position ourselves as an employer of choice for top talent in diverse communities and leverage that diversity to strengthen our client relationships and deliver excellence.



We evaluate all of our initiatives and programmes through our global D&I framework

Citizenship

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

As a truly global law firm, we recognise that our continued success owes much to the diversity of our people. Embracing our cultural differences and recognising our strong local knowledge means we can deliver for our clients all over the world.

This recognition of strength in diversity and a sense of togetherness permeates throughout the firm into all our practice areas; and so it is with our commitment to corporate responsibility (CR).

We support the United Nations Sustainable Development Goals.

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

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

Pro bono

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

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

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

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

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

US$35+ million
The value of pro bono legal services devoted through the Empowering Girls and Women initiative

50+
Formal partnerships with nonprofits and other legal services

75,000+
Compensation secured in the UK for victims of gender-based violence and human trafficking

£733,370
Compensation secured in the UK for victims of gender-based human trafficking

Alicante
Amsterdam
Baltimore
Beijing
Birmingham
Boston
Brussels
Budapest*
Colorado Springs
Denver
Dubai
Dusseldorf
Frankfurt
Hamburg
Hanoi
Ho Chi Minh City
Hong Kong
Houston
Jakarta*
Johannesburg
London
Los Angeles
Louisville
Luxembourg
Madrid
Mexico City
Miami
Milan
Minneapolis
Monterrey
Moscow
Munich
New York
Northern Virginia
Paris
Perth
Philadelphia
Riyadh*
Rome
San Francisco
Sao Paulo
Shanghai
Shanghai FTZ*
Silicon Valley
Singapore
Sydney
Tokyo
Ulaanbaatar*
Warsaw
Washington, D.C.
Zagreb*

*Our associated offices
Legal Services Centre: Berlin

www.hoganlovells.com

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.

For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.

© Hogan Lovells . All rights reserved. 1270780_1220