

Legal Headwinds: Quarterly Report – Q1 2019

Legal Headwinds focuses on key legal and regulatory developments relevant to clients operating in the FI, asset management and insurance sectors in the UK, the Netherlands, Hong Kong, Singapore and China and in the Life Sciences sectors in Belgium, France, Germany and the UK. We also cover significant developments more generally within the EU.

Rather than being a retrospective analysis, the report looks at future developments this quarter and beyond (based on information available as at 31 December 2018) and it is not intended to be exhaustive. Those issues which have a hyperlink in the 'Headwind Topic' column are accompanied by more detailed topic summaries on elexica.

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This document has been created using the following criteria:

Priority: Red; Amber and Green.






Region: UK; EU and Global

Relevant Sectors: Asset Managers.




Relevant Subsectors: Asset Managers; Hedge funds; Institutional managers; Private equity; Sovereign wealth; Service Providers and Private Clients.

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
AIFM Directive		Imposes EU wide regime for oversight of alternative investment funds and managers	<p>19 February 2019 – consultation period for ESMA consultation paper, "On Integrating Sustainability Risks and Factors in the UCITS Directive and AIFMD" closes</p> <p>Annex IV reporting period for quarterly reporting AIFMs with information to report ended on 31 December 2018 - reports must be submitted to regulators by 31 January 2019</p>	<p>Consequential revision to AIFMD expected as part of European Commission's proposed amendments to powers of ESAs</p> <p>Delegated Regulation amending safe keeping duties of depositaries of AIFs and UCITS to apply from 01 April 2020</p> <p>European Commission to adopt, in due course, delegated acts permitting a marketing passport following receipt from ESMA of positive advice and/or positive opinion in respect of given non-EEA jurisdiction(s)</p>	Asset managers	All	G


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<i>AIFM Directive</i>		Cross border distribution of collective investment funds	European Parliament and Council of the EU to conclude trilogue negotiations with European Commission to finalise text of Directive and Regulation amending cross border distribution rules in AIFMD and UCITS (along with EuVECA and EuSEF Regulations)	Finalised text of Regulation and Directive amending cross border distribution rules in AIFMD and UCITS Directive (along with EuVECA and EuSEF Regulations) to be published in OJ. Intention for political agreement to be reached ahead of May 2019 European Parliament elections, with application of new legislation from 2021	Asset managers	All	G
<i>Anti-Tax Avoidance Directive</i>		Council of the EU has adopted EU Anti-Tax Avoidance Directive to provide for consistent implementation of BEPS measures within EU		Directive to be implemented in domestic legislation of Member States. Some provisions to be included in Finance Act 2019 to ensure that UK legislation complies with Directive, including changes to rules dealing with exit charges and hybrid mismatches, which will have effect from 01 January 2020	All	All	G
<i>Base Erosion and Profit Shifting (BEPS)</i>		Modernisation of aspects of international tax rules intended, in part, to limit opportunities for cross-border strategies to reduce taxation by multinationals		Work to continue to implement OECD's recommendations of October 2015, including adoption of Multilateral Convention to implement tax treaty related aspects and review of taxation of digital economy (see "Taxation of digital economy")	All	All	R
<i>Capital allowances</i>		UK Government will introduce a "Structure and Buildings Allowance" (SBA) providing a straight line 2% per year relief on the original construction costs of commercial buildings and other "commercial" with no uplift reflecting increases in market value or balancing charge/allowance system where there is a change of ownership.	Technical consultation on the detail of the SBA. (Legislation is included in Finance (No 3) Bill.)	SBA to apply where written contracts for physical construction are entered into on or after 29 October 2018	All	All	R
<i>Capital Markets Union</i>		Capital Markets Union (CMU), a long-standing objective of the European Union, is at heart of the single market and intended to help businesses tap into more diverse sources of funding (away from dependence on bank lending), make markets work more efficiently and offer investors and savers more opportunities to invest in wider asset classes		European Commission CMU Action Plan sets out building blocks for putting integrated Capital Markets Union, encompassing all Member States, into place by 2019 On 28 November 2018, the European Commission published a <i>Communication</i> calling for the European Parliament and Council of the EU to put in place all main building blocks for a complete CMU before the European Parliament elections in May 2019	Financial Institutions Asset Managers	All All All issuers of, investors in and other market participants in relation to capital markets products, in particular	A




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						equities, corporate bonds and securitisations	
<i>Capital Markets Union</i>		<i>Prospectus Regulation (EU) 2017/1129</i> a new Regulation to modernise and overhaul Prospectus regime	21 January 2019 - Deadline for adoption of Delegated Acts by the European Commission 31 March 2019 - ESMA expected to submit technical advice on minimum information content for prospectus exemption	Prospectus Regulation (EU) 2017/1129 published in Official Journal on 30 June 2017, entered into force on 20 July 2017 and will apply (with some exceptions) from 21 July 2019 ESMA expected to submit technical advice as set out in Part II of the European Commission's mandate on equivalence criteria for third country prospectuses – August 2020	Financial Institutions Asset Managers	All All All issuers of, investors in and other market participants in relation to capital markets products, in particular equities, corporate bonds and securitisations	A
<i>Capital Markets Union</i>		<i>The Financial Services and Markets Act 2000 (Prospectus and Markets in Financial Instruments) Regulations 2018</i> amend the FSMA 2000 for the purposes of implementing new Prospectus Regulation (Regulation (EU) 2017/1129), entered into force on 21 July 2018	HM Treasury expected to lay <i>Draft Official Listing of Securities, Prospectus and Transparency (Amendment) (EU Exit) Regulations 2019</i> before Parliament for approval before exit day – 29 March 2019		Financial Institutions Asset Managers	All All	G
<i>Capital Markets Union</i>		<i>Securitisation Regulation (EU) 2017/2402</i> introduces a single uniform regulatory framework for securitisation and also creates a new class of simple, transparent and standardised (STS) securitisation <i>Capital Requirements Amending Regulation (CRR Amending Regulation) (EU) 2017/2401</i>	01 January 2019 - Securitisation Regulation (EU) 2017/2402 (published in Official Journal on 28 December 2017 entered into force on 17 January 2018) applies 01 January 2019 - CRR Amending Regulation (EU) 2017/2401 (published in Official Journal on 28 December 2017, entered into force on 17 January 2018) applies <i>EBA final guidelines</i> on interpretation of criteria		Financial Institutions Asset	Wholesale Banks Retail Banks and other consumer credit providers Fin-tech Wealth	A



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		recalibrates calculation of risk weights for securitisation positions and introduces lower risk weights for STS securitisations	for term and short-term securitisations to be eligible as STS to apply from 15 May 2019 - EBA expects market participants to apply approach set out in guidelines from 01 January 2019		Managers	All All originators and sponsors of, investors in and other market participants in relation to securitisations	
<i>Capital Markets Union</i>		<p>Omnibus Regulation proposal (COM(2017) 536) (Omnibus 3) put forward by European Commission to reform European Union's supervisory architecture. This would result in significant amendments to Prospectus Regulation</p> <p><i>Omnibus 3 proposal</i>, published by European Commission on 20 September 2017, if adopted in current form would result in some significant amendments to Prospectus Regulation (amongst others) and prospectus approval for certain non-equity securities, asset-backed securities and third country prospectuses falling within remit of ESMA rather than relevant NCA</p>	ECON Committee expected to adopt draft report and vote on decision to enter into 'Trilogue' discussions – 10 January 2019	Changes proposed in Omnibus 3 would take effect during 2019; however, changes to prospectuses are likely to take effect during 2022	Financial Institutions Asset Managers	<p>All</p> <p>All</p> <p>All issuers of, investors in and other market participants in relation to capital markets products, in particular equities, corporate bonds and securitisations</p>	G



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Central Counterparty Clearing Houses (CCPs)		<p>CPMI-IOSCO has developed guidance on resiliency and recovery plans for financial-market infrastructures, including CCPs</p> <p>FSB has issued further guidance on the application of its Key Attributes of Effective Resolution Regimes to financial market infrastructures such as CCPs</p>	<p>Responses to November 2018 FSB <i>paper</i> on financial resources to support CCP resolution and treatment of CCP equity in resolution due by 01 February 2019</p> <p>In Q1 2019, FSB to establish timeline for resolution planning, crisis management groups and cooperation agreements and ensure efficient interplay with CCP home authorities' assessment of adequacy of resources and treatment of equity within crisis management groups</p>	<p>By 31 December 2019, CCP home authorities (acting within crisis management groups) to assess adequacy of financial resources and treatment of equity on the basis of the November 2018 FSB <i>paper</i></p> <p>Further guidance on financial resources to support CCP resolution and the treatment of CCP equity in resolution may then be forthcoming by 31 December 2020 (see the November 2018 FSB <i>paper</i>)</p> <p>The <i>final report</i> from the Derivatives Assessment Team contains recommendation for future reform. This includes reforms relating to initial margin and the leverage ratio</p>	Financial Institutions Asset Managers	All All	G
CCP Recovery and Resolution Regulation		In November 2016, the European Commission adopted a proposal for new rules for Central Clearing Counterparties (CCPs) Recovery & Resolution	Trilogues to continue		Financial Institutions Asset Managers	All All	G
Central Securities Depositories		<p>Regulation on improving securities settlement and regulating central securities depositories (CSDR)</p> <p>CSDR officially entered into force on 17 September 2014</p> <p>Level 2 measures for CSD requirements (except technical standards on settlement discipline) published in the Official Journal and apply from 30 March 2017</p>	<p>ESMA consultation requesting comments on guidelines on standardised procedures and messaging protocols used between investment firms and their professional clients under Article 6(2) of CSDR – closes 20 February 2019</p> <p>ESMA consultation requesting comments on guidelines on settlement fails reporting under Article 7(1) of CSDR – closes 20 February 2019</p>	<p>ESMA final guidelines on (i) standardised procedures and messaging protocols used between investment firms and their professional clients under Article 6(2) of CSDR; and (ii) settlement fails reporting under Article 7(1) of CSDR – expected July 2019</p> <p>First internalised settlement reports containing details of transactions settled internally covering the period from 01 April 2019 to 30 June 2019 inclusive, due to NCAs – 12 July 2019</p> <p>13 September 2020 <i>Commission Delegated Regulation (EU) 2018/1229</i> with regard to technical standards on settlement discipline applies</p> <p>Article 3(1) of Regulation, under which relevant issuers must arrange for relevant securities to be represented in book-entry form, to apply from 01 January 2023 to transferable securities issued after that date, and from 01 January 2025 to all other transferable securities</p>	Financial Institutions Asset Managers	All All All Issuers of, holders of, and those entering into transactions regarding, securities held in settlement systems	R




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<i>Central Securities Depositories</i>		<p>Amendments to domestic legislation through the <i>Central Securities Depositories Regulations 2014 (SI 2014/2879)</i></p> <p><i>The Central Securities Depositories Regulations 2017 (SI 2017/1064)</i> entered into force on 28 November 2017</p>	29 March 2019 - <i>The Central Securities Depositories (Amendment) (EU Exit) Regulations 2018 (SI 2018/1320)</i> enters into force	UK Department for Business, Energy & Industrial Strategy (BEIS) expected to issue consultation paper in relation to Article 3(1) requirements relating to book-entry form recording (also known as dematerialisation) of transferrable securities admitted to trading – timetable unclear	Financial Institutions Asset Managers	<p>All</p> <p>All</p> <p>CSDs, CCPs, trading venues and any entities that provide internalised settlement</p>	R
<i>Changes to the taxation of termination payments</i>		<p>From 6 April 2018, all payments in lieu of notice (PILONs) are effectively subject to income tax and, from 6 April 2020, will be subject to employee and employer Class 1 National Insurance Contributions (NICs), regardless of whether there is a PILON clause in the employment contract. The new rules apply where both payment and termination occur on or after 6 April 2018</p> <p>The new rules require the division of the "termination award" (i.e. payments or other benefits within Section 401(1)(a) the Income Tax (Earnings and Pensions) Act 2003 (ITEPA)) into two elements: post-employment notice pay (PENP) and the balance of the termination award. The PENP is calculated using a specific statutory formula and is taxed as earnings. The balance of the termination award is subject to the usual rules regarding termination payments and may fall within the £30,000 exemption</p>		Autumn 2018 budget announced that employer Class 1A national insurance contributions on termination payments over £30,000 will not be introduced until April 2020	All	All	G




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<i>CMA investigation into bond market</i>		CMA investigating four banks in relation to suspected cartel in bond-trading market		CMA expected to provide further updates and guidance later in 2019	Financial Institutions Asset Managers	All	A
<i>Consumer credit</i>		Regulatory responsibility for consumer credit was transferred to FCA in April 2014. Some CCA provisions were repealed, and others replaced by FCA rules. Current review is aimed at simplifying regime	<p>Early 2019 - Final rules on high-cost credit proposed in CP18/12 to come into force</p> <p>17 January 2019 – consultation period for CP18/35 closes</p> <p>22 February 2019 - FCA rules on extended warranties come into force</p> <p>18 March 2019 – consultation period closes for CP18/42 closes</p> <p>18 March 2019 – consultation period closes for CP18/43 closes</p> <p>19 March 2019 – deadline for firms to comply with rules and guidance on explaining the comparative costs of borrowing</p> <p>Consumer Credit (Amendment) (EU Exit) Regulations 2018 come into force on 29 March 2019</p> <p>Q1 2019 - FCA expects to complete thematic review of debt management sector</p>	<p>By 01 April 2019, FCA required to report to HM Treasury on its review of CCA conduct requirements and develop rules-based alternatives where possible</p> <p>June 2019 - FCA to publish market study on consumers' credit information</p> <p>June 2019 – Final rules to CP18/42 to be published. Rules on pricing and repeat use to come into force by early December 2019</p>	Financial Institutions Asset Managers	All All	R


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<i>Consumer protection</i>		<p>Fitness Check) of six major EU consumer protection laws, including Unfair Terms Directive and Unfair Commercial Practices Directive</p> <p>The review found the Directives fit for purpose overall, but that they should also be better applied</p> <p>On 11 April 2018, European Commission adopted New Deal for Consumers package, including two Proposals for Directives</p>		<p>European Parliament and Council of the EU to scrutinise legislative proposals and agree on final text by May 2019</p> <p>17 January 2020 - Regulation on cooperation between national authorities responsible for enforcement of consumer protection laws to apply</p> <p>European Commission to</p> <ul style="list-style-type: none"> undertake targeted awareness activities update its guidance on Unfair Terms Directive 	<p>Financial Institutions</p> <p>Asset Managers</p>	<p>All</p> <p>All</p>	G
<i>Consumer protection</i>		<p>Department for Business, Energy and Industrial Strategy (BEIS) – successor to Department for Business Innovation and Skills (BIS) - review of terms and conditions, including civil fining powers for unfair terms</p>			<p>Financial Institutions</p> <p>Asset Managers</p>	<p>All</p>	G
<i>Corporate governance</i>		<p>Women on Boards Draft Directive</p> <p>European Commission proposal for draft directive on gender equality on boards of listed companies in EU, published on 14 November 2012</p>		<p>Timetable unknown</p>	All	<p>All</p> <p>EU listed companies</p>	G




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Corporate governance		<p>Directive which amends EU Shareholder Rights Directive (SRDII) came into effect on 09 June 2017</p> <p>4 September 2018, European Commission published final implementing regulation on minimum requirements and standardised formats to be used when an issuer asks for information to identify its shareholders and for sending information between issuer and its shareholders through intermediaries, with a view to harmonising practices across Member States</p>		<p>Member States to implement SRDII into national law by 10 June 2019. The UK is expected to implement SRDII</p> <p>Implementing regulation to apply from 3 September 2020</p>	All	All	A
Corporate governance		<p>FRC Report on developments in corporate governance and stewardship</p> <p>24 October 2018, FRC published its annual review of corporate governance and reporting 2017/2018. This year the FRC have combined its review of corporate governance with its annual review of corporate reporting in light of increasing cross-over between corporate governance and corporate reporting</p>			All	All	R
Corporate governance		<p>New corporate governance reporting rules</p> <p>22 October 2018, GC100 published guidance on directors' duties under section 172 Companies Act 2006 and stakeholder consideration</p> <p>7 December 2018, GC100 and Investor Group published an updated version of the Directors' Remuneration Reporting Regulations Guidance to reflect these regulations. These replace</p>	<p>New regulations require disclosure of:</p> <p>UK incorporated quoted companies with more than 250 UK employees - ratio of CEO's total remuneration to median (50th), 25th and 75th percentile of full time equivalent remuneration of company's UK employees, together with certain supporting information</p> <p>All UK incorporated quoted companies - effect of future share price growth on executive pay outcomes</p>	<p>Regulations apply to financial years beginning on or after 1 January 2019, so reporting will effectively start in 2020 covering previous year</p> <p>One exception is that the requirement for companies to illustrate impact of share price increases on executive pay outcomes applies to any new remuneration policy introduced from 1 January 2019</p>	All	All	R

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		<p>2016 version</p> <p>17 July 2018, UK Government published new corporate governance reporting requirements (Companies (Miscellaneous Reporting) Regulations 2018) to implement its well-publicised corporate governance reforms to make directors more accountable</p> <p>UK Government has also published guidance on these regulations in the form of Q&A which were updated in November 2018</p> <p>See below</p>	<p>Large companies</p> <ul style="list-style-type: none"> - statement explaining how directors have complied with duty to have regard to matters in s.172(1)(a) to (f) Companies Act 2006 and - statement summarising (in more detail) how directors had regard to need to foster business relationships with suppliers, customers and others <p>UK incorporated companies with more than 250 UK employees</p> <ul style="list-style-type: none"> - summary of how directors have engaged with employees 				
Corporate governance		<p>Revised UK Corporate Governance Code</p> <p>27 November 2018, FRC published FAQs on the 2018 Code. These note that the FRC intend to update its Guidance on Audit Committees to reflect the 2018 Code in due course. The FRC will also make consequential changes to guidance on Risk Management and Internal Control and Related and Financial Business Reporting, and will consider whether further changes are needed in light of various investigations following Carillion's collapse</p> <p>16 July 2018, revised UK Corporate Governance Code and FRC Guidance on Board Effectiveness published</p>	<p>Revised Code applies to financial years beginning on or after 01 January 2019 but FRC expect companies to follow new provisions on explanations during 2019 where significant votes are cast against resolutions and to develop future remuneration policies and changes to existing ones by reference to this version of the Code and the Guidance on Board Effectiveness</p>	<p>First reporting against revised Code in 2020 unless adopted earlier or one of provisions companies are expected to follow in 2019</p>	All	<p>All</p> <p>Main Market companies</p>	R


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Corporate governance		<p>Insolvency and corporate governance</p> <p>26 August 2018, Government response to its consultation paper setting out proposals to improve corporate governance of firms in or approaching insolvency published</p>	Further consultation awaited		All	All	A
Corporate governance		<p>Corporate governance for large private companies</p> <p>New corporate governance reporting regulations (see above) require certain large private companies to state:</p> <ul style="list-style-type: none"> which corporate governance code (if any) they have applied in a relevant financial year how they applied it; and any aspects they departed from and the reasons for doing so. <p>If no corporate governance code has been applied for the financial year, then the company must instead explain the reasons for that decision and what corporate governance arrangements were applied</p> <p>10 December 2018, The Wates Corporate Governance Principles for Large Private Companies published (following consultation in June 2018). The Wates Principles can be applied to meet this requirement</p>	Regulations apply to financial years beginning on or after 1 January 2019 (so reporting will effectively start in 2020 covering the previous year)	Regulations apply to financial years beginning on or after 1 January 2019, so reporting will effectively start in 2020 covering the previous year	All	All Large private companies	R
Corporate governance		<p>IA Public Register</p> <p>The 2018 Corporate Governance Code provides that, when 20% or</p>	Register to be updated on ongoing basis throughout year		All	All Listed	R







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		<p>more of votes are cast against the board recommendation for a resolution, a company should:</p> <ul style="list-style-type: none"> when announcing results, explain what actions it intends to take to consult shareholders to understand reasons for result; publish an update on views received from shareholders and actions taken no later than six months after vote; provide final summary in annual report, or explanatory notes to resolutions, on whether the board has taken any action or proposed new resolutions as a result of feedback. <p>The IA, which maintains public register, has published guidance setting out what investors expect to see in any update statement</p>				companies	





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Corporate governance		<p>House of Commons BEIS Select Committee (Committee) inquiry into gender pay gap and executive pay</p> <p>02 August 2018, the Committee published a report on gender pay gap reporting setting out its findings and recommendations following its inquiry into the adequacy and effectiveness of gender pay gap reporting requirements. The report includes recommendations on the scope of reporting obligations and proposals for redressing gender pay gaps which firms should have in mind for their next round of reporting</p> <p>Outcome of Committee inquiry into the progress of reforms relating to executive pay levels and structure awaited</p> <p>28 September 2018, House of Commons Library published a Briefing Paper (The Gender Pay Gap) that provides statistics on the size of the gender pay gap in the UK, looks at some of the reasons why the gender pay gap arises and discusses the duty on large employers to report on the size of the gender pay gap in their workforce</p> <p>See “<i>Gender pay gap important publications</i>” for more information</p>			All	All	A

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Corporate governance		Executive Remuneration 22 November 2018, updated Investor Association Principles of Remuneration and letter to Chairs of remuneration committees of FTSE 350 companies published. The letter includes key areas that its members will be focussing on at the 2019 AGMS			All	All	R
Corporate governance		Executive Remuneration New corporate governance reporting regulations (see above) include a requirement for certain companies to report ratios of CEO's remuneration to UK employees' remuneration	Requirements apply to financial years beginning on or after 1 January 2019 (so reporting will effectively start in 2020 covering the previous year)	Requirements apply to financial years beginning on or after 1 January 2019, so reporting will effectively start in 2020 covering the previous year	All	All	R
Corporate governance		Executive Remuneration	Response awaited to UK Government announcement (28 January 2018) of research to understand whether companies buyback their own shares to inflate executive pay		All	All	A
Corporate governance		UK Stewardship Code	FRC's feedback to consultation on UK Corporate Governance Code included initial feedback on high-level questions on the UK Stewardship Code. FRC expected to consult on revisions to Stewardship Code in Q1 2019	Final version of revised Stewardship Code expected summer 2019	All	All	A
Corporate governance		Stakeholder engagement	Updated ISS Voting Guidelines published. To be applied to shareholder meetings on or after 01 February 2019		All	All	R
Corporate governance		Corporate directors Provisions on prohibition of corporate directors under Small Business, Enterprise and Employment Act 2015		Provisions originally expected to come into effect in October 2016 - implementation delayed and timing unknown	All	All	G

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<i>Corporate governance</i>		Board diversity: Hampton Alexander annual Review 13 November 2018, third report of Hampton Alexander Review published.	Recommendations of Hampton-Alexander report to be followed now	FTSE 350 companies targets are: 33% of board positions to be held by women by end of 2020, and; 33% of women on FTSE 350 executive committees and direct reports to executive committees by 2020 FTSE 350 to increase also number of women in role of chair, senior independent executive and executive positions on board. women on boards and in leadership teams by 2020	All	All	R
<i>Corporate governance</i>		Board diversity. Parker Review encourages FTSE 350 companies to adopt the recommendations on a voluntary basis Final report published October 2017, includes Questions for Directors and The Directors Resource Toolkit to help boards increase board diversity now		FTSE 100 to have at least one director of colour by 2021 and FTSE 250 by 2024	All	All	A
<i>Corporation Tax Payment Dates</i>		UK Government to introduce new payment dates for largest companies, requiring payment of corporation tax in quarterly instalments in third, sixth, ninth and twelfth months of their accounting period		Measure will apply to accounting periods starting on or after 01 April 2019	All	All	R
<i>Cybersecurity</i>		The "Directive on Security of Network and Information Systems" ("NIS Directive") was adopted by European Parliament on 06 July 2016 and entered into force on 08 August 2016 In the UK, the Directive has been implemented via the Network and Information Systems Regulations 2018 (the "NIS Regulations") which came into force on 10 May 2018 The NIS Regulations apply to	By early 2019, Department for Business, Energy and Industrial Strategy ("BEIS") expects OESs to have undertaken initial assessment of whether they are taking appropriate and proportionate technical and organisational measures to manage cyber security. (National Cyber Security Centre ("NCSC") has issued the Cyber Assessment Framework ("CAF") to facilitate this.) By 15 February 2019 – under Ofgem guidance for the Gas and Electricity sector, OES to submit self-assessment against CAF	During 2019, BEIS (as competent authority in Electricity, Oil, and Gas sectors) expects OESs to submit improvement plan to address shortcomings based on CAF findings May 2019- European Commission expected to report to European Parliament and Council of the EU with assessment of consistency of approaches taken by member states in identifying OESs Summer 2019 - UK's National Cyber Security Centre (NCSC) expected to review CAF	All	All	G

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		<p>critical organisations within society (Operators of Essential Services ("OESs")) as well as online marketplaces, online search engines and cloud computing services (Digital Service Providers "DSPs"). The NIS Regulations are designed to ensure the availability of systems and networks for such organisations</p> <p>The UK Government omitted banking and financial market infrastructures from the scope of OESs in its consultation in January 2018. This differs from the NIS Directive which suggests credit institutions, operators of trading venues and central counterparties could fall under the definition</p> <p>Instead, the NIS Regulations describe OESs as providers of essential services only in the following subsectors: electricity, oil, gas, air transport, water transport, road transport, healthcare, drinking water supply and distribution, and digital infrastructure. Within each subsector, the imposition of threshold requirements further limits the entities that are likely to be in scope of the NIS Regulations to only the most significant service providers in those sectors</p> <p>The main points for UK organisations to consider are as follows:</p> <p>(i) Overlap with the EU's General Data Protection Regulation – Notification requirements, provisions on security and data protection responsibilities</p>		<p>By 30 April 2019 – under Ofgem guidance for Gas and Electricity Sector, OES to submit improvement plans to Ofgem</p> <p>UK Government guidance issued for DSPs in a "no deal" Brexit scenario indicates that EU's NIS Directive would continue to apply post-Brexit (including NIS Regulations in UK) and advises DSPs to prepare for eventuality they may be required to designate representative in EU Member States where they offer services</p>			


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		<p>of OESs and DSP's.</p> <p>(ii) Security provisions that a DSP must have in place when interacting with any organisations ranging from business continuity, audit provisions and incident handling processes.</p> <p>(iii) Incident notification requirements for DSPs where interruption exceeds set thresholds. All incident reports should be submitted to the relevant Competent Authority within 72 hours.</p> <p>(iv) Under the NIS Regulations penalties of up to £17million could be imposed for non-compliance relating to security and incident reporting requirements.</p> <p>ICO (the designated relevant Competent Authority for DSPs) has generally limited its approach to post-incident oversight and attempted to ensure that there is no "double jeopardy" in relation to acts that may also be a fine under GDPR</p> <p>ICO Guidance states that the ICO does regulate OESs and DPSSs, but only in the context of data protection law where they are acting as data controllers (under GDPR). The ICO has pointed out though that both are likely to be data controllers and, in some cases, data processors, meaning that they will be regulated by GDPR</p>					

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		<p>The Political Declaration (published on 22 November 2018) provides for thematic co-operation with the EU in areas of cyber-security</p> <p>The Political Declaration:</p> <ul style="list-style-type: none"> sets out the proposed framework for the future relationship between the EU and the UK and states the commitment of the parties to exchange information on cyber-incidents and threat-analysis (amongst others); states the UK's intention to cooperate closely with the Computer Emergency Response Team - EU ("CERT-EU"); and subject to the conclusion of an agreement, participate in certain activities of the Cooperation Group and the EU Agency for Network and Information Security ("ENISA"); asks the parties to establish a "cyber-dialogue" to promote cooperation and identify opportunities for future cooperation as new threats, opportunities and partnerships emerge within the cyber-security sphere <p>The provisions above remain subject to ratification of the Political Declaration by the UK Parliament and subsequent agreement of any revised terms with the EU</p>					


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		The ICO has clarified that as the NIS and GDPR are separate laws it is possible to be fined twice for regulatory action under both. However, the ICO states that any action it takes will be proportionate and in line with the sentiment of avoiding “double jeopardy” where possible					
<i>Data protection</i>		<p>The EU General Data Protection Regulation (“GDPR”) came into force on 25 May 2018. On the same day, the Data Protection Act 2018 (“DPA 2018”) also came into force in the UK (subject to a few exceptions which came into force on 23 July 2018), replacing the Data Protection Act 1998, updating the UK’s data protection laws and supplementing the GDPR’s provisions, where relevant. The DPA 2018 also extends data protection laws to areas not covered by the GDPR, e.g. immigration and national security</p> <p>The UK government made available associated guidance relating to the various provisions of the DPA 2018 in May 2018 following its Royal Assent</p> <p>In addition to the operative provisions of the GDPR, the DPA 2018 adds the following pertinent points:</p> <ul style="list-style-type: none"> • Further provisions for data processing that do not fall under the GDPR (e.g. where it relates to immigration); • Further “public interest” grounds for processing “special categories” of personal data and criminal 	UK and other EU businesses to seek to follow local data protection guidance (either via national implementing laws or guidance issued by national data protection supervisory authorities) in relation to implementation of GDPR within different EU Member States		All	All	R

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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
		<p>convictions data under the GDPR;</p> <ul style="list-style-type: none"> • Changes to age at which a child can consent to receiving “information society services”; • Clarifications on restrictions for data subject access rights and penalties for “enforced” access requests; and • Some additional offences, such as deliberate alteration of personal data in response to a data subject access request. <p>In November 2018, the Information Commissioner’s Office (ICO) issued guidance on encryption to provide further understanding of its approach towards assessing the interpretation of appropriate technical and organisational measures to protect personal data that is held by data processors or controllers. As well as summarising the different forms of encryption currently available, the guidance outlines possible risks, and details some recommendations for storing and transmitting personal data</p> <p>In December 2018, the ICO published further guidance including:</p> <ul style="list-style-type: none"> • Updated guidance on some of the basic concepts forming the foundations of the GDPR (e.g. transparency and implementing “privacy by design”); • How the DPA 2018 works; • Which regime within the DPA 2018 applies (i.e. the provisions relating to all data 					

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		<p>controllers and/or processors or those relating exclusively to law enforcement processing)</p> <p>The ICO also expanded its guidance on contracts, controllers and processors and contracts and liabilities</p> <p>Employers should, seeking appropriate legal advice where necessary, review the extent to which the provisions of the DPA 2018 relate to their day-to-day business processing activities</p>					
<i>Data protection</i>		<p>The UK Government released a guidance note on the implications of a “no deal” Brexit for UK data protection law on 13 September 2018, setting out actions that UK organisations should take to enable the continued flow of personal data between the UK and EU in event of a “no deal” Brexit</p> <p>The guidance note sets out the following points:</p> <ul style="list-style-type: none"> The UK government will continue to allow free flow of personal data from the UK to the EU beyond the UK’s departure from the EU; The EU Commission continues to state that negotiations on a UK “adequacy” decision cannot begin until the UK officially leaves the EU and thereby becomes a “third country” under the GDPR; If the EU Commission does not make an adequacy 	<p>UK businesses should begin to prepare for potential necessary implementation of standard contractual clauses or other forms of legitimizing non-EEA data transfers under the GDPR, in event of a “no deal” Brexit</p> <p>UK and EU to continue Brexit negotiations up until official date that UK is due to leave EU (29 March 2019), at which point adequacy talks between UK government and EU Commission can feasibly begin, provided that no agreement is reached on UK-EU free standing data protection trade agreement in advance of that date and there is no extension to Article 50</p> <p>UK/EU businesses should continue to monitor the developments of the negotiations on the UK’s withdrawal from the EU (currently scheduled for 29 March 2019) in relation to the regulation of EU-UK personal data transfers following 29 March 2019, when UK will become a “third country” for purposes of personal data transfers under GDPR</p>		All	All	R





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		<p>decision (or agree a separate free-standing data protection agreement) at the point of the UK's exit, UK businesses should consider identifying an alternative method for legitimizing EU-UK data transfers, such as implementing EU Commission approved standard contractual clauses between relevant group entities and with customers/suppliers; and</p> <ul style="list-style-type: none"> On 7 June 2018, the UK government released its "Technical Note" about a proposal for a free-standing data protection agreement between the UK and the EU post-Brexit. This proposal has not yet been accepted in any form by the EU Commission. <p>The Political Declaration (published 22 November 2018) issued as part of the proposed negotiated withdrawal agreement between the UK and the EU states that the parties are committed to ensuring a high level of personal data protection to facilitate the flow of information between them. It suggests:</p> <ul style="list-style-type: none"> the UK will be establishing its own international transfer regime; the European Commission is due to start the adequacy assessment as soon as possible after the UK's withdrawal; and both parties will endeavour to complete these activities by 2020. 					




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		<p>The UK Government issued further guidance in December 2018 in relation to the approach to data transfers in a “no deal” Brexit scenario. The guidance sets out that:</p> <ul style="list-style-type: none"> • The responsibilities of data controllers across the UK will not change and the same GDPR standards will continue to apply in the UK and the ICO will remain the UK’s independent regulator for data protection. • The UK will transitionally recognize all EEA states, EU and EEA institutions, and Gibraltar as providing an “adequate level of protection” meaning that personal data transfers can continue to flow freely from the UK to these jurisdictions. However, the UK government will continue to keep this decision under review. • For data transfers into the UK from the EU, UK organisations will need to work with EU counterparts to make sure an alternative mechanism for transfer (such as standard contractual clauses) are in place. • Standard contractual clauses (“SCCs”) that have been previously issued by the EU Commission will continue to be an effective basis for international data transfers from the UK. The ICO will 					


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		<p>have the power to issue new standard contractual clauses after 29 March 2019.</p> <p>Existing authorisations of Binding Corporate Rules ("BCRs") made by the ICO will continue to be recognised in UK domestic law. After 29 March 2019, the ICO will continue to be able to authorise new BCRs under UK domestic law</p>					
<i>Disclosure of cross-border tax avoidance arrangements</i>		<p>Council of the EU has adopted new mandatory rules for disclosure and automatic exchange of information concerning reportable cross-border tax avoidance arrangements</p> <p>Affected taxpayers and intermediaries should consider their obligation to collect information for disclosure during the transitional period commencing on 25 June 2018</p>		<p>New rules to be introduced with effect from 01 July 2020, although disclosure of affected transactions during the transitional period is required by 31 August 2020</p> <p>Finance Act 2019 will include power for HM Treasury to make regulations to implement these requirements and the Government will consult on them in 2019</p>	All	All Lawyers, Accountants, Banks and other Financial Advisers	G
<i>Dispute resolution</i>		<i>Implications of Brexit for dispute resolution</i>	Following publication of the draft Withdrawal Agreement, progress awaited on issues relating to future recognition of jurisdiction clauses and cross-border enforcement of judgments	<p>UK Government to rejoin Hague Convention in the UK's own right and to seek to join the Lugano Convention, which requires consent of all EEA member states</p> <p>If no sufficient replacement is put in place for recognition of contractual choices of jurisdiction and recognition of judgments, there may be a rush of cases brought before end of any transition arrangements to gain the benefit of the existing Brussels regulation (Recast) regime</p>	All	All	R
<i>Dispute resolution</i>		<i>Disclosure pilot scheme in Business and Property Courts</i>	Following publication of final text of the Practice Direction and court form on 31 July 2018, parties to forthcoming litigation need to start getting to grips with new rules and duties under pilot scheme	Pilot Scheme will apply to most proceedings in the Business and Property Courts across England and Wales where no disclosure order has been made by 1 January 2019	All	All	R
<i>Dispute resolution</i>		<i>Proposals to change procedure for witness evidence</i>	A working party led by Mr Justice Popplewell likely to respond to responses to survey of court users on experiences of current practice of written witness statements standing as evidence in chief	Following on from work of the Disclosure Working Group that has led to the Disclosure Pilot Scheme, it is likely that changes will be made to how witness evidence is taken and presented. Based on proposals in consultation, these could be quite radical	All	All	A





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<i>Dispute resolution</i>		<i>Possible introduction of new law</i> making commercial organisations criminally liable for failing to prevent economic crimes including fraud, false accounting and money laundering Consultation period for Call for Evidence closed on 31 March 2017	Comments by Solicitor General and incoming Director of SFO suggest this is still on Government's agenda. Response to Call for Evidence may be published this quarter, though Brexit may make this unlikely	Proposed new offence to make corporations criminally responsible where they fail to take reasonable steps to prevent economic crimes by their employees or agents. Proposed that offence will apply to foreign as well as UK corporations	All	All	A
<i>Dispute resolution</i>		<i>Corporate offence of failure to prevent tax evasion</i>	Businesses involved in tax planning advice and corporate structuring to review compliance policies to avail of "reasonable prevention measures" in event of allegation of facilitating tax evasion	FCA likely to conduct thematic review of institutions' systems and controls (as happened following coming into force of Bribery Act)	All	All	R
<i>Employment – Off-payroll working in the private sector</i>		The Government has consulted on how to tackle non-compliance with the intermediaries legislation (commonly known as IR35) applicable to use of personal service companies (PSCs) in private sector IR35 ensures individuals who choose to structure their work through a PSC or some other intermediary and effectively work as employees are taxed as employees The Government has confirmed that it will now extend the recent public sector reforms (introduced in April 2017) to the private sector		The off-payroll public sector rules will be extended to private sector from 06 April 2020	All	All	G



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<p><i>Employment status consultation</i></p>		<p>In response to the Taylor Review of Modern Working Practices, the Government launched a consultation on employment status, seeking views on whether changes to employment and worker status law would achieve greater clarity and certainty and, if so, what those changes would look like. Further information is available here</p> <p>The Government has since confirmed which parts of the Taylor Review it will take forward in its Good Work Plan published on 17 December 2018. Further information is available here.</p> <p>Key changes include:</p> <ul style="list-style-type: none"> • Repeal of the Swedish derogation (whereby paying agency workers a low sum between assignments avoided need to equalise pay (with equivalent employees)) • Annual leave calculation changes from 12 to 52 weeks • Section 1 statements extended to workers and as a day 1 right for all • Additional information in section 1 statement list • Lower threshold for Information & consultation trigger • Right to request fixed hours/days <p>There are also indications of intention to legislate to clarify employment status, but the Plan does not include any specific timeframes or draft legislation</p>		<p>The Government has since laid the first related statutory instruments, with first changes coming into effect in April 2019, but most expected in April 2020</p> <p>The first changes coming into effect in April 2019 include:</p> <ol style="list-style-type: none"> 1. the repeal of the Swedish derogation. Employers are obliged to notify affected staff by 30 April 2019. 2. all workers will be entitled to itemised pay slips. 	All	All	A
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<i>Ethnicity Pay Reporting</i>		On 11 October 2018, the Government published a consultation seeking views on mandatory Ethnicity Pay Reporting (EPR) by employers Consultation comes in response to the Government's findings that not enough progress has been made in removing barriers to entry and progression in the labour market for all ethnic groups Consultation closed on 11 January 2019	Government's response awaited		All	All	G
<i>EU Financial Transaction Tax (FTT)</i>		Proposal to use enhanced cooperation procedure (ECP) to introduce multilateral EU tax on certain financial transactions entered into by financial institutions		Remaining ten participating Member States continue to seek to negotiate mutually acceptable form of FTT	Financial Institutions Asset Managers	All All	G
<i>EU framework for managers of EuVECA</i>		EuVECA Regulation containing new rules to facilitate access by small and medium-sized enterprises (SMEs) to venture capital financing	European Parliament and Council of the EU to conclude trilogue negotiations with European Commission to finalise text of Directive and Regulation amending cross border distribution rules in AIFMD and UCITS (along with EuVECA and EuSEF Regulations)	Finalised text of Regulation and Directive amending cross border distribution rules in AIFMD and UCITS Directive (along with EuVECA and EuSEF Regulations) to be published in OJ. Intention for political agreement to be reached ahead of May 2019 European Parliament elections, with application of new legislation from 2021 Consequential revision to EuVECA Regulation expected as part of European Commission's proposed amendments to powers of ESAs	Asset managers	All	G
<i>EU framework for managers of EuSEF</i>		EuSEF Regulation sets out framework for a marketing passport to allow fund managers to market qualifying social entrepreneurship funds to wide range of EU investors with EuSEF status	European Parliament and Council of the EU to conclude trilogue negotiations with European Commission to finalise text of Directive and Regulation amending cross border distribution rules in AIFMD and UCITS (along with EuVECA and EuSEF Regulations)	Finalised text of Regulation and Directive amending cross border distribution rules in AIFMD and UCITS Directive (along with EuVECA and EuSEF Regulations) to be published in OJ. Intention for political agreement to be reached ahead of May 2019 European Parliament elections, with application of new legislation from 2021 Consequential revision to EuSEF Regulation expected as part of European Commission's proposed amendments to powers of ESAs	Asset managers	All	G




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<i>EU infringements proceedings in relation to UK VAT treatment of commodity derivatives</i>		The European Commission has commenced infringement proceedings against the UK in relation to the application of zero-rating to certain transactions in commodity derivatives under the Terminal Markets Order		UK Government response to infringement proceedings awaited	Financial Institutions Asset Managers	All All	G
<i>EU Whistleblowing Directive</i>		<p>On 23 April 2018, the European Commission proposed a new directive to strengthen whistleblower protection</p> <p>The proposal reflects the fact that only 10 EU countries (including France, Netherlands, Italy, UK) currently have comprehensive laws protecting whistleblowers. Others (including Germany, Spain, Portugal, Belgium) have only partial “coverage” – which includes certain coverage in the Financial Services sector but leaves gaps in protection across other sectors. The Commission is concerned that this uneven and fragmented approach undermines whistleblower confidence and EU legal and policy interests</p> <p>In November 2018, the Legal Affairs Committee of the European Parliament approved the draft legislation to guarantee that whistleblowers in the EU can report breaches of EU law in the areas of tax evasion, corruption, environmental protection and public health and safety, without fear of retaliation (link to EU Parliament press release here). The draft legislation remains subject to review and approval by the European Council</p>	Council of the EU's approval of draft legislation awaited		All	All	G



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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>European Commission interested in parallel investments</i>		European Commission interested in impact on competition effects of investment firms holding parallel minority shareholding in competing companies	No current action European Commission holding watching brief. German Monopolies Commission also interested in issue	Further announcement awaited by European Commission	Asset Managers	All	A
<i>European Commission investigation into bond market</i>		European Commission investigating four banks in relation to suspected cartel (sharing of sensitive information) Suspected cartel to have occurred in bond-trading markets (US\$ denominated supra-sovereign, sovereign and agency bonds)	Statements of Objections have been sent to four banks	Individual parties to respond to Statement of Objections in due course	Financial Institutions Asset Managers	All	A
<i>European Long-Term Investment Funds (ELTIF)</i>		Regulation introducing European Long-Term Investment Fund (ELTIF), a type of private collective investment fund designed to invest only in businesses needing long-term investment	ESMA to finalise, and European Commission to adopt, draft Level 2 measures in respect of costs disclosure	European Commission to adopt, draft Level 2 measures in respect of costs disclosure European Commission due to start review of application of ELTIF Regulation by 09 June 2019 Consequential revision to ELTIF Regulation expected as part of European Commission's proposed amendments to powers of ESAs Finalised text of Regulation and Directive amending cross border distribution rules in AIFMD and UCITS Directive (along with EuVECA and EuSEF Regulations to be published in OJ. Intention for political agreement to be reached ahead of May 2019 European Parliament elections, with application of new legislation from 2021	Financial Institutions Asset managers	Insurance All	G
<i>European System of Financial Supervision (ESFS) reform - ESAs</i>		European Commission Proposal reforming European Supervisory Authorities (ESAs) to improve mandates, governance and funding	European Parliament and Council of the EU to continue scrutiny of European Commission legislative proposal	Political agreement on, and publication in OJ of, level 1 text of regulation amending ESAs to enter into force before end of current legislative term in 2019	Financial Institutions Asset Managers	Wholesale Banks Retail Banks and other consumer credit providers Insurance All	G



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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>European System of Financial Supervision (ESFS) reform - ESRB</i>		European Commission review of operation of ESFS, mandate and effectiveness of European Systemic Risk Board (ESRB)	European Parliament and Council of the EU to scrutinise European Commission legislative proposal	Political agreement on, and publication in OJ of, level 1 text of regulation amending ESRB, to enter into force before end of current legislative term in 2019	Financial Institutions Asset managers	Insurance All	A
<i>Extension of corporation tax to non-resident companies</i>		Proposal to bring non-resident companies in receipt of income and gains in respect of UK property within the charge to corporation tax		Legislation to be included in the Finance Act 2019 and expected to come into effect from April 2020	All	All	G
<i>FCA competition initiatives in the financial services markets</i>		<p>Asset management market study</p> <p>Interim report published 18 November 2016 containing extensive remedies. FCA received significant level of feedback from industry participants. Final report published on 28 June 2017</p> <p>Consultation on proposed remedies in relation to fund governance, risk-free box profits and share class switching closed on 28 September 2017</p> <p>Consultation on proposed extension of SMCR to cover all FSMA-authorised firms, including asset managers, closed on 03 November 2017</p> <p>Consultation on transitioning firms from the Approved Persons Regime closed on 21 February 2018</p> <p>FCA published Policy Statement on Asset Management Market Study remedies and changes to the handbook in April 2018</p> <p>New rules to Collective Investment Schemes sourcebook to come into</p>		Further policy statements and updates to FCA Handbook expected following consultation on SMCR and further remedies	Financial Institutions Asset Managers	Insurance All	A




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		<p>force from 01 April 2018</p> <p>Near final rules published on approach to transitioning FCA firms and individuals to SMCR in summer 2018</p> <p>New rules in Collective Investment Schemes sourcebook for governance remedies in effect from 30 September 2018</p>					
<i>FCA competition initiatives in the financial services markets</i>		<p>CMA market study into investment consultancy advice market</p> <p>FCA consultation on provisional decision to refer investment consultancy services to CMA closed on 28 July 2017</p> <p>FCA made referral on 14 September 2017. CMA launched investigation the same day. CMA published Statement of Issues on 21 September 2017</p> <p>Initial submissions from main and third parties in October and November 2017. Hearings with main and third parties in November and December 2017</p> <p>The CMA published a working paper on 01 March 2018 on fees and quality</p> <p>The CMA published a Provisional Decision Report in July 2018</p> <p>Final report published by the CMA in December 2018</p>	Following final report of December 2018, CMA to issue draft Order in early 2019 which will set out requirements for remedies to improve competition in the market	Remedies expected to be in place by end of 2019	Asset Managers	All	R
<i>FCA investigation into IPO and placing market</i>		FCA investigating four firms in relation to suspected disclosure of prices relating to two IPOs and one		Individual parties liaising with FCA	Financial Institutions	All	A



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		placing, shortly before prices were set Information sharing is to have occurred on a bilateral basis, enabling firms to know each other's plans during the IPO or placing process			Asset Managers		
Gender Pay Gap Reporting		The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 came into force on 06 April 2017 and introduced new obligations on organisations with 250 or more employees to provide information on the gender pay gap in their organisation First deadline for gender pay gap (GPG) publication of data was 4 April 2018, with an obligation to publish updated data on an annual basis thereafter Three new BEIS Committee and Government Equalities Office publications set out proposals and guidance for organisations to take into account as they consider next round of GPG reporting Further information is available here	Employers should take account of guidance as they consider next round of GPG reporting due by 04 April 2019	Employers will be required to publish their GPG data by 04 April 2019	All	All	R
Market Abuse Regulation (MAR)		Revision of scope of MAD (MAR/CSMAD) (including provisions relating to manipulation of benchmarks)			Financial institutions Asset managers Energy and infrastructure	All All	G








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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Market study into audit sector</i>		CMA launched a market study into the statutory audit sector in October 2018 Update paper has been published proposing remedies, legislative changes and outlining competition concerns	Responses to audit update paper to be submitted by 21 January 2019		Financial Institutions Asset Managers	All	R
<i>Market study into investment platforms</i>		Terms of Reference for Investment Platforms Market Study published 17 July 2017, closed for comments on 08 September 2017. FCA seeks to look at how platforms compete with each other, and whether they use bargaining power to ensure investors get a good deal FCA published its Interim report on 16 July 2018	Final report expected in Q1 2019		Asset Managers	All	R
<i>Markets in Financial Instruments Directive (MiFID)</i>		Post-implementation review of MiFID and possible amendments (MiFID2), including introduction of EU regime on recording/ retention of telephone calls and electronic communications (in particular minimum retention period of five years)	01 January 2019 - Article 15(a)(4) of Commission Delegated regulation (EU) 2017/571 (RTS 13) on minimum coverage ratios for consolidated tape providers comes into force 02 January 2019 - ESMA prohibition on marketing, distribution or sale of binary options to retail clients (in effect since 02 July) to be renewed for further three months 01 February 2019 - ESMA restriction on marketing, distribution or sale of contracts for differences (CFDs) to retail clients (in effect since 1 August) to be renewed for a further three months 03 January 2019 and 03 March 2019 - deadlines for various reports which ESMA and the Commission must make in relation to various aspects of MIFID 2 . The consultation period for ESMA <i>call for evidence</i> (09 November 2018) on periodic auctions for equity instruments closes on 11 January 2019	03 July 2019, 03 September 2020 and 03 July 2021 - deadlines for various reports which Commission must make in relation to various aspects of MIFID 2 Articles 14(2) (on machine readability), 15(1) to (3) (on scope of consolidated tape) and 20(b) (on publication) of Commission Delegated Regulation (EU) 2017/571 (RTS 13) come into force on 03 September 2019 Commission consultation on proposed amendments to Commission Delegated Regulation (EU) 2017/565 on sustainable finance may lead to further amendments to that Regulation The obligations on consolidated tape providers to collate and publish information, set out in Article 65(2) of the MIFID 2 Directive, apply from 03 September 2019 The obligations in Article 37 of MIFIR on non-discriminatory access to and the licensing of benchmarks apply from 03 January 2020	Financial Institutions Asset Managers	Wholesale Banks Retail Banks and other consumer credit providers Insurance All	R





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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
			<p>By 01 February 2019 - ESMA to publish required EU wide data for systematic internalisers (SI) calculations (as set out in ESMA's plan of 12 July 2018. To cover from 01 July to 31 December 2018 for ETCs, ETNs, SFPs, securitised derivatives, emission allowances and derivatives. SI's to comply with obligations from 01 March 2019</p> <p>Proposed amendments to Commission Delegated Regulation (EU) 2017/587 (RTS 1) limiting the application of tick sizes to quotes of systematic internalisers to shares and depositary receipts may come into force in Q1 2019</p> <p>Amendments to Commission Delegated Regulation (EU) 2017/565 as regards SME growth markets take effect in Q1 2019 (assuming the amendments are not annulled by Council or Parliament)</p>	<p>The transition period set out in Article 54(1) of MIFIR relating to the disapplication of access rights to CCPs and trading venues ends on 03 July 2020</p> <p>The transitional period set out in Article 95 of the MIFID 2 Directive relating to the application of the clearing obligation and risk mitigation techniques to certain C6 energy derivative contracts ends on 03 January 2021</p>			
<i>Markets in Financial Instruments Directive (MiFID)</i>		Brexit	If UK leaves EU with "hard Brexit", UK version of MIFIR and other UK legislation implementing MIFID 2 will be amended. Key SI can be found here and FCA consultations can be found here and here .		Financial Institutions	Wholesale Banks Retail Banks and other consumer credit providers Insurance	R
					Asset Managers	All	
<i>Money Market Funds Regulation</i>		Regulation applicable to Money Market funds (MMFs) established, managed or marketed in EU, imposing requirements in respect of, inter alia, authorisation, investment policies, internal credit quality; risk management; valuation, external support and transparency and reporting requirements	21 January 2019 – managers of MMFs already in existence on 21 July 2018 to comply with MMF Regulation	Q4 2019 – managers of MMFs to submit first quarterly report to NCAs under Article 37 of MMF Regulation	Financial institutions	Wholesale banks	R
					Asset managers	All	




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Money laundering		<i>Fifth Money Laundering Directive (5MLD)</i>	Following publication of <i>final text</i> in Official Journal on 19 June 2018, European governments will start to prepare to implement it	National governments of EU member States must implement 5MLD by 10 January 2020 6MLD was published in the Official Journal of EU on 12 November 2018	All	All	A
Money laundering		<i>Sixth Money Laundering Directive (6MLD)</i>	Following publication of Directive 2018/1673 in Official Journal on 12 November 2018, 6MLD came into force on 2 December 2018. , European governments will now start to prepare to implement it	National governments of EU member States must implement 5MLD by 3 December 2020	All	All	G
Money laundering		<i>Law Commission Consultation on the SARS regime</i>	Response expected to consultation that closed on 05 October 2018	Current SARS regime likely to be overhauled to eliminate over-defensive reporting, reduce number of reports and increase their usefulness to law enforcement agencies	All	All	R
Narrative reporting		Directive amending EU Shareholder Rights Directive includes new rules to give shareholders a right to vote on remuneration policy and remuneration report Amending Directive adopted and came into effect on 09 June 2017		Member States have until 10 June 2019 to implement SRDII into national law. The UK is expected to implement SRDII	All	All	A
Narrative reporting		EU consultation on public reporting by companies 21 March 2018, European Commission published consultation paper seeking views on whether EU framework for public reporting is fit for its purpose. Consultation closed on 21 July 2018	EU Commission confirmed (in its 2019 Work Programme published on 24 October 2018) that it will carry out this fitness check	Staff Working Document expected to be published Q2 of 2019	All	All	G
Narrative reporting		Corporate governance reporting regulations	See "New corporate governance reporting rules" under Corporate governance above for a summary	Apply to financial years beginning on or after 01 January 2019 so reporting will effectively start in 2020, subject to the exception described	All	All	R
Narrative reporting		Energy and carbon reporting	New regulations will require certain companies and limited liability partnerships to disclose emissions, energy consumption and energy efficiency action in directors' report or energy and carbon reports	Regulations apply to financial years beginning on or after 01 April 2019	All	All	R






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<i>Narrative reporting</i>		Ethnicity pay gap reporting	October 2018, UK Government published a consultation seeking views on ethnicity pay reporting by employers. Consultation closes on 11 January 2019		All	All	A
<i>Narrative reporting</i>		FRC Guidance on strategic report	31 July 2018, revised Guidance on strategic report published, together with a statement summarising feedback received on the consultation paper (published in August 2017). Applies now		All	All	R
<i>Narrative reporting</i>		Modern slavery statement	<p>October 2018, Home Office wrote to businesses informing them that</p> <ul style="list-style-type: none"> continued non-compliance with the Modern Slavery Act will not be tolerated Home Office intends to audit all supply chain transparency statements from 31 March 2019 and publish a list of non-compliant organisations. 		All	All	R
<i>Narrative reporting</i>		Government response to Taylor Review (annual reporting aspects) (Published 7 February 2018)	Government expects larger companies to be more transparent about their workforce structures under existing disclosure requirements and new s172 statement – see new corporate governance reporting rules above	<p>Government proposes:</p> <ul style="list-style-type: none"> working with the FRC to consider how existing guidance on the content of annual reports can be revised to encourage companies to provide a fuller explanation of their workforce model and practices, and monitoring the impact of corporate governance reforms. If there is no change, it will take further action, which could include a new 'People Report'. 	All	All	A



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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Narrative reporting</i>		<p>Disclosure of non-financial information in annual report</p> <p>26 June 2017, EU Commission adopted guidelines for companies on disclosure of environmental and social information which are intended to assist companies when making their disclosures and make it easier to compare information. The guidelines are not, however, compulsory</p> <p>27 July 2017, FRC published a Factsheet on Non-Financial Reporting)</p>	Certain large companies to start including in their strategic report a non-financial information statement with information to the extent necessary for an understanding of company's development, performance and position relating to, as a minimum; environmental matters, employees, social matters, respect for human rights and anti-corruption and anti-bribery matters (as applies to financial years beginning on or after 01 January 2017)		All	<p>All</p> <p>Certain large listed companies</p>	R
<i>Narrative reporting</i>		<p>FRC Guidance on 2018/19 annual reports</p> <p>24 October 2018, FRC published a letter highlighting changes to reporting requirements and key matters that are relevant when preparing annual reports and accounts for 2018/19</p>			All	All	R
<i>Narrative reporting</i>		<p>FRC Audit & Assurance Lab report on audit committee reporting</p> <p>18 December 2017, Lab published its report. This is first phase of a project considering how investors' confidence in an audit is enhanced by audit committee's external reporting in annual report</p> <p>The second phase, which will cover how auditors report to audit committees, has yet to be published</p>			All	All	A




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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Narrative reporting</i>		FRC project on future of corporate reporting 30 October 2018, FRC called for participants in a new project that will consider how companies should better meet information needs of shareholders and the purpose of corporate reporting and the annual report.		FRC expect to publish a thought leadership paper with outcomes in second half of 2019	All	All	A
<i>Narrative reporting</i>		Financial Reporting Lab project on climate change and workforce reporting		A final report is expected in autumn 2019	All	All	A
<i>Narrative reporting</i>		Financial Reporting Lab guidance on performance metrics 7 November 2018, guidance on the presentation by companies of performance metrics in their reporting was published			All	All	R
<i>Narrative reporting</i>		Gender pay gap reporting 2 August 2018, the House of Commons BEIS Select Committee (Committee) published a report on gender pay gap reporting setting out its findings and recommendations following its inquiry into adequacy and effectiveness of gender pay gap reporting requirements. The report includes recommendations on the scope of reporting obligations and proposals for redressing gender pay gaps which firms should have in mind for their next round of reporting <i>Mandatory gender pay gap: important publications</i> for more information			All	All	R
<i>OECD draft guidance on transfer pricing for financial services</i>		The OECD issued draft guidance on transfer pricing for financial services on July 3, 2018		Further developments are awaited	All	All	G




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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
		Comments on draft were required by 07 September 2018					
<i>Offshore receipts in respect of IP</i>		2017 UK proposal to introduce a withholding tax in respect of royalty payments made to low or no tax jurisdictions in connection with sales to UK customers has been recast as a new primary income tax charge. It will apply to owners of intangible property (IP) or those that are otherwise entitled to income from IP that is referable to the sale of goods or services in the UK in relation to that IP (valued at £10m or more per annum)		Legislation is expected to be included in the Finance Act 2019 and to come into effect from 06 April 2019	All	All	G
<i>OTC derivatives</i>		<i>Regulation (EU) No 648/2012 of OTC derivatives, central counterparty clearing and reporting requirements (EMIR)</i>	16 January 2019 - <i>BCBS consultation</i> on leverage ratio treatment of client cleared derivatives closes	<p>Clearing obligation for G4 currency for IRS: Category 3 FCs and AIFs that are NFC+, which are not included in Categories 1 or 2 – from 21 June 2019 (originally 21 June 2017);</p> <p>Clearing obligation for EEA currency IRS: Category 3 FCs and AIFs which are NFC+ which are not included in Categories 1 or 2 – 21 June 2019 (originally 09 February 2018); Category 4 other NFC+ which do not fall into Categories 1, 2 or 3 – from 09 August 2019</p> <p>Clearing obligation for CDS: Category 3 FCs and AIFs which are NFC+ which do not fall in Category 1 or 2 – 21 June 2019 (originally 09 February 2018); Category 4 other NFC+ which do not fall into Categories 1, 2 or 3 – from 09 May 2019</p>	Financial Institutions Asset Managers	All All	A

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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
OTC derivatives		<p>Proposals for an amendment regulation that amends certain parts of EMIR Regulation (EU) No 648/2012</p> <p><i>European Commission proposal</i> (and <i>annex</i>) pursuant to Article 85(1) (EMIR REFIT Regulation) was published on 04 May 2017</p> <p><i>European Commission modified proposal</i> to amend EMIR supervisory regime for EU and third country CCPs was published on 20 September 2017</p>	<p>European Parliament and Council of the EU continue to review European Commission's proposals</p> <p>Proposed EMIR REFIT Regulation subject of 'Trilogue' discussions -proposed Regulation may be finalised during Q1 2019</p>		<p>Financial Institutions</p> <p>Asset Managers</p>	<p>All</p> <p>All</p>	G
OTC derivatives		<p>Secondary legislation (including draft SIs) ensuring the UK continues to have an effective regulatory framework for OTC derivatives, CCPs and TRs after Brexit</p>	<p>29 March 2019 <i>Draft Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018</i> (laid before Parliament and awaiting approval) likely to enter into force on exit day –</p> <p>29 March 2019 <i>The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (SI 2018/1184)</i> enters into force</p> <p>29 March 2019 <i>The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (SI 2018/1318)</i> – amendments to EMIR to enter into force on exit day</p>		<p>Financial Institutions</p> <p>Asset Managers</p>	<p>All</p> <p>All</p>	R
Parental Bereavement Leave		<p>The Parental Bereavement (Leave and Pay) Act 2018 has received Royal Assent. It will give employees who lose a child below the age of 18 right to at least two weeks' leave (irrespective of their length of service) and statutory bereavement pay. The Government intends to introduce supporting regulations, setting out the details as to how leave will be</p>		<p>New rights are expected to come into force by April 2020</p>	All	All	G



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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
		taken and how much remuneration will be payable					
<i>Pension Fund Industry</i>		Minimum contribution rise	06 April 2019 - statutory minimum employer contributions in defined contribution schemes used for auto enrolment will increase from 2% to 3%, with total minimum employer and jobholder contributions rising to 8%. Employers to consider whether any steps required to alter UK pension arrangements to remain compliant		All	All	A
<i>Pension Fund Industry</i>		DWP announces changes to earnings triggers and qualifying earnings band for 2019/20	<p>Earnings trigger (which determines whether automatic enrolment duties apply to employees) will remain fixed at £10,000.</p> <p>Lower end of qualifying earnings band will rise from £6,032 to £6,136.</p> <p>Upper end of qualifying earnings band will rise from £46,350 to £50,000.</p> <p>Qualifying earnings band determines earnings which must be taken into account when calculating automatic enrolment contributions payable by employees (and by employers on their behalf).</p> <p>Employers to consider whether any steps required to alter UK pension arrangements to remain compliant</p>		All	All	A
<i>Pension Fund Industry</i>		<p>DWP White Paper</p> <p>On 19 March 2018, the Department for Work and Pensions (DWP) published its White Paper on "Protecting Defined Benefit Pension Schemes". This follows the consultation on the Green Paper "Security and Sustainability in Defined Benefit Pension Schemes" published in February 2017</p> <p>The White Paper includes several proposals to increase the protection of members' benefits.</p>		Many of the proposals will require primary legislation. We can therefore expect further consultations into 2019. We are unlikely to see draft primary legislation until the 2019-2020 parliamentary session	All	All	A


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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
		<p>Some of the proposals have the potential to produce significant change in the DB pensions landscape, particularly in the context of scheme funding discussions and corporate transactions</p> <p>First consultation on this paper ran from June – August 2018. The DWP has reviewed the current notifiable events regime, and the consultation paper proposes a number of new events which would require the employer to notify the Pensions Regulator</p> <p>These proposed 'notifiable events' will include:</p> <ul style="list-style-type: none"> significant changes to the employer's board of directors and certain senior management appointments; the sale of a material proportion of the employers' business or its assets; the sponsoring employer taking independent pre-appointment insolvency/restructuring advice, such as an independent business review; and the granting of security over a debt where it is given priority over the pension scheme. <p>At present the potential civil fine for non-compliance is £5,000 for individuals and £50,000 for corporate entities. The White Paper introduces a new criminal offence and a significant increase to the civil penalties cap (to £1million). Importantly, such penalties can be levied against</p>					



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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
		individuals as well as companies					
<i>Pension Fund Industry</i>		General Data Protection Regulation ((EU) 2016/679) ("GDPR") came into effect on 25 May 2018	Liaise with scheme trustees or managers to ensure that UK pension scheme is GDPR-compliant. Key points include reviewing previous member communications such as privacy notices and consent forms, updating scheme's data protection policy, and contracts with third party service providers (including where relevant between trustees and employers)		All	All	R
<i>Pension Fund Industry</i>		<p>The Occupational Pension Schemes (Administration and Disclosure) (Amendment) Regulations 2018 (the "Regulations") came into force</p> <p>The Regulations relate to way in which costs and charges information is made available to defined contribution ("DC") pension scheme members.</p> <p>Trustees and managers of DC schemes must report costs and charges for each default arrangement and each alternative fund option, rather than simply reporting on range of costs and charges. This information must also be published on a website.</p> <p>The FCA is consulting on corresponding rules concerning costs and charges information for workplace personal pensions as part of its consultation on risks facing the pensions industry (see above). In October 2018, the pensions industry published a helpful template, this is referred to in the Pensions Regulator ("tPR")'s Guide to Communicating and Reporting as the 'Simplified Annual Benefit Statement'.</p> <p>See tPR's <i>Communicating and Reporting Guide</i>.</p>			All	All	A




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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Pension Fund Industry</i>		<p>Prohibition on operation of master trusts without authorisation by the Pensions Regulator came into force on 1 October 2018</p> <p>From that date, a master trust will be prohibited from operating unless it has been authorised by tPR and will be subject to the Regulator's ongoing supervision</p> <p>Authorisation for new master trusts will be decided by an executive arm of tPR, while existing master trusts will need to seek approval from the Determinations Panel</p> <p>Defined contribution master trusts, and some mixed benefit and multi-employer schemes, will be required to demonstrate compliance with five criteria, namely that the scheme must:</p> <ol style="list-style-type: none"> (1) be run by fit and proper persons; (2) be financially sustainable; (3) have scheme funders who meet specific requirements; (4) have sufficient and effective system and processes; and (5) have an adequate continuity strategy. <p>There will be a requirement to pay a fee of £41,000 for existing master trusts (or £23,000 for new schemes established on or after the implementation date) on application for authorisation from tPR</p> <p>tPR has published a Code of Practice on the authorisation and supervision of master trusts which, <i>inter alia</i>, includes requirement to</p>			All	All	A






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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
		produce a business plan that demonstrates compliance with the above five criteria. tPR has also now published a short note which sets out its decision-making procedure to be followed by its staff					
<i>Pension Fund Industry</i>		Regulations prohibiting direct marketing (cold calling) in relation to occupational and personal pension schemes have been made and will come into force on 9 January 2019.	9 January 2019. - the ICO to have power to enforce ban and issue a fine up to £500,000		All	All	G
<i>Pension Fund Industry</i>		<p>DWP publishes draft Occupational and Personal Pension Schemes (Amendment etc) (EU Exit) Regulations 2018</p> <p>As drafted, regulations will make technical changes to UK pensions legislation, designed to ensure it operates effectively once the UK has left the EU. Regulations are drafted on assumption that no withdrawal agreement is implemented. The draft regulations are due to come into force on "exit day" in accordance with the European Union (Withdrawal) Act 2018</p> <p>Of key importance, draft regulations provide as follows:</p> <ol style="list-style-type: none"> (1) for repeal of the EU cross-border pension regime. (2) to correct certain provisions in UK primary and secondary legislation. (3) to amend definition of "regulated market" to mean "a UK regulated market or an EU regulated market within the meaning of Article 2.1.13A and 2.1.13B respectively of Regulation (EU) No 600/2014 of the European Parliament 			All	All	A

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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
		and of the Council of 15 May 2014 on markets in financial instruments", allaying concerns that previous drafting would require UK schemes to disinvest from regulated markets outside of the UK.					
<i>Pensions tax allowances</i>		A reminder of the reduced Lifetime Allowance (which increased to £1.03m on 06 April 2018) and the tapering of the Annual Allowance (to as low as £10,000 for higher earners - those with relevant income of £150,000 + p.a.)	Consider implementing alternative remuneration strategies (e.g. cash in lieu of pension, tax relieved share plan alternative, and excepted life assurance scheme if death benefits provided under a registered scheme) for higher earners		All	All	R
<i>Pensions taxation reforms</i>		Draft Finance Bill 2019 legislation Published by HMRC in November 2018, draft legislation for the Finance Bill 2019 contains reforms for taxation of employer contributions paid into life insurance products and overseas pension schemes At present contributions are only tax-exempt if beneficiary is an employee or a member of employee's family or household. If implemented, legislation will expand tax exemption and allow tax-exempt payments to be made to a qualifying recognised overseas pension scheme where those benefits will be paid to an individual or a registered charity	8 January 2019 - Finance Bill 2019 due to have its report stage and third reading		All	All	G
<i>Personal service companies in the private sector</i>		UK Government will reform the IR35 rules applicable to the private sector arrangements, including making the engager responsible for operating the rules		The October 2018 Budget announced that the changes will be introduced with effect from April 2020 and will only apply to "large and medium-sized" businesses	All	All	A



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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Prospectus Regulation</i>		Prospectus Regulation (which replaces the Prospectus Directive) came into force on 20 July 2017 <i>See Prospectus Regulation Tracker</i> for more information on ESMA's technical advice and standards and EU Commission delegated legislation under the Prospectus Regulation		Majority of Prospectus Regulation to apply to prospectuses approved on or after 21 July 2019	All	All	A
<i>Public Country by Country Reporting (CBCR)</i>		EU Commission has proposed making CBCR public for the largest multinationals EU Parliament has supported adoption of public CBCR		Negotiations continue at an EU level with a view to reaching a compromise between the Commission and Parliament proposals	All	All	G
<i>Regulation of benchmarks following LIBOR rate-setting revelations</i>		EU Benchmarks Regulation establishing legislative framework regulating production and use of indices serving as benchmarks	25 January 2019 – ten Delegated Regulations, supplementing Benchmarks Regulation with RTS come into force	01 January 2020 - transitional period for existing benchmark administrators ends By 01 January 2020 - Commission to submit report to the European Parliament and Council on effectiveness of Benchmarks Regulation	Financial Institutions Asset managers	Wholesale Banks Retail Banks and other consumer credit providers Insurance Hedge funds Institutional managers Service providers	G
<i>Regulation of benchmarks following LIBOR rate-setting revelations</i>		Regulation of benchmarks in UK following LIBOR misconduct investigation	During 2019, FCA expected to consult on extending SMCR to benchmark administrators and applying Benchmarks Regulation's rules on users of benchmarks to supervised UK branches of third country firms, to extent they are not supervised entities for purposes of Benchmarks Regulation	01 May 2020 - Benchmarks Regulations 2018 transition period ends: (i) Article 63S RAO activity to become only regulated activity relating to benchmarks; (ii) Articles 63O to 63R of Regulated Activities Order (current regulated activities relating to benchmarks) to be revoked; and (iii) Section 22(1A)(b) and (6) of FSMA to be repealed LIBOR to be sustained until end of 2021	Asset managers	Hedge funds Institutional managers Service providers	G
<i>Regulatory capital: CRD4</i>		Phased implementation of CRD4 CRD 4 confers power on the European Commission and the	01 January 2019 - amendments to Regulation (EU) 680/2014 regarding the inclusion of prudent valuation into COREP as well as other amendments now in force	Phased implementation 01 January 2018 to 31 December 2022 - transitional arrangements for entry into force of IFRS9 apply in stages	Financial Institutions	Wholesale Banks Retail Banks and	R




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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
		<p>ESAs to adopt Level 2 and Level 3 measures respectively</p> <p>Possible future amendments in light of December 2017 amendments to Basel 3 (sometimes called Basel 4)</p>	<p>01 January 2019: Capital buffers apply in full</p> <p>01 January 2019: Securitisation Regulation (EU) 2017/2402 and CRR Amendment Regulation apply</p> <p>01 January 2019: EBA Guidelines for common procedures and methodologies for the supervisory review and evaluation process (SREP) and on stress testing come into force</p>	<p>15 June 2019: transitional arrangements in Article 497(2) of the CRR for exposures to 3rd country CCPs come to an end (the deadline has been extended on several occasions and may be extended again)</p> <p>31 December 2020: end of application of transitional arrangements for large exposures for certain derivatives firms</p> <p>31 December 2021: Grandfathering of existing capital instruments ends</p> <p>Transitional arrangements for the coming into force of IFRS9 apply in stages between 01 January 2018 and 31 December 2022</p> <p>L2 and L3 in development</p> <p>Current state of play on RTS and ITS can be found here and here. In particular, the following L2 and L3 are in the pipeline:</p> <ul style="list-style-type: none"> • New EBA guidelines on STS securitisations may have an indirect impact on 15 May 2019. • RTS on methods of prudential consolidation. • EBA Guidelines on outsourcing. • RTS on calculation of capital requirements for securitised exposures (K_{IRB}) in accordance with the purchased receivables approach in the CRR • RTS on the homogeneity of underlying exposures in a securitisation (now with Commission) • RTS relating to economic downturns and EBA Guidelines related to the estimation of loss given default (LGD) appropriate for conditions of an economic downturn. (Now finalised and with Commission for adoption - apply from 01 January 2021). • EBA Guidelines on non-performing and forborne exposures (apply from 30 June 	Asset Managers	<p>Investment Firms</p> <p>All</p>	


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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
				<p>2019).</p> <ul style="list-style-type: none"> • EBA Guidelines on high risk exposures. • EBA Guidelines on the management of interest rate risk. (Now finalised – apply from 30 June 2019). • Proposes changes to the ITS on ECAI mapping. • Proposed new draft version of Data Point Model (DPM) 2.9 (relevant to reporting). • Proposed amendments to the Implementing Regulation on benchmarking of internal models to adjust the benchmarking of portfolios and reporting requirements in view of the 2020 benchmarking exercise. <p>Future developments</p> <p>Specific proposals for amendments are set out in separate entries in Headwinds. Apart from those, European Commission is considering amendments to CRD4 to reflect the December 2017 amendments to Basel framework</p>			
Regulatory capital: Non-performing loans		Proposed Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards minimum loss coverage for non-performing exposures	Proposal in “trilogues” between European Commission, Council of the EU and European Parliament		Financial Institutions	Wholesale Banks Retail Banks and Investment Firms	G
					Asset Managers	All	
Regulatory capital: covered bonds		Proposed Regulation of the European Parliament and of the Council amending the CRR as regards exposures in the form of covered bonds	Proposal in “trilogues” between European Commission, Council of the EU and European Parliament		Financial Institutions	Wholesale Banks Retail Banks and Investment Firms	G
					Asset	All	



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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
					Managers		
Regulatory capital: CRD V and CRR II		Proposed legislative package to amend the CRR and the CRD4 Directive. These reforms comprise amendments to reflect the Basel standards (eg a binding leverage ratio) and also EU specific measures (eg lending to SMEs)	Proposal in “trilogues” between European Commission, Council of the EU and European Parliament. Recent update here	EBA has published a discussion paper on the implementation in the EU of the revised market risk and counterparty credit risk frameworks, i.e. Fundamental Review of the Trading Book (FRTB) and Standardised Approach for Counterparty Credit Risk (SA-CCR)	Financial Institutions Asset Managers	Wholesale Banks Retail Banks and Investment Firms All	A
Regulatory capital: new prudential regime for investment firms		Proposed legislative package to amend the CRR and CRD4 to create a dedicated prudential regime for investment firms in the EU	Proposal in “trilogues” between European Commission, Council of the EU and European Parliament		Financial Institutions Asset Managers	Wholesale Banks Retail Banks and Investment Firms All	G
Regulatory capital		Proposed legislation and changes to PRA handbook to implement CRD 4	PRA 01 January 2019 - systemic risk buffer (SRB) to apply to RFBs and certain building societies. Updated policy statement can be found here and here PRA policy statement on the new EU securitisation regulation and significant risk transfer applies. See also here 01 January 2019 - PRA policy statement on applying the UK leverage ratio framework to systemic ring-fenced bodies applies. See also here and here 01 January 2019 - new version of SS 16/13 on large exposures effective	PRA Pillar 2 liquidity reporting obligations take effect on 01 July 2019 Changes to reporting take effect on 01 July 2019 (see here and here). PRA's amended expectations for banks and building societies using IRB approach to calculate credit risk capital requirements for residential mortgages take effect end 2020 Proposed changes to regulatory transactions (changes to notification and application forms). Possible regulatory changes resulting out of this consultation on climate change. See also here .	Financial Institutions Asset Managers	Wholesale Banks Retail Banks and Investment firms	R


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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
			<p>01 January 2019 -changes to reporting take effect (see here and here).</p> <p>01 January 2019 - hanges to reporting for third country firms operating in the UK through a branch tale effect</p> <p>01 January 2019 - updates to SS on the ICAAP and SREP take effect</p> <p>15 January 2019 - joint FCA/PRA statement on reporting of information on private securitisations applies</p> <p>Possible changes to eligibility of guarantees as unfunded credit protection in light of PRA's February 2018 consultation</p> <p>Changes to supervising remuneration for Level 1 firms take effect from the 2018/2019 remuneration review</p> <p>FCA</p> <p>15 January 2019 - joint FCA/PRA statement on reporting of information on private securitisations applies</p>	<p>FCA</p> <p>Transitional arrangements for exemption of certain public sector debt exposures from large exposure limits under Art 493(4)- (7) of CRR run from 2018 to 2020</p>			
<i>Regulatory capital</i>		<p>Brexit</p> <p>If the UK leaves the EU with a "hard Brexit", the UK's version of the CRR and other UK legislation implementing CRD4 will be amended. The key SI can be found here, the Bank/PRA consultations here, here and here, and the FCA consultations here and here</p>			<p>Financial Institutions</p> <p>Asset Managers</p>	<p>Wholesale Banks</p> <p>Retail Banks and Investment firms</p>	R




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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Regulation on cross-border payments</i>		<p>European Commission's Consumer Financial Services Action Plan (March 2017) proposed variety of measures intended to help break down cross-border barriers preventing consumer access to products from other member states, resulting in high fees on foreign transactions, switching and comparisons, and lessen benefits of digitisation</p> <p>In March 2018, European Commission adopted proposed Regulation amending Regulation on cross-border payments with aim of reducing charges for cross-border transactions in Member States</p>	Following political agreement on Level 1 text of European Commission's proposed Regulation on cross-border payments, European Parliament to adopt text by plenary vote and Council of the EU to formally endorse this.	<p>In context of review of Payment Accounts Directive in 2019, European Commission to analyse behavioural, legal, and commercial obstacles preventing consumers from switching providers</p> <p>Text of Regulation on cross-border payments to be reviewed by European Commission's Legal Services and published in Official Journal</p>	<p>Financial Institutions</p> <p>Asset Managers</p>	<p>All</p> <p>All</p>	G
<i>Remuneration</i>		<p>The High Court in <i>Daniels and Tate v Lloyds Bank plc</i> decided that the employer did not have the power, without the consent of award holders, to amend the terms of existing awards, under a long-term incentive plan to apply a malus clause retrospectively as the rules of the plan did not include clear and express wording permitting such an amendment. The case also highlighted that employers have to follow due process when applying malus. For malus to be enforceable employers need to ensure the decision to invoke malus is taken by the appropriate body</p> <p>The case highlights the need to ensure plan rules are appropriately drafted to allow future amendments to be made and that the excess set out in plan rules in relation to malus is to be followed if malus decisions taken under the plan are to be enforceable</p>			All	All	R

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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
Remuneration		<p>HMRC and disguised remuneration</p> <p>HMRC has:</p> <ul style="list-style-type: none"> invited users to settle tax arising from disguised remuneration schemes published guidance (Spotlight 39) on disguised remuneration: re-describing loans. Guidance highlights arrangements that in HMRC's view are not effective <p><u>RFC 2012 Plc</u></p> <p>Following the RFC 2012 Plc Supreme Court decision, HMRC has invited those using disguised remuneration scheme to register an interest in settling associated tax liabilities</p> <p>Those who do register an interest may benefit from reduced interest charges and extended payment terms</p> <p>HMRC believes that the Supreme Court decision affects not only loans by employee benefit trusts, but also employer-finance retirement benefit schemes and contract loan schemes</p> <p><u>Spotlight 39</u></p> <p>Spotlight 39 refers to arrangements under which taxpayers declare that sums received under loan agreements from a disguised remuneration scheme are not loans because they hold the money in a fiduciary capacity</p>	To avoid new loan charge (introduced in the Finance (No.2 Bill 2017) must either repay loan or settle liability with HMRC before 5 April 2019		All	All	R



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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
		HMRC has indicated that it is not possible to reclassify something in this manner where, in substance, it is a loan					
Remuneration		The remuneration provisions in MiFID2 and in Article 27 of the MiFID delegated regulation have been implemented through a new remuneration code in SYSC 19F, which took effect from 3 January 2018	<p>MiFID firms should consider whether variable pay is assessed in a way which prevents employees being conflicted with a client's best interests</p> <p>MiFID firms should conduct gap analysis to help assess and sign off on compliance with MiFID 2 remuneration requirements</p>	MiFID remuneration rules will apply to all <i>"relevant persons with an impact, directly or indirectly, on investment and ancillary services provided by the investment firm, or on its corporate behaviour, regardless of the type of clients, to the extent that the remuneration of such persons and similar incentives may create a conflict of interest that encourages them to act against the interests of any of the firm's clients"</i> . The FCA has confirmed that this includes partners and directors of firms	All	All	R
Remuneration		<p>General Data Protection Regulation (GDPR)</p> <p>The GDPR took direct effect in the UK on 25 May 2018</p> <p>Under the GDPR, consent to process personal data must be freely given, specific, informed and unambiguous. Data subjects must also be able to withdraw consent at any time</p>	Companies will need to review their data protection consent provisions in share plans and employment documents		All	All	R
Remuneration		<p>FCA published a document outlining the next steps in its transforming culture work.</p> <p>The document summarises themes that were raised at the FCA's conference on transforming culture, which followed publication of a discussion paper on the subject in March 2018.</p> <p>The FCA sets out the four key thematic lines of enquiry it will now focus on:</p> <ul style="list-style-type: none"> Psychological safety over fear. What role does psychological safety play in promoting healthy and inclusive cultures? How can this be promoted most 	FCA to continue its engagement with financial services community, and wants to convene "thought leaders" to explore key themes and questions (see bullet points in 'Principal issue' column to left) and share examples of practices across the four themes		All	All	A


Legal Headwinds: Quarterly Report – Q1 2019

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
		<p>effectively?</p> <ul style="list-style-type: none"> • Remuneration and incentives. What implicit behaviours are being driven by bonus cultures? Are there better approaches to compensation? What non-financial incentives can be used to motivate performance? • Leadership and management capabilities. What is needed to support leaders, including middle management, to cultivate healthy cultures? How can these skills be better recognised as a management discipline? • Assessing culture. What does effective assessment or measurement of cultural indicators look like within firms? How should measurement be used? 					





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Remuneration		<p>The FCA has published a policy statement (PS18/7) and finalised guidance (FG18/2) on staff incentives, remuneration and performance management in consumer credit</p> <p>Among other things, the FCA will require firms to put in place adequate arrangements to detect and manage any risk of non-compliance with their regulatory obligations arising from their remuneration or performance management practices</p> <p>The FCA guidance (FG18/2) on staff incentives, remuneration and performance management in consumer credit sets out examples of good and bad practice observed by the FCA relating to incentive scheme features, performance management practices and management of risks from incentive schemes and performance management</p>	Firms expected to comply with FCA's guidance now		All	Firms that are engaged in credit-related regulated activity and are not subject to any of the existing remuneration codes in the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) (that is, SYSC 19A to SYSC 19F)	R
Remuneration		<p>Shareholder Rights Directive (2007/36/EC) has been amended with the aim of strengthening shareholders' engagement in big European companies</p> <p>Text approved by Parliament provides member states:</p> <ul style="list-style-type: none"> no longer need to ensure the value of the shares do not play a dominant role in the financial performance criteria; and with the discretion to allow companies to derogate temporarily from the remuneration policy in 		Member states have until 10 June 2019 to transpose its provisions into national law	All	All	G





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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
		<p>exceptional circumstances.</p> <p>The Directive came into force on 9 June 2017, Brexit aside, as existing UK remuneration reporting rules are already as onerous, if not more so, than the provisions relating to executive pay there may be little impact on UK listed companies</p> <p>Changes to the existing directive include:</p> <ul style="list-style-type: none"> A company's remuneration policy must support the business strategy and long term interests of the company and include information on deferral, retention and vesting periods and clawback. It must also be made public without delay. <p>If a company loses a vote on its remuneration report, it must explain in next report whether, and if so, how, it has taken shareholders' views into account</p>					
<i>Retail Distribution Review</i>		Part of FCA's retail market strategy, seeking to improve consumer trust and confidence in retail investment industry	RDR Post-implementation Review to be combined with 2019 Financial Advice Markets Review		Financial Institutions Asset managers	Insurance Hedge funds Institutional managers Service providers	A




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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Retail structured products</i>		<i>New horizontal legislation to apply to Packaged Retail Insurance-based Investment Products (PRIIPs) with respect to product disclosure (Regulation (EU) 1286/2014)</i> <i>The PRIIPs Regulation (EU) 2016/2340 of 14 December 2016 apply from 01 January 2018</i>	January 2019 - ESAs to submit amendments to <i>PRIIPs Delegated Regulation</i> to European Commission for endorsement and publish final report, including feedback from their November consultation	Transitional period for UCITS ends on 31 December 2019 (likely to be delayed by two years)	Financial Institutions Asset Managers	All All	G
<i>Retail structured products</i>		Proposed secondary legislation to ensure that the regime established under the PRIIPs Regulation continues to operate effectively after Brexit	29 March 2019 - draft SI: <i>The Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019</i> (laid before Parliament and awaiting approval) likely to enter into force		Financial Institutions Asset Managers	All All	R
<i>Securities Financing Transactions Regulations</i>		EU Securities Financing Transactions Regulation (SFT Regulation) establishing a safer and more transparent financial system by placing additional requirements on counterparties to SFTs	European Parliament and Council of the EU to scrutinise draft regulatory technical standards on reporting and transparency following adoption by Commission Implementing technical standards on reporting and transparency to be published in OJ	Reporting to trade repositories under SFT Regulation commences 2018-2019 (exact dates depend on adoption of technical standards) ESMA to start publishing annual report on aggregate SFT volumes in 2019	Financial institutions Asset managers	Wholesale banks All	A
<i>Shadow banking</i>		Possible additional regulation and oversight of credit activity by non-banks (ie provision of sources of funding and alternatives to bank deposits which are not currently subject to the same levels of prudential regulation)		<i>6th progress report</i> on compensation practices anticipates further report in 2019 See <i>13th progress report</i> on OTC derivatives market reforms, covering trade reporting of OTC derivatives, central clearing, platforms and capital; and margin requirements Basel III post-crisis reforms to take effect (BCBS issues fourteenth Progress Report on adoption of Basel III) on 01 January 2022 <i>Final report</i> from BCBS-CPMI-IOSCO Derivatives Assessment Team contains recommendation for future reform. This includes reforms relating to initial margin and leverage ratio	Financial institutions Asset managers	Wholesale banks All	G




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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Short Selling Regulation</i>		Regulation creating pan-European short selling regime		European Commission to adopt agreed Level 2 measures following ESMA Final Report on evaluation of certain elements of Short Selling Regulation European Commission due to submit report to European Parliament and Council of the EU on functioning of Short Selling Regulation by 03 July 2019	Financial institutions Asset managers	All All	A
<i>Short term business visitors from overseas</i>		UK Government has issued a consultation document looking at possibilities for simplifying the administration for businesses where business visitors come to work in the UK from an overseas branch for short periods		October 2018 Budget announced that eligibility for PAYE special arrangements to be widened and deadlines for reporting and paying tax extended, reducing administrative burdens on UK employers with effect from April 2020	All	All	G
<i>Supplies of fund management by insurers</i>		HMRC has announced a change of policy in relation to the VAT treatment of the provision of fund management services by insurers		HMRC to withdraw exemption (except where the investment management is provided to a special investment fund) with effect from 01 April 2019	Financial Institutions Asset Managers	Insurance All	R
<i>Tax Avoidance Involving Profit Fragmentation</i>		UK Government is consulting on measures to prevent the transfer of trading profits to unrelated foreign entities, including a targeted anti-avoidance provision and a new duty to notify HMRC of such arrangements and pay tax earlier		Legislation to implement change will be included in the Finance Act 2019 and is expected to have effect from April 2019	All	All	R




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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Taxation of the digital economy</i>		<p>There is increasing pressure for a new approach to the tax treatment of certain digital businesses, including those operating social networking and search engine sites and operators of auction site. The European Commission has proposed two directives and the OECD has released an Interim Report and will conduct further work regarding challenges of digital economy</p> <p>However, a December 2018 ECOFIN meeting failed to progress the Commission proposals and France and Germany jointly released a declaration on the taxation of digital companies, which appears to accept a more restricted basis for the EU proposals based on a 3% DST on a "tax base referring to advertisement" only</p>	<p>The OECD to continue to engage with jurisdictions with a view to progressing globally agreed measures</p> <p>EU Member States to continue to discuss proposals put forward by the European Commission</p>	<p>Whilst an internationally co-ordinated approach is clearly preferable, there appears to be significant appetite amongst some EU Member States for an interim EU-only approach in the absence of adequate global progress</p> <p>In the meantime, some Member States (including the UK) are pressing forward with domestic proposals. See "UK Digital Services Tax"</p>	All	All	G
<i>Taxing gains made by non-residents on UK real estate</i>		<p>Proposal to extend UK taxation to all UK immovable property held directly or indirectly by non-residents</p> <p>Legislation is included in the Finance (No 3) Bill</p>		New rules to be enacted with effect for disposals made on or after 6 April 2019	All	All	R
<i>Transparency Directive</i>		<p>European Single Electronic Format (ESEF)</p> <p>13 December 2017, FRC's Lab published a report on the use of XBRL in corporate reporting</p> <p>ESMA's final report on draft regulatory technical standards on the ESEF was published in December 2017.</p> <p>On 17 December 2018, the Commission published the final draft text of its delegated regulation on technical standards on the specification of the ESEF</p>	Council of the EU and European Parliament to consider Commission's draft delegated regulation on technical standards on specification of ESEF	<p>ESEF sets out the digital format which EU issuers must use to prepare their annual financial information from 1 January 2020</p> <p>Delegated Regulation will apply to financial statements for financial years beginning on or after 01 January 2020</p>	All	All	G



Legal Headwinds: Quarterly Report – Q1 2019

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>UCITS</i>		UCITS VI – further possible changes relating to: (i) eligible assets and use of derivatives; (ii) efficient portfolio management; (iii) OTC derivatives; (iv) extraordinary liquidity management; (v) depository passports; and (vi) other UCITS IV improvements			Financial institutions Asset managers	Wholesale banks Retail banks and other consumer credit providers Hedge funds Institutional managers Service providers	G
<i>UCITS</i>		Cross border distribution of collective investment funds	European Parliament and Council of the EU to conclude trilogue negotiations with European Commission to finalise text of Directive and Regulation amending cross border distribution rules in AIFMD and UCITS (along with EuVECA and EuSEF Regulations)	Finalised text of Regulation and Directive amending AIFMD and UCITS Directive (along with EuVECA and EuSEF Regulations) in respect of cross border distribution to be published in OJ. Intention for political agreement to be reached ahead of May 2019 European Parliament elections	Financial institutions Asset managers	Wholesale banks Retail banks and other consumer credit providers Hedge funds Institutional managers Service providers	G
<i>UK Listing Rules; Disclosure Guidance and Transparency Rules</i>		FCA Market Watch December 2018, FCA published a Market Watch with findings of a review of industry implementation of the Market Abuse Regulation (MAR). This includes some commentary on the issues, including on insider lists and issuers' obligations under MAR			All	All Listed companies	R

Legal Headwinds: Quarterly Report – Q1 2019

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>UK Listing Rules, Disclosure Guidance and Transparency Rules</i>		<p>Primary Market Bulletin 19</p> <p>FCA published, for consultation, an updated Technical Note on identifying and handling inside information when preparing periodic financial reports (FCA/TN/506.2)</p> <p>It provides an example of a legitimate interest for delaying disclosure which could be used where inside information emerges during preparation of a periodic financial report and will be included in the final report. Consultation closed on 23 July 2018</p>	Response awaited		<p>Financial Institutions</p> <p>Asset Managers</p> <p>TMT</p>	<p>All</p> <p>All</p> <p>All</p>	A
<i>UK Listing Rules, Disclosure Guidance and Transparency Rules</i>		<p>Primary Market Bulletin No 18</p> <p>31 August 2017, includes feedback on changes proposed in Primary Market Bulletins No 16 and 17 and consultation on further changes to the Knowledge Base, including three new technical notes on sponsor obligations under the Listing Rules</p> <p>Consultation closed 11 October 2017</p> <p>See “<i>Primary Market Bulletin No.18: new guidance on sponsor obligations proposed</i>” and “<i>Primary Market Bulletin No. 18: new technical notes confirmed and new sponsor technical notes proposed</i>” for more information</p>	Response awaited		<p>Financial Institutions</p> <p>Asset Managers</p> <p>TMT</p>	<p>All</p> <p>All</p> <p>All</p>	A
<i>VAT grouping and partnerships</i>		HMRC is informally consulting on a potential restricted extension of the VAT grouping rules to certain partnerships and individuals		Legislation is expected to be enacted in Finance Act 2019 and will come into effect on a day to be appointed by Treasury regulations	All	All	G

Legal Headwinds: Quarterly Report – Q1 2019

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>VAT grouping of overseas entities</i>		HMRC has announced that it will issue revised guidance on the definition of 'bought in services' to ensure that such services are subject to UK VAT and to provide clarity on HMRC's 'protection of the revenue' powers and the treatment of UK fixed establishments	Revised guidance is awaited		All	All	A
<i>VAT reverse charge for construction services</i>		UK proposed implementation of a VAT reverse charge on supplies of construction services		It is expected that the reverse charge will have effect from 01 October 2019	All	All	A

Priority–Key

- R** Red–Requires immediate attention
- A** Amber–Important but not likely to require attention until the second quarter of 2019
- G** Green–Is not likely to require much attention until beyond the second quarter of 2019

This column reflects the level of attention which will be required to deal with the developments identified