

Legal Headwinds: Quarterly Report – Q4 2018

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 30 September 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: Financial Institutions.





Relevant Subsectors: Financial Institutions: Wholesale Banks; Retail Banks and other consumer credit providers; Fin-tech; Wealth and Insurance..

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
Anti-Money Laundering		The Financial Action Task Force (FATF) to issue guidance for the life insurance and securities sectors on applying a risk-based approach to anti-money laundering and counter-terrorist financing	Following consultation FATF intends to adopt guidance at October 2018 plenary meeting		Financial Institutions	Insurance	G
Anti-Tax Avoidance Directive		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




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<i>Bank crisis management and resolution</i>		Global framework for resolution regimes for financial institutions <i>FSB Principles on Bail-in Execution</i> published 21 June 2018 <i>FSB Funding Strategy Elements of an Implementable Resolution Plan</i> published 21 June 2018	Ongoing work by FSB in relation to implementing key attributes	FSB to continue to monitor implementation of key attributes. FSB jurisdictions have agreed to undergo assessment of bank resolution regimes on basis of assessment methodology	Financial Institutions	Wholesale Banks Retail Banks and other consumer credit providers Fin-tech Wealth	G
<i>Bank crisis management and resolution</i>		Directive 2014/59/EU establishing framework for recovery and resolution of credit institutions and investment firms (Bank Recovery and Resolution Directive (BRRD))	European Commission's BRRD proposed moratoria and amendments to Article 55 could trigger opt-out rights for entities that have adhered to ISDA 2015 Universal Resolution Stay Protocol. Amendments likely to be adopted by European Parliament by end 2018	Ongoing debate whether bail-in language should now be included in certain facility documents given English law will be a "third country" law post-Brexit	Financial Institutions	Wholesale Banks Retail Banks and other consumer credit providers Fin-tech Wealth	A
<i>Bank crisis management and resolution</i>		Reforms to PRA recovery and resolution framework <i>PRA policy statement on recovery planning (PS29/17)</i> published 11 December 2017 <i>PRA revised supervisory statement (SS9/17)</i> published 11 December 2017 <i>PRA policy statement on resolution planning for reporting minimum requirement for own funds and eligible liabilities (MREL) (PS11/18)</i> published 13 June 2018 <i>PRA revised supervisory statement SS19/13</i> published 13 June 2018		From 01 January 2019, PRA revised supervisory statement SS19/13 on reporting requirements to take effect By 30 June 2019, firms to meet following expectations set out in SS9/17 (i) full separability analysis for disposal options (ii) modelling of capital and liquidity profiles in each scenario (iii) full analysis of funding needs by currency in each scenario, and (iv) integration of liquidity contingency plans (contingency funding plans)	Financial Institutions	Wholesale Banks Retail Banks and other consumer credit providers Fin-tech Wealth	G



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<i>Bank crisis management and resolution</i>		Proposed amendments to the UK bank crisis management regime contained in the <i>draft Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018</i> to ensure that it functions effectively after Brexit	Draft Regulations likely to be laid before Parliament – Autumn 2018		Financial Institutions	All	A
<i>Bank Structural Reform</i>		Reform of UK banking system and promotion of competition and stability (based on Vickers report)		Legislation to come into force by start of 2019 Further decisions of English courts on detail of ring-fencing proposals of affected retail banks expected. For first judicial sanction of a ring-fencing transfer scheme, see <i>In the Matter of Barclays Bank PLC</i> [2018] EWHC 472(Ch) A <i>list of approved schemes</i> is available on PRA website	Financial Institutions	Wholesale Banks Retail Banks and other consumer credit providers Fin-tech Wealth	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 on implementing 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 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 expected to publish recommendation on private placements – during 2018 European Commission to publish consultation on EU corporate bond markets – during 2018 European Parliament and Council of the EU to consider legislative proposal on prudential treatment of investment firms – during 2018 European Supervisory Authorities to report to Commission on transparency of fees and net performance of long-term retail and pension products – by end of 2018	European Commission CMU Action Plan sets out building blocks for putting integrated Capital Markets Union, encompassing all Member States, into place by 2019	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




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<i>Capital Markets Union</i>		<i>Prospectus Regulation (EU) 2017/1129</i> a new Regulation to modernise and overhaul Prospectus regime	ESMA consultation on draft guidelines on risk factors under the Prospectus Regulation - closes 05 October 2018 ESMA consultation on draft technical advice on minimum information content for prospectus exemption - closes 05 October 2018	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			Financial Institutions Asset Managers	All All	G
<i>Capital Markets Union</i>		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 <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	Proposals for legislation will now be discussed by European Parliament and Council of the EU	Changes proposed in Omnibus 3 would take effect during Q1 2019; however, changes to prospectuses are likely to take effect during 2022	Financial Institutions Asset Managers	All All All issuers of, investors in and other market participants in relation to capital markets products, in particular equities,	G



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		for certain non-equity securities, asset-backed securities and third country prospectuses falling within remit of ESMA rather than relevant NCA An <i>amended proposal</i> was published on 12 September 2018				corporate bonds and securitisations	
Central Counterparty Clearing Houses (CCPs)		CPMI-IOSCO has developed guidance on resiliency and recovery plans for financial-market infrastructures, including CCPs FSB has issued further guidance on the application of its Key Attributes of Effective Resolution Regimes to financial market infrastructures such as CCPs	By end 2018 - CPMI-IOSCO to undertake follow-up work on good practices for auctions of defaulting clearing member positions in CCP default management processes and recovery By end 2018 - FSB to monitor consistency of implementation of Key Attributes with expectations set out in its guidance on CCP resolution and resolution planning. CPMI-IOSCO to give status report on implementation By end 2018 - FSB to continue further work on financial resources to support CCP resolution to determine whether there is need for any additional guidance By end 2018 - FSB to consider whether further guidance needed on treatment of CCP equity in resolution and, if appropriate, develop guidance By end 2018 - Derivatives Assessment Team (DAT) to assess incentives to clear centrally arising from interaction of post-crisis reforms. DAT to complete report	Findings for CPMI-IOSCO review of CCP progress in addressing issues of concern in recovery planning, coverage of financial resources and liquidity stress testing (identified in CPMI-IOSCO level 3 assessment report of August 2016) to be published	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	European Parliament and Council of the EU to continue review of European Commission's proposal for Regulation Trilogue negotiations expected to start Q4 2018		Financial Institutions Asset Managers	All All	G




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<i>Central Securities Depositories</i>		<p><i>Regulation on improving securities settlement and regulating central securities depositories (CSDR)</i></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>10 March 2019 Level 2 measures for internal settlement apply</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>	<p>Financial Institutions</p> <p>Asset Managers</p>	<p>All</p> <p>All</p> <p>All Issuers of, holders of, and those entering into transactions regarding, securities held in settlement systems</p>	G
<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>		<p>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</p>	<p>Financial Institutions</p> <p>Asset Managers</p>	<p>All</p> <p>All</p> <p>CSDs, CCPs, trading venues and any entities that provide internalised settlement</p>	G
<i>Civil Liability Bill</i>		<p>Reform of law relating to whiplash claims</p>	<p>Civil Liability Bill due to have report stage and third reading</p>		<p>Financial Institutions</p>	<p>Insurance</p>	G




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<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>01 October 2018 – Deadline for firms to comply with new rules on staff incentives, remuneration and performance management</p> <p>Autumn 2018 - FCA to publish policy statement to CP18/12</p> <p>Q4 2018 - FCA to publish policy statement to chapter 3 of CP18/13</p> <p>Q4 2018 - FCA to publish market study on consumers' credit information</p> <p>01 November 2018 - Rules on assessing creditworthiness from PS 18/19 come into force</p> <p>02 November 2018 – consultation period for DP 18/7 closes</p> <p>End of 2018 - FCA report on findings from thematic review on commission and other remuneration models between credit brokers and other firms such as lenders (assessing whether these lead to poor customer outcomes) expected to be published</p>	<p>Early 2019 - Final rules on high-cost credit proposed in CP18/12 to come into</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>	Financial Institutions Asset Managers	All All	R
<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 	Financial Institutions Asset Managers	All All	G




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<i>Consumer protection</i>		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			Financial Institutions Asset Managers	All	G
<i>Corporate governance</i>		Women on Boards Draft Directive European Commission proposal for draft directive on gender equality on boards of listed companies in EU, published on 14 November 2012		Timetable unknown	All	All EU listed companies	G
<i>Corporate governance</i>		Directive which amends EU Shareholder Rights Directive (SRDII) came into effect on 09 June 2017 4 September 2018, European Commission published final implementing regulation on minimum requirements and standardised formats to be used when 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		Member States to implement SRDII into national law by 10 June 2019. The UK is expected to implement SRDII This regulation will apply from 3 September 2020	All	All	A





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<i>Corporate governance</i>		<p>New corporate governance reporting rules</p> <p>17 July 2018, UK Government published proposed new corporate governance reporting requirements (Companies (Miscellaneous Reporting) Regulations 2018) to implement its well-publicised corporate governance reforms to make directors more accountable. UK Government has also published guidance on these regulations in the form of Frequently Asked Questions</p> <p>See below.</p>		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	R
<i>Corporate governance</i>		<p>Revised UK Corporate Governance Code</p> <p>16 July 2018, revised UK Corporate Governance Code and FRC Guidance on Board Effectiveness published</p>		Revised Code and Guidance apply to financial years beginning on or after 01 January 2019 but FRC expect companies to report 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	All	All Main Market companies	R
<i>Corporate governance</i>		<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 and legislation expected later in 2018		All	All	A



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Corporate governance		Corporate governance for large private companies On 13 June 2018, FRC published, for consultation, The Wates Corporate Governance Principles for Large Private Companies which could be applied to meet this requirement. These principles have been developed by a Coalition Group chaired by James Wates, CBE	The new corporate governance reporting regulations (see above) require certain large private companies to state: <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. 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. Consultation on Wates principles closed on 7 September 2018. Final version of principles expected in December 2018 to align with the new reporting requirements	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		IA Public Register Investment Association public register of listed companies where 20% or more of shareholders vote against any resolution or withdrew a resolution before shareholder vote launched in December 2017	Register will be updated on ongoing basis throughout the year		All	All Listed companies	R
Corporate governance		House of Commons BEIS Select Committee (Committee) inquiry into gender pay gap and executive pay	2 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 The Committee will continue with its inquiry into the progress of reforms relating to executive pay levels and structure in Autumn 2018 See “ Gender pay gap important publications ” for more information		All	All	A




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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			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. Findings expected to be published later in 2018		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 2018		All	All	A
Corporate governance		Stakeholder engagement	ICSA and IA guidance (September 2017) on board engagement with employees and other stakeholders (intended to help company boards think about how they understand and weigh up interests of key stakeholders when taking strategic decisions) to be followed	If necessary, ICSA/IA guidance to be updated following UK Government's corporate governance reforms coming into effect - see above	All	All	R



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Corporate governance		<p>Stakeholder engagement — virtual meetings</p> <p>Institutional Shareholder Services (ISS) UK benchmark proxy voting policies 2018 include a new policy on virtual general meetings. ISS will generally recommend hybrid meetings (where there is a physical meeting but shareholders can also participate online) but will not recommend virtual-only meetings (where the meeting is held exclusively online)</p> <p>The new ISS policies apply to shareholder meetings on or after 01 February 2018</p> <p>The Investment Association (IA) position statement on virtual-only AGMs (December 2017) states that amendments to articles of association that would allow virtual-only AGMs and expect a physical meeting alongside any electronic meeting element. IVIS will red-top any company that allows virtual-only AGMs after amending its articles. Applies to 2018 AGMs</p>	Applies to 2018 AGMs		All	All	R
Corporate governance		<p>Corporate directors</p> <p>Provisions on prohibition of corporate directors under Small Business, Enterprise and Employment Act 2015</p>		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>		<p>Board diversity: Hampton Alexander Review</p> <p>November 2017, Hampton-Alexander 'one year on' report published on improving female representation at executive level in FTSE 350 companies</p> <p>On 27 June 2018, UK Government published a press release showing progress made by FTSE 350 companies in meeting the Hampton-Alexander Review target of at least 33% of board positions held by women by the end of 2020</p> <p>Press release noted that, if progress matches the same gains made over the last three years, FTSE 100 companies are on track to meet the 2020 target but that FTSE 350 companies need to do more. All FTSE 350 companies are urged to accelerate their progress</p>	<p>Recommendations of Hampton-Alexander report to be followed now</p> <p>13 November 2018 - 2018 Hampton-Alexander Report expected to be published</p>	FTSE 350 companies target of 33% of women on boards and in leadership teams by 2020	All	All	R
<i>Corporate governance</i>		<p>Board diversity. Parker Review encourages FTSE 350 companies to adopt the recommendations on a voluntary basis</p> <p>Final report published October 2017, includes Questions for Directors and The Directors Resource Toolkit to help boards increase board diversity now</p>		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	G

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<i>Cyber risk and insurance</i>		The International Association of Insurance Supervisors (IAIS) Application Paper on Supervision of Insurer Cyber Security	IAIS to finalise a paper on cyber security	Insurers encouraged to standardise policy language and underwriting questionnaires, promote data sharing between stakeholders, develop industry standards, build in-house expertise in cyber security, build offerings around information security and privacy regulations, and adopt a sectoral approach to harmonising language	Financial Institutions	Insurance	A
<i>Cybersecurity</i>		<p>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</p> <p>In the UK, the Directive has been implemented via the the Network and Information Systems Regulations 2018 (the "NIS Regulations") which came into force on 10 May 2018</p> <p>The NIS Regulations apply to 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</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>By 09 November 2018, for each critical sector, EU Member States must identify OESs with establishment in their territory</p>	<p>In UK, DSPs to be required to register with ICO within timeframe that ICO will specify</p> <p>Further guidance from ICO expected on how penalties and appeals regime in NIS Regulations will operate in conjunction with GDPR</p> <p>UK Government intends NIS Regulations to remain in effect following Brexit</p>	All	All	G


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		<p>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</p> <p>Main points for UK organisations to consider are as follows:</p> <p>Overlap with the EU's General Data Protection Regulation – Notification requirements, provisions on security and data protection responsibilities of OESs and DSP's</p> <p>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>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>Under the NIS Regulations penalties of up to £17million could be imposed for non-compliance relating to security and incident reporting requirements</p>					
Data protection		The EU General Data Protection Regulation ("GDPR") came into force on 25 May 2018	ICO to publish further guidance on DPA 2018 during this quarter, under umbrella of new "Guide to Data Protection" (covering GDPR,	UK/EU businesses should seek to follow guidance issued by their local data protection supervisory authority in relation to implementation of the GDPR	All	All	R


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		<p>In the UK, the Data Protection Act 2018 ("DPA 2018") also came into force on 25 May 2018 (subject to a few exceptions which came into force on 23 July 2018). The DPA 2018 replaced the Data Protection Act 1998, thereby updating the UK's data protection laws and supplementing the GDPR's provisions, where relevant. It 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 convictions data under the GDPR; • 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, 	<p>applied DPA 2018 and Law Enforcement Directive, which has also been implemented through DPA 2018)</p>	<p>within different EU Member States either via national implementing laws or guidance issued by national data protection supervisory authorities</p>			






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		<p>such as deliberate alteration of personal data in response to a data subject access request</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>					
Data protection		<p>The UK Government released its guidance note on implications of a “no deal” Brexit for UK data protection law on 13 September 2018</p> <p>The guidance note sets out actions that UK organisations should take to enable 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> <p>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;</p> <p>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;</p> <p>If the EU Commission does not make an adequacy 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</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	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 a UK-EU free standing data protection trade agreement in advance of that date	All	All	R




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		<p>for legitimizing EU-UK data transfers, such as implementing EU Commission approved standard contractual clauses between relevant group entities and with customers/suppliers</p> <p>The Chief EU Negotiator, Michel Barnier made it clear in a speech on 26 May 2018 that the EU would not share decision-making powers under the GDPR with a “third country” and therefore the only likely method of legitimizing data transfers post-Brexit would likely be an adequacy decision</p> <p>The UK government announced the releasing of its second batch of 28 guidance notes on potential impact of a “no deal” Brexit across a wide range of sectors in the UK economy (including data protection) on 13 September 2018</p> <p>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>					
<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



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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
Dispute resolution		<i>Implications of Brexit for dispute resolution</i>	Following publication of UK Government's <i>position paper on cross-border civil justice co-operation</i> , and the EU's Notice to Stakeholders of 21 November 2017 progress awaited on issues relating to future recognition of jurisdiction clauses and cross-border enforcement of judgments Dispute resolution clauses attempting to deal with Brexit uncertainty starting to be seen	UK Government policy to be formulated as part of wider Brexit negotiations	All	All	G
Dispute resolution		<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. This means cases starting in Q3 and Q4 2018 may fall within the Pilot Scheme	All	All	R
Dispute resolution		<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 outgoing Director of SFO suggest this is still on Government's agenda. Response to Call for Evidence may be published this quarter	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	R
Dispute resolution		<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
Electronic Signatures		The use of electronic platforms to facilitate execution of contracts and deeds under English law	Law Commission's <i>consultation</i> on electronic execution of documents closes 23 November 2018	<i>Possible legislation on the electronic execution of documents. Whether legislation will be proposed will depend on the results of the consultation</i>	Financial Institutions	All	A





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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Employment – Off-payroll working in the private sector</i>		On 18 May 2018, the Government launched a consultation on how to tackle non-compliance with the intermediaries legislation (commonly known as IR35) in the private sector IR35 ensures individuals who choose to structure their work through a company or some other intermediary and effectively work as employees are taxed as employees. A possible next step would be to extend the recent public sector reforms (introduced in April 2017) to the private sector	Government response to consultation may be announced as part of anticipated Autumn Budget 2018	Any changes announced in Autumn Budget 2018 are unlikely to take effect until April 2020	All	All	G
<i>Employment status consultation</i>		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	Government response to consultation expected as part of anticipated Autumn Budget 2018	Primary and secondary legislation likely, codifying tests to identify who is an employee vs self-employed and worker	All	All	G
<i>Employment status consultation – Tax aspects</i>		The UK Government's consultation on employment status seeks responses to the way in which the tax system inter-relates with different types of employment status and whether changes should be made to the tax system in that context		UK Government's response to comments on consultation awaited	All	All	G





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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>EU Trade Secrets Directive</i>		<p>The Trade Secrets (Enforcement, etc.) Regulations 2018 (SI2018/597), which implement the Directive (2016/244/EU) in the UK, came into force on 9 June 2018</p> <p>The European Trade Secrets Directive sets up a minimum standard for trade secret protection across the EU. The Directive introduces an EU-wide definition of "trade secret" and sets out rules on the unlawful acquisition, disclosure and use of trade secrets. The Directive specifically provides that nothing should restrict whistleblowing activity</p>	<p>Employers should take steps to meet the requirements of the new Directive, paying particular attention to the new definition of Trade Secret, which requires reasonable steps to have been taken to keep information secret. Employers should therefore identify their trade secrets and review their protective measures. Employers may also consider reviewing the restrictions in employment contracts (such as confidentiality and intellectual property provisions), as well as other practices and procedures, such as IT policies and document management processes</p>		All	All	R
<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. Focus has been heightened by recent scandals including the ongoing Cambridge Analytica issues</p>	<p>Period for feedback has now closed and a response is awaited</p>		All	All	G



Legal Headwinds: Quarterly Report – Q4 2018

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<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 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>European Commission to consider syndicated loans</i>		European Commission to consider syndicated loans from a competition law perspective	Currently in data gathering phase with third party consultancy Third party consultancy expected to deliver final report to the European Commission in Q3 2018	Publication of executive summary from final report Possible launch of a sector inquiry by European Commission; or targeted enforcement action	Financial Institutions	All	G
<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 Parliament to continue scrutiny of European Commission proposals for Directive and Regulation amending cross border distribution rules in AIFMD and UCITS (along with EuVECA and EuSEF Regulations)	European Commission to adopt, draft Level 2 measures in respect of costs disclosure Further revision expected to ELTIF Regulation as part of European Commission's proposed amendments to powers of EBA, EIOPA and ESMA Once finalised following trilogues, 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 European Commission to start review of application of ELTIF Regulation by 09 June 2019	Financial Institutions Asset managers	Insurance All	G




Legal Headwinds: Quarterly Report – Q4 2018

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>European System of Financial Supervision (ESFS) reform - ESAs</i>		European Commission Proposal reforming European Supervisory Authorities (ESAs) in order 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
<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>		The Government has announced that it will bring non-resident companies in receipt of income and gains in respect of UK property within the charge to corporation tax	Draft legislation is expected to be published in Q3 2018	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>		Asset management market study 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 Consultation on proposed remedies in relation to fund governance, risk-free box profits and share class switching closed on 28 September 2017 Consultation on proposed extension of SMCR to cover all FSMA-authorised firms, including asset managers, closed on 03 November 2017 Consultation on transitioning firms		Further policy statements and updates to FCA Handbook expected later in 2018 following consultation on SMCR and further remedies	Financial Institutions Asset Managers	Insurance All	R



Legal Headwinds: Quarterly Report – Q4 2018

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
		<p>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 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>Competition in mortgage sector</p> <p>Terms of reference for market study published 12 December 2016</p> <p>Publication of interim report published on 05 May 2018</p>		Final report due to be published late in Q4 2018	Financial Institutions	Retail Banks and other consumer credit providers	A
<i>FCA competition initiatives in the financial services markets</i>		<p>Wholesale Insurance Broker Market Study</p> <p>Feedback period for the study closed 19 January 2018 - FCA wants to ensure sector is working well, fosters innovation and competition in the interests of diverse range of clients</p> <p>Market study ongoing. Feedback period closed 19 January 2018</p>	Still awaiting interim report which was expected to be published autumn 2018	Final report in 2019	Financial Institutions	Wholesale Insurance Brokers	A





Legal Headwinds: Quarterly Report – Q4 2018

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Financial Advice Markets Review (FAMR)</i>		<p>FCA's FAMR report (14 March 2016) contained 28 recommendations to increase accessibility and affordability of advice and guidance to consumers, and improve transparency about FSCS and FOS</p> <p>FCA established Financial Advice Working Group to take forward shortlist of terms to describe guidance and advice (recommendation 17), develop rules of thumb or nudge techniques to encourage engagement by consumers (recommendation 18) and develop guide with employers for employees to improve their financial health (recommendation 12)</p>		FCA and HMT to conduct review of outcomes from FAMR in 2019 - results to be published early in 2020	Financial Institutions	Retail Banks and other consumer credit providers Wealth Insurance	G
<i>Financial Advice Markets Review (FAMR)</i>		In parallel with FAMR, on 16 March 2016, HM Treasury consulted on proposals for public financial guidance for debt, pensions and general financial capability and planning. These include new pensions guidance body (incorporating the functions of Pension Wise and The Pension Advisory Service), and new 'slimmed down' money advice service to replace Money Advice Service		FCA and HMT to conduct review of outcomes from FAMR in 2019 - results to be published early in 2020	Financial Institutions	Retail Banks and other consumer credit providers Wealth Insurance	G
<i>Financial Conglomerates</i>		Fundamental review of Financial Conglomerates Directive (FICOD II)			Financial Institutions Asset Managers	All All	G







Legal Headwinds: Quarterly Report – Q4 2018

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Foreign Account Tax Compliance Act (FATCA), the Common Reporting Standard and international automatic exchange of information</i>		Impact of US Foreign Account Tax Compliance Provisions (FATCA) and other developments in relation to international exchange of information on financial institutions, including Common Reporting Standard		Other jurisdictions which have signed up to CRS to implement reporting requirements and exchange information in 2018	Asset Managers Financial Institutions	All All	R
<i>Gender Pay Gap Reporting</i>		<p>Government proposals and guidance published on tackling Gender Pay Gap</p> <p>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</p> <p>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</p> <p>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</p> <p>Further information is available here</p>	Employers should take account of guidance as they consider next round of GPG reporting		All	All	A






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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Green Paper on Retail Financial Services</i>		European Commission consultation (closed 18 March 2016) on its Green Paper on retail financial services, focusing on breaking 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 Commission has proposed an amendment to the Regulation on cross-border payments to reduce charges for cross-border transactions in Member States	Following publication of Consumer Financial Services Action Plan (March 2017), European Commission to: (i) explore further steps to make it easier for consumers to switch to more advantageous retail financial services (ii) examine national consumer protection and conduct rules to assess whether these create unjustified barriers to cross-border business	Council of the EU and European Parliament to consider European Commission's proposed amendment to Regulation on cross-border payments to reduce charges for cross-border transactions in all Member States	Financial Institutions Asset Managers	All All	G
<i>HMRC's engagement with large businesses</i>		HMRC review of its process for assessing tax risk posed by large businesses and how such businesses might be further encouraged to achieve Low Risk status			All	All	G
<i>Insurance Distribution Directive</i>		The Insurance Distribution Directive (IDD) will replace the Insurance Mediation Directive (IMD)	1 October 2018 IDD to apply Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (SI 2018/546) - amending FSMA and other financial services legislation to implement IDD – to apply on 1 October 2018 (save for financial promotion rules, which came into force on 23 May 2018)		Financial Institutions	Insurance	G
<i>Insurance Regulation</i>		FCA Policy Statement PS18/8 – report into Asset Management Sector FCA published Policy Statement PS18/8, adopting responsibility for “AFM's value for money assessments, independent director representation and acting in investors' best interests” (PR7)		PR7 to be implemented through SMCR in late 2019	Financial Institutions	Insurance	G




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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
Insurance Regulation		FCA Business Plan for 2018/19	FCA Business Plan for 2018/19 indicates that the FCA's sector priorities include general insurance and protection	Across the sectors FCA's focus to include culture and governance including SMCR, tackling financial crime and data security/technology changes	Financial Institutions	Insurance	R
Insurance Regulation		EIOPA statement 18/251 on IBIPs	IBIPs based on instruments subject to ESMA ban or restriction should be avoided	EIOPA expects insurers to avoid insurance-based investment products which are based on restricted or banned instruments	Financial Institutions	Insurance	G
Insurance Regulation		FCA review of firms with 'with-profits' business	FCA review was scheduled to commence in Q1 2018 – no report published		Financial Institutions	Insurance	G
Insurance Regulation		FCA guidance on Part VII FSMA insurance business transfers (FG18/4)		Firms will need to explain why they have diverged from guidance where relevant to a particular Part VII Transfer	Financial Institutions	Insurance	G
Insurance Regulation		The International Association of Insurance Supervisors (IAIS) consultations: <ul style="list-style-type: none"> on the draft overall Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame) on the Risk-Based Global Insurance Capital Standard 	Deadline for comment on the draft papers is 30 October 2018		Financial Institutions	Insurance	R
Insurance Regulation-Brexit		Publications on supervisory convergence and consistency across the EU in light of United Kingdom withdrawing from European Union EIOPA opinion (EIOPA-BoS-17/141) addresses authorisation and approval processes, governance and risk management, outsourcing and on-going supervision of UK-based insurers and reinsurers falling under the Solvency II Directive (2009/138/EC) framework, on assumption that UK will become a third country (non-EU) Insurance Europe position paper on the consequences of Brexit on existing insurance contracts. essential contingency planning	Firms which have already or are contemplating establishing a subsidiary in another EU member state as a result of Brexit should ensure guidance issued by EIOPA taken into consideration and effective measures are implemented to ensure appropriate supervision of the new subsidiary Firms considering Part VII transfers should also, if not already done so, make this known to the PRA, and consider FCA guidance FG18/4 EIOPA's priorities will include supervisory convergence and Solvency II	Post-Brexit, firms currently exercising rights to establish a branch or provide services into the UK ('inbound firms') will need to seek PRA authorisation to carry on PRA-regulated activities in the UK If diverging from FCA guidance FG18/4 when applying for a Part VII transfer, an explanation will be needed	Financial Institutions	Insurance	R




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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
		FCA has published guidance on its approach to review of insurance business transfers under Part VII FSMA Gabriel Bernadino speech setting out EIOPA's priorities					
<i>Insurance Law - Brexit</i>		Lloyd's Market Bulletin Y5211 - grandfathering process for European coverholders	Those wishing to bind EEA risks after Brexit will need to obtain approval from Lloyd's Brussels	From 1 January 2019 coverholders wishing to bind risks located in the EEA will only be able to do so under a Coverholder Appointment Agreement (CAA) with Lloyd's Brussels. EEA risks will no longer be permitted under Lloyd's Binding Authority	Financial Institutions	Insurance	R
<i>Insurance Law Reform</i>		Draft Insurable Interest Bill	Draft Bill relating only to life and life-related insurance. Consultation open until 31 October 2018		Financial Institutions	Insurance	R
<i>Insurance Regulation – Solvency II</i>		PRA modification by consent of Solvency II reporting obligation	PRA modification to exempt category 4 and 5 insurance firms from submitting quarterly reports to the PRA in effect from 30 September 2018		Financial Institutions	Insurance	R
<i>Legal Entity Identifiers, Unique Transaction Identifiers and Unique Product Identifiers</i>		Financial Stability Board (FSB) working group on Unique Transaction Identifiers (UTIs) and Unique Product Identifier (UPIs) governance (GUUG), providing proposals for a recommended governance structure		The FSB has published governance arrangements and implementation plan for UTI with a recommendation that jurisdictions implement UTI no later than end-2020 The FSB expects to reach conclusions on issues raised in its April 2018 consultation in relation to governance arrangements for UPIs by mid-2019	Financial Institutions	All	G
<i>Legal Entity Identifiers, Unique Transaction Identifiers and Unique Product Identifiers</i>		Committee on Payments and Market Infrastructures (CPMI) of Bank for International Settlements and Board of International Organization of Securities Commissions (IOSCO) (together the Harmonisation Group) – developing guidance for uniform global Unique Transaction Identifiers (UTIs) and Unique Product Identifier (UPIs)		The Harmonisation Group will develop a framework for the maintenance and governance of critical OTC derivatives data elements (other than the UTI and UPI)	Financial Institutions	All	G





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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Legal Entity Identifiers, Unique Transaction Identifiers and Unique Product Identifiers</i>		Compliance with <i>Regulation (EU) 2016/867</i> on collection of granular credit and credit risk data (ECB/2016/13) (and known popularly as the AnaCredit Regulation) (see <i>explanatory note</i>)	Eurozone banks required to submit data in relation to syndicated loans to ECB. This requires the lead arranger to allocate a syndicated contract identifier (SCI) to each applicable loan. First reporting date under the AnaCredit Regulation - end of October 2018		Financial Institutions	All	R
<i>Market Abuse Regulation (MAR)</i>		Revision of scope of MAD (MAR/CSMAD) (including provisions relating to manipulation of benchmarks)			Financial institutions Asset managers Energy and infrastructure	All All	G
<i>Market study into card-acquiring services</i>		The Payment Systems Regulator (PSR) launched a market review to ensure that the supply of card-acquiring services is competitive and works in the interests of merchants and ultimately consumers Draft Terms of Reference was open for consultation until 14 September 2018	Final Terms of Reference to be published by end of 2018		Financial Institutions	Retail Banks and other consumer credit providers	R




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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Market study into digital comparison tools</i>		<p>CMA launched a market study into digital comparison tools used by consumers to compare and/or switch between a range of products or services from a range of businesses</p> <p>Update paper published in March 2017</p> <p>Final report published 26 September 2017. CMA published recommendations on how to treat consumers, as well as opening an investigation into one digital comparison tool's contract with home insurers</p> <p>UK Government response published on 21 December 2017</p>		CMA to continue monitoring of certain common contractual elements in DCT agreements, as well rolling out programme of consumer enforcement (notably in relation to hotel bookings and car hire)	<p>Financial Institutions</p> <p>Technology Media and Telecoms</p> <p>Energy and Infrastructure</p>	All	G
<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)	ESMA to renew prohibition on marketing, distribution or sale of binary options to retail clients, in effect since 02 July, from 02 October 2018 for a further three-month period	<p>ESMA to publish required EU wide data for systematic internalisers (SI) calculations by 01 February 2019 (as set out in ESMA's plan of 12 July 2018)</p> <p>These 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>Financial Institutions</p> <p>Asset Managers</p>	<p>Wholesale Banks</p> <p>Retail Banks and other consumer credit providers</p> <p>Insurance</p> <p>All</p>	R
<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	01 December 2018 ESMA consultation on guidelines on stress test scenarios under MMF Regulation closes	<p>21 January 2019 – managers of MMFs already in existence on 21 July 2018 to comply with MMF Regulation</p> <p>Q4 2019 – managers of MMFs to submit first quarterly report to NCAs under Article 37 of MMF Regulation</p>	<p>Financial institutions</p> <p>Asset managers</p>	<p>Wholesale banks</p> <p>All</p>	R





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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 is already under discussion	All	All	A
Money laundering		<i>Law Commission Consultation on the SARS regime</i>	Consultation closes 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 proposals 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		Staff Working Document expected to be published Q2 of 2019	All	All	G





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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Narrative reporting</i>		Corporate governance reporting regulations	<p>New regulations require disclosure of:</p> <p>UK incorporated quoted companies with more than 250 UK employees - ratio of the CEO's total remuneration to median (50th), 25th and 75th percentile of full time equivalent remuneration of the 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>Large companies - a statement which explains how the directors have complied with their duty to have regard to the matters in s.172(1)(a) to (f) Companies Act 2006 and a statement summarising (in more detail) how the directors had regard to the need to foster business relationships with suppliers, customers and others</p> <p>UK incorporated companies with more than 250 UK employees - a summary of how directors have engaged with their employees</p>	Apply to financial years beginning on or after 01 January 2019			R
<i>Narrative reporting</i>		FRC Guidance on strategic report	31 July 2018, revised Guidance on strategic report published. Applies now		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>	For financial years beginning on or after 01 January 2017, certain large companies have to include 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		All	<p>All</p> <p>Certain large listed companies</p>	R
<i>Narrative reporting</i>		FRC Guidance on annual reports	10 October 2017, FRC letter highlighting changes to reporting requirements and key areas for improvement when preparing annual reports for 2017/2018 reporting season		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
<i>Narrative reporting</i>		Financial Reporting Lab project on risk and viability reporting	23 November 2017, report published. Further improvements in risk reporting by companies expected in 2018 and the report includes guidance on how to improve reporting specifics without revealing commercially sensitive information		All	All	R




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<i>Narrative reporting</i>		Financial Reporting Lab report on disclosure of dividends	04 October 2017, second report published which provides guidelines on policy and practice around disclosure of dividends in financial reports - to be considered for annual reports in 2018		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 Comments on draft were required by 07 September 2018			All	All	G
<i>OTC derivatives</i>		<i>Regulation (EU) No 648/2012 of OTC derivatives, central counterparty clearing and reporting requirements (EMIR)</i>	Clearing obligation for Category 4 NFC – from 21 December 2018 <i>ESMA guidelines</i> for position calculations by Trade Repositories (TRs) under Article 80(4) of EMIR will become applicable on 03 December 2018 and will require an annual assessment of the TRs' compliance	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); 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 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	Financial Institutions Asset Managers	All All	R


Legal Headwinds: Quarterly Report – Q4 2018

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>OTC derivatives</i>		<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>The proposed EMIR REFIT Regulation is the subject of 'Trilogue' discussions and proposed Regulation is likely to be finalised during Q4 2018</p>		<p>Financial Institutions</p> <p>Asset Managers</p>	<p>All</p> <p>All</p>	G
<i>Ownership of land by overseas companies</i>		Government proposals requiring overseas entities which own land in the UK to register at Companies House and submit specified information in relation to their beneficial owners on an annual basis	Department for Business, Energy & Industrial Strategy (BEIS) has published a <i>draft Registration of Overseas Entities Bill</i> . BEIS is considering the responses to its consultation		Financial Institutions	All	G
<i>Payment Accounts Directive</i>		<p>Payment Accounts Directive (PAD) imposing EU wide regime for payment accounts, including fee comparisons, switching and basic payment accounts, with development of standardised terminology for certain payment services</p> <p>Recent development: evaluation information provided to European Commission under Article 27 of PAD (18 September 2018)</p>	<p>By 31 October 2018:</p> <p>Payment service providers to use terms on final list of most representative services; and</p> <p>UK to apply measures necessary to comply with requirements on statement of fees, fee information document and common symbol ie payment service providers to provide consumers with pre-contractual fee information document and annual statement of fees</p>	European Commission to review Directive and submit report to European Parliament and Council of the EU by 18 September 2019	Financial Institutions	Retail Banks and other consumer credit providers	G





Legal Headwinds: Quarterly Report – Q4 2018

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Payment Services Directive reform, electronic payments, and interchange fee caps in MIF Regulation</i>		<p>New Payment Services Directive (PSD2) updates payment services regime, expanding geographical and currency scope, enhancing consumer protections and regulated activities. PSD2 is tailored to suit new services, such as internet and mobile payments</p> <p>PSD2 came into force across EU on 12 January 2016</p> <p>Capping interchange fees in Multilateral Interchange Fee Regulation (MIF Regulation) in force since 09 December 2015</p>	<p>European Commission to adopt draft Regulatory Technical Standards (RTS) on information provided by competent authorities to EBA under Article 15(5) of PSD2</p> <p>European Commission to adopt RTS relating to central contact point under Article 29(4) of PSD2</p> <p>EBA to publish regulatory technical standards (RTS) on home-host co-operation under Article 24 (6) of PSD2</p>	<p>EBA continuing to develop guidelines addressed to payment service providers and competent authorities, aimed at contributing to objective of PSD2 to increase security of retail payments in EU. Specifically, on the conditions to be met to benefit from an exemption from contingency measures, complaints handling and fraud reporting</p> <p>RTS on strong customer authentication and common and secure open standards of communication apply (with some exceptions) from 14 September 2019</p> <p>European Commission to submit report on application and impact of PSD2 by 13 January 2021</p>	Financial Institutions	<p>Wholesale Banks</p> <p>Retail Banks and other consumer credit providers</p> <p>Fin-tech</p> <p>Wealth</p>	R
<i>Payment Services Directive 2, electronic payments and interchange fee caps in MIF Regulation</i>		FCA implementation of PSD2	13 October 2018 is the deadline for firms intending to continue to operate beyond 13 January 2019 to have submitted complete application for re-registration under Payment Services Regulations 2017	13 January 2019 is the first date on which payment service providers within limited network exemption can meet conditions for notifying FCA that total value of payment transactions exceeds €1 million	Financial Institutions	<p>Wholesale Banks</p> <p>Retail Banks and other consumer credit providers</p> <p>Fin-tech</p> <p>Wealth</p>	R
<i>Pension Fund Industry</i>		Minimum contribution rise		Statutory minimum employer contributions in defined contribution schemes used for auto enrolment will increase from 2% to 3% on 06 April 2019, 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




Legal Headwinds: Quarterly Report – Q4 2018

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Pension Fund Industry</i>		DWP White Paper	<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. 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 individuals as well as companies</p>	Many of the proposals will require primary legislation. We can therefore expect further consultations during the rest of 2018 and into 2019. We are unlikely to see draft primary legislation until the 2019-2020 parliamentary session	All	All	A



Legal Headwinds: Quarterly Report – Q4 2018

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<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, and updating the scheme's data protection policy		All	All	R
<i>Pensions tax allowances</i>		A reminder of the reduced Lifetime Allowance (which increased to £1.03m on 06 April 2018) and the Annual Allowance tapering (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 an 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 July 2018, draft legislation for the Finance Bill 2019 contains reforms for the taxation of employer contributions paid into life insurance products and overseas pension schemes At present contributions are only tax-exempt if the beneficiary is an employee or a member of the employee's family or household. If implemented the legislation will expand the 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	The Finance Bill will be introduced to Parliament following the 29 October 2018 Autumn Budget. It is currently expected to be passed before the end of this tax year	All	All	G
<i>Personal service companies in the private sector</i>		UK Government has launched a consultation on potential reform of the IR35 rules applicable to the private sector arrangements, including potentially making the engager responsible for operating the rules		If ultimately engager is made liable for operating IR35 rules, such a change could well lead to many fewer engagements through personal service companies	All	All	G


Legal Headwinds: Quarterly Report – Q4 2018

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Prospectus Regulation</i>		<p>Prospectus Regulation (which replaces the Prospectus Directive) came into force on 20 July 2017</p> <p>28 February 2017, European Commission asked ESMA to provide technical advice on a number of aspects of Prospectus Regulation. An updated version of the mandate was published on 01 June 2017</p> <p>April 2018 - ESMA final report with technical advice on format and content of prospectus; scrutiny and approval of prospectus; and content and format of EU Growth prospectus</p> <p>24 April 2018, EU Commission published for consultation a roadmap setting out its intentions regarding certain of the delegated legislation. Consultation closed on 22 May 2018. Response awaited</p> <p>17 July 2018, ESMA published its final report on the draft regulatory technical standards, following consultation published in December 2017</p> <p><i>See Prospectus Regulation Tracker</i> for more information</p>		<p>Majority of Prospectus Regulation to apply to prospectuses approved on or after 21 July 2019</p> <p>Subject to endorsement by the European Commission, April 2018 technical advice will form the basis of delegated acts to be adopted by the Commission by 21 January 2019</p>	All	All	A
<i>Public Country by Country Reporting (CBCR)</i>		<p>EU Commission has proposed making CBCR public for the largest multinationals</p> <p>EU Parliament has supported adoption of public CBCR</p>		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</i>		EU Benchmarks Regulation establishing legislative framework regulating production and use of indices serving as benchmarks		Transitional period for existing benchmark administrators ends 1 st January 2020	Financial Institutions	Wholesale Banks Retail Banks and other	G




Legal Headwinds: Quarterly Report – Q4 2018

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>revelations</i>				Commission to submit report to the European Parliament and Council on the effectiveness of the Benchmarks Regulation by 1 st January 2020	Asset managers	consumer credit providers Insurance Hedge funds Institutional managers Service providers	
<i>Regulatory capital</i>		Basel Accord (Basel 3) – amended in December 2017		<p>01 January 2019: capital conservation buffer goes up to 2.5%, large exposures framework comes into force</p> <p>01 January 2022: revised standardised approach to credit risk, IRB framework, CVA framework, market risk framework and operational risk framework. End of transitional provisions for capital instruments no longer qualifying as Tier 1 or 2. Output floor set at 50%, rising in steps to 72.5% on 01 January 2027</p>	Financial Institutions	Wholesale Banks, Retail Banks	A
<i>Regulatory capital: CRD4</i>		<p>Phased implementation of CRD4</p> <p>CRD 4 confers power on the European Commission and the ESAs to adopt Level 2 and Level 3 measures respectively</p> <p>Possible future amendments in light of further amendments to Basel 3 (sometimes called Basel 4)</p>		<p>Phased implementation</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>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</p>	<p>Financial Institutions</p> <p>Asset Managers</p>	<p>Wholesale Banks Retail Banks and Investment Firms</p> <p>All</p>	A



Legal Headwinds: Quarterly Report – Q4 2018

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
				<p>here and here. In particular, the following L2 and L3 are in the pipeline:</p> <ul style="list-style-type: none"> RTS on methods of prudential consolidation. EBA Guidelines on outsourcing. RTS on calculation of capital requirements for securitised exposures (KIRB) in accordance with the purchased receivables approach in the CRR and on the homogeneity of underlying exposures in a securitisation, and EBA Guidelines on STS securitisations. RTS relating to economic downturns and EBA Guidelines related to the estimation of loss given default (LGD) appropriate for conditions of an economic downturn. EBA Guidelines on non-performing and forborne exposures, and on high risk exposures. EBA Guidelines for common procedures and methodologies for the supervisory review and evaluation process (SREP) and on stress testing. EBA Guidelines on the management of interest rate risk. <p>Future developments</p> <p>Specific proposals for amendments are set out in separate entries in Headwinds. Apart from those, European Commission considering amendments to CRD4 to reflect December 2017 amendments to Basel framework. EBA has also published discussion paper on implementation in EU of 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)</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 currently being considered by European Parliament and Council of the EU - neither institution has yet reached agreed position		Financial Institutions	Wholesale Banks Retail Banks and Investment Firms	G


Legal Headwinds: Quarterly Report – Q4 2018

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
					Asset Managers	All	
<i>Regulatory capital: covered bonds</i>		Proposed Regulation of the European Parliament and of the Council amending the CRR as regards exposures in the form of covered bonds	Proposal currently being considered by European Parliament and Council of the EU - neither institution has yet reached agreed position		Financial Institutions Asset Managers	Wholesale Banks Retail Banks and Investment Firms All	G
<i>Regulatory capital: CRD V and CRR II</i>		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)	European Parliament likely to agree first reading position Trilogues likely to begin		Financial Institutions Asset Managers	Wholesale Banks Retail Banks and Investment Firms All	A
<i>Regulatory capital: new prudential regime for investment firms</i>		Proposed legislative package to amend the CRR and CRD4 to create a dedicated prudential regime for investment firms in the EU	Proposal currently being considered by European Parliament and Council of the EU - neither institution has yet reached agreed position		Financial Institutions Asset Managers	Wholesale Banks Retail Banks and Investment Firms All	G




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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<i>Regulatory capital</i>		<p>Proposed legislation and changes to PRA handbook to implement CRD 4</p> <p>On 22 May 2018, PRA consulted on its approach to EU Securitisation Regulation and certain aspects of revised Capital Requirements Regulation (CRR) banking securitisation capital framework. Consultation also updates firms on PRA's expectations with regard to Significant Risk Transfer (SRT) in securitisation</p>	<p>PRA to issue consultation paper on proposals to apply SRB framework in UK leverage ratio framework</p> <p>Possible changes to eligibility of guarantees as unfunded credit protection in light of PRA's February 2018 consultation</p> <p>Updates to the Pillar 2 reporting requirements take effect on 01 October 2018</p>	<p>PRA</p> <p>New version of SS 16/13 on large exposures effective on 01 January 2019</p> <p>Systemic risk buffer (SRB) to apply to RFBs and certain building societies from 01 January 2019.</p> <p>Pillar 2 liquidity reporting obligations take effect on 01 July 2019</p> <p>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</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>	<p>Financial Institutions</p> <p>Asset Managers</p>	<p>Wholesale Banks</p> <p>Retail Banks and Investment firms</p>	R
<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



Legal Headwinds: Quarterly Report – Q4 2018

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>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> <p>HMRC has indicated that it is not possible to reclassify something in this manner where, in substance, it is a loan</p>	<p>Those who do register an interest may benefit from reduced interest charges and extended payment terms</p> <p>The only way of avoiding the new loan charge (introduced in the Finance (No.2 Bill 2017) is to either repay the loan or settle the liability with HMRC before 5 April 2019</p>		All	All	R

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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
Remuneration		Implementation of the Insurance Distribution Directive (“IDD”) has been postponed	<p>The European Commission has postponed the application date of the IDD to 1 October 2018</p> <p>Companies should begin preparation and it would be advisable to conduct a GAP analysis in advance of the IDD coming into force</p>		Financial Institutions	<p>Wholesale banks</p> <p>Retail Banks and other consumer credit providers</p> <p>Insurance</p>	R
					Asset Managers	Institutional managers	
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		General Data Protection Regulation (GDPR)	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. Companies will need to review their data protection consent provisions in share plans and employment documents		All	All	R



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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
Remuneration		<p>The Finance Act 2018 received royal assent on 15 March 2018, and came into force on 6 April 2018</p> <p>The Act includes:</p> <ul style="list-style-type: none"> a strengthening of the disguised remuneration legislation, including a Part 7a charge on loans which remain outstanding on 5 April 2019 a new close companies gateway to the disguised remuneration legislation new information provisions relating to the 2019 loan charge <p>HMRC's accompanying technical note provides a number of examples to explain how the rules are intended to operate</p>			All	All	A
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 effectively? Remuneration and 	<p>The FCA will continue its engagement with financial services community, and wants to convene "thought leaders" to explore themes and questions raised in the bullets in the issues column, and share examples of practices across the four themes</p>				A

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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
		<p>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?</p> <ul style="list-style-type: none"> • 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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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
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 are expected to comply with the 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		Amendments to Investment Association ("IA") remuneration principles which were updated for 2018	<p>For 2018, the IA has advised that:</p> <ul style="list-style-type: none"> remuneration policies should be set to promote long-term value creation, rather than simply value creation; in its guidance to remuneration committees, to specify that any discretion specific to a particular incentive scheme should be disclosed in the remuneration policy in addition to the plan rules when fulfilling reporting obligations on workforce pay (such as gender pay gap reporting or executive to employee pay ratios), shareholders expect remuneration committees to provide the numbers in the context of the business and fully explain why the figures are appropriate In relation to shareholder consultation on 		All	All	R


Legal Headwinds: Quarterly Report – Q4 2018

Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
			<p>changes to remuneration, a requirement that remuneration committees should provide details of the whole remuneration structure, not just proposed changes. After the consultation process and before finalising the remuneration report, the committee should review proposals in light of subsequent events to ensure the proposals remain appropriate</p> <ul style="list-style-type: none"> • relocation benefits should be disclosed at the time of appointment. They should be in place for a limited period, which must be disclosed to shareholders. Each element should be detailed in the remuneration report. • In relation to annual bonuses, a new requirement that definition of any performance measure should be clearly disclosed. Any adjustments made to metrics as set out in the company's accounts should also be clearly explained and impact of adjustment on outcome disclosed. It is expected that bonus targets are disclosed no later than twelve months (previously two years, but generally within a year) following the payment. There is a new requirement to defer a portion of bonus into shares for any bonus opportunity greater than 100% of salary (rather than simply any bonus opportunity). • that Shareholders require retrospective disclosure of bonus targets so that they can ensure that there is an appropriate link between pay and performance. Members expect following: <ul style="list-style-type: none"> ○ Financial Targets; ○ Personal and Strategic Performance Targets; • any up and coming Remuneration Policy renewal votes due at their 2017 AGM; • use of Committee discretion, they may wish to fully outline the circumstances, reasons and outcomes of the use of discretion; • where there is a large disparity in Executive Director pension provision compared to that provided to general workforce, justifications 				





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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
			for the differences Clarification from ESMA and European Commission awaited on interpretation of “closed period”				



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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
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 exceptional circumstances. <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>		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
<i>Restrictions on Assignment of Contracts</i>		Statutory prohibition of contractual restrictions on assignment	Department for Business, Energy & Industrial Strategy (BEIS) has laid revised draft regulations before Parliament which prohibit contractual restrictions on the assignment of specified contracts. It is proposed that the regulations will apply to any contract entered into on or after 31 December 2018. It is understood that the draft regulations will be debated in Parliament in October or November 2018 under the affirmative procedure	The promulgation of the <i>Business Contract Terms (Assignment of Receivables) Regulations 2018</i>	Financial Institutions	Retail Banks and other consumer credit providers	R
<i>Retail Distribution Review</i>		Part of FCA's retail market strategy, seeking to improve consumer trust and confidence in retail investment industry		Phase 2 and 3 of Post-implementation Review of RDR, which will consider longer term implications of implementation, to be combined into single review with Financial Advice Markets Review and released in 2019	Financial Institutions Asset managers	Insurance Hedge funds Institutional managers Service providers	A
<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>	European Commission to review PRIIPs Regulation by 31 December 2018	Transitional period for UCITS ends on 31 December 2019	Financial Institutions Asset Managers	All All	G
<i>Ring-fencing and disclosures to consumers by non-ringfenced bodies</i>		Segregating retail banking activities from investment banking activities		UK ring-fencing regime to begin 01 January 2019 Final rules on disclosure obligations to come into force at later date Bank of England/PRA to examine policies, governance and control arrangements put in place by regime, as well as finalising arrangements to collect and analyse data submitted by banks during 2019	Financial Institutions	Wholesale Banks Retail Banks and other consumer credit providers Wealth	A







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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
<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 Commission to decide whether to endorse or propose amendments to draft RTS and ITS under SFTR	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	R
<i>Senior Managers and Certification Regime – extension to all FCA solo-regulated firms</i>		<p>The new regime will essentially replace Approved Persons Regime</p> <p>Proposed extension of the Senior Managers Regime to asset managers is now due to come into force in December 2019 through implementation of the Bank of England and Financial Services Act 2016</p> <p>The “near final” Rules were published in July 2018 and will apply in different ways to four categories of persons:</p> <ul style="list-style-type: none"> senior managers performing “senior management functions”; employees covered by the certification regime (“significant harm functions” employees); other staff who are subject to Conduct Rules; and specific ancillary roles excluded from the Conduct Rules. <p>Conduct Rules (and specific other rules) may also apply to non-executive directors</p> <p>The Rules are subject to commencement regulations to be made by HM Treasury (and may be subject to change in connection with subsequent handbook</p>	<p>For further information on the steps firms should be taking to prepare for the new regime, see our SMCR microsite and in particular:</p> <p><i>Action List: Senior Managers Regime</i> <i>Action List: Certification Regime</i> <i>Action List: Conduct Rules</i></p>	The new rules will apply to FCA solo-regulated firms from 09 December 2019.	Financial Institutions	Wholesale Banks Retail Banks and other consumer credit providers Wealth Fin-tech	A





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Headwind topic	Region	Principal issue	This quarter	Looking ahead	Relevant to	Relevant Subsector	Priority
		<p>amendments, Brexit developments and/or “SMCR optimisation”) but the FCA do not expect to make any significant changes. Limited points remain subject to ongoing consultation</p> <p>Further information, see here.</p> <p>Note Simmons & Simmons has developed a SMCR Extension Toolkit, to help firms progress implementation of SMCR in a cost effective way</p>					
Senior Managers and Certification Regime- extension to insurance		Extension of SM&CR to insurance	<p>The Senior Managers and Certification Regime will be extended to dual-regulated insurers on 10 December 2018</p> <p>SMCR will replace the FCA’s Approved Persons regime and the PRA’s Senior Insurance Managers regime. FCA and PRA have published their ‘near-final’ rules on the extension of the SMCR to insurers. Click here for our initial commentary. (PS18/15 and PS 15/18)</p> <p>FCA has also published its ‘near-final’ rules on extending the regime to FCA solo-regulated firms including insurance brokers. (PS18/14) and its final guidance on the Duty of Responsibility for insurers and FCA solo-regulation firms (PS18/16). See commentary here</p> <p>Firms should continue to review the SMCR regime and ensure that their processes and procedures comply. PRA note on ‘Redesignation of Senior Insurance Management Functions to Senior Management Functions, and the change-over to ‘Statements of responsibilities’ by insurers’</p> <p>FCA has also published information on what insurers may need to do in preparation for SMCR on the FCA’s Senior Managers and Certification Regime: insurers webpage</p>	The Senior Managers and Certification Regime will be extended to insurance brokers on 9 December 2019	Financial Institutions	Insurance	R




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<i>SIMR (Senior Insurance Managers Regime)</i>		PRA policy statement on optimisations to the SIMR (PS1/18)	Rules implementing the optimisations to the SIMR will come into force 10 December 2018		Financial Institutions	Insurance	R
<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)	Progress report on timely adoption of Basel III framework Joint BCBS-CPMI-FSB-IOSCO Derivatives Assessment Team review of incentives to central clearing, final report to be published by end of November 2018	Sixth progress report on compensation practices Thirteenth progress report on OTC derivatives market reforms; update on progress in addressing legal barriers to full reporting of and authorities' access to TR data Basel III post-crisis reforms to take effect (BCBS issues fourteenth Progress Report on adoption of Basel III) on 01 January 2022	Financial institutions Asset managers	Wholesale banks All	A
<i>Short Selling Regulation</i>		Regulation creating pan-European short selling regime	European Parliament and Council of the EU continue scrutiny of ESMA Final Report on evaluation of certain elements of Short Selling Regulation	European Commission to adopt agreed Level 2 measures following ESMA Final Report on evaluation of certain elements of Short Selling Regulation European Commission 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			All	All	G
<i>Super-complaint by Citizens Advice</i>		Citizens Advice has launched a "super-complaint" asking CMA to look into the "loyalty penalty" in certain products, including mortgages, cash, savings, insurance, mobile and broadband	CMA seeking views from interested parties CMA to report by end of 2018 on how it proposes to deal with the complaint		Financial Institutions Technology Media and Telecoms	All	A
<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 will withdraw the 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	A







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<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	G
<i>Taxation of the digital economy</i>		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. In addition, HM Treasury has published a revised position paper setting out government's view on challenges and its preferred solutions	The OECD will continue to engage with jurisdictions with a view to progressing globally agreed measures, whilst EU Member States will discuss the proposed directives put forward by the European Commission	Whilst an internationally co-ordinated approach is clearly preferable, there now appears to be significant appetite amongst some of the major EU Member States, including Germany and France, for an interim EU-only approach in the absence of adequate global progress	All	All	G
<i>Taxing gains made by non-residents on UK real estate</i>		Proposal to extend UK taxation to all UK immovable property held directly or indirectly by non-residents	There is a technical consultation on the draft legislation released on 06 July 2018	The UK proposes to introduce the new rules with effect for disposals made on or after 6 April 2019	All	All	G
<i>Third-party effects of assignments of claims</i>		<i>Proposed regulation</i> sets out rules for determining the law that governs perfection of assignments of claims The UK <i>announced</i> on 30 July 2018 its intention to opt out of the proposed regulation	Feedback period for the European Commission proposed regulation closes on 17 October 2018		Financial Institutions	All	A


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<i>Transparency Directive</i>		European Single Electronic Format (ESEF) 18 December 2017, ESMA published its final report on draft regulatory technical standards on the ESEF 13 December 2017, FRC's Lab published a report on the use of XBRL in corporate reporting	The European Commission has three months to decide whether to endorse the RTS	ESEF sets out the digital format which EU issuers must use to prepare their annual financial information from 1 January 2020	All	All	G
<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	European Parliament to continue scrutiny of European Commission proposals for Directive and Regulation amending AIFMD and UCITS (along with EuVECA and EuSEF Regulations) in respect of cross border marketing Amending Delegated Regulation on safe keeping duties to be published in OJ, entering into effect on twentieth day following publication and applying 18 months following entry into force	Once finalised following trilogues, 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>		Primary Market Bulletin 19 FCA published, for consultation, an updated Technical Note on identifying and handling inside information when preparing periodic financial reports (FCA/TN/506.2) 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	Response awaited		Financial Institutions Asset Managers TMT	All All All	A

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<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>Response awaited</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>		<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>FCA discussion paper on effectiveness of UK primary market landscape (DP17/2)</p> <p>Feedback statement (FS17/3) on effectiveness of primary markets published in October 2017. The FCA is giving further consideration to certain topics</p>			<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>		Minor changes to Listing Rules and DTRs in response to FCA Quarterly Consultation (CP17/39)	Minor changes, which apply from 27 July 2018, clarify publication of information on a company's diversity policy as required under DTR 7.2.8AR		All	<p>All</p> <p>Listed Companies</p>	R
<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 included in Finance Act 2019 and will come into effect on a day to be appointed by Treasury regulations	All	All	G
<i>VAT recovery on “specified supplies”</i>		Draft legislation to restrict recovery of input VAT on certain specified supplies of intermediary services related to insurance or financial services has been published		An implementation date for the restriction is awaited	Financial Institutions	All	G
<i>VAT reverse charge for construction services</i>		UK Government has released draft legislation for the 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

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<i>Withholding tax on royalties</i>		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		Legislation is expected in Finance Act 2019	All	All	G

*Priority–Key***R**

Red–Requires immediate attention

A

Amber–Important but not likely to require attention until the first quarter of 2019

G

Green–Is not likely to require much attention until beyond the first quarter of 2019

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