

2023 – the year of divergence?

25 January 2023



2023

Seminar Programme schedule

2023 – the year of divergence?

Kate Sumpter – Partner, Financial Services Regulatory
Damian Carolan – Partner, Financial Services Regulatory
Bob Penn – Partner, Financial Services Regulatory
Nick Bradbury – Partner, Financial Services Regulatory

Wednesday 25 January

9.00-10.00am

Greenwashing update 2023

Tamara Cizeika – Counsel, Financial Services Regulatory
Kate Sumpter – Partner, Financial Services Regulatory
Matthew Townsend – Partner, International Trade and Regulatory Law Group
Sarah Hitchins – Partner, Litigation & Investigations
Andrew Denny – Partner, Litigation & Investigations
Gauthier van Thuyne – Partner, Corporate – Public Law

Tuesday 31 January

9.00-10.00am

Employment law horizon scanning

Sarah Henchoz – Partner, Litigation Employment
Kate Pumfrey – Counsel, Litigation Employment
Hannah Crisp – Senior Associate, Litigation Employment

Thursday 02 February

12.30-1.30pm

Enforcement of security financial collateral arrangements

Richard Hooley – Consultant, Banking

Wednesday 15 February

12.30-1.30pm

Pillar Talk: Conversations on OECD global tax reforms for a digital world

James Burton – Partner, Tax
Ellen Birkemeyer – Partner, Tax
Ishtar Sancho – Counsel, Tax
Naomi Lawton – Senior Professional Support Lawyer, Tax

Tuesday 21 February

9.00-9.45am



The year ahead in ESG – product update for UK financial services firms

Wednesday 22 February
9.00-10.00am

Tamara Cizeika – Counsel, Financial Services Regulatory
Jennifer Cresswell – PSL Counsel, International Capital Markets
Emma Dwyer – Partner, ICM – Derivatives and Structured Finance
Tim Conduit – Partner, ICM – Securitisation
Tanya O'Hagan – Senior Associate, ICM – Derivatives and Structured Finance
Greg Brown – Partner, Financial Services Regulatory

The end-game: options, strategy and tactics for defined benefit pension schemes

Tuesday 28 February
9.00-10.00am

Jessica Kerslake – Partner, Corporate Pensions
Jane Higgins – Partner, Corporate Pensions

National Security and Investment Act 2021 – Implications for Energy and Infrastructure Financings

Tuesday 14 March
12.30-1.30pm

Chris Andrew – Partner, Banking

Recent developments in banking and finance law

Friday 31 March
12.30-1.30pm

Richard Hooley – Consultant, Banking

If you would like to attend one or more of our seminars, please visit www.aoseminars.com where you can register. If you have any queries or require further information please email seminarregistration@allenoverly.com



Contents

Summary	5
Biographies	6
2023 – the year of divergence?	8
Notes	40



Summary

2023 – the year of divergence?

Our annual financial services horizon scanning seminar will again provide an overview of upcoming and expected changes for UK firms. Partners from our Financial Services Regulatory practice will consider developments such as ongoing changes to the UK regulatory framework post Brexit. In particular, we will consider the Financial Services and Markets Bill, the Wholesale Markets Review reforms and other financial markets regulation initiatives, the EU Banking Package developments and updates in relation to the regulation of digital assets.



Biographies



Kate Sumpter

Partner - London

Tel +44 20 3088 2054

kate.sumpter@allenovery.com

Kate is a partner in our Financial Services Regulatory practice. She has over 16 years' experience in the financial services sector and has extensive experience of dealing with complex regulatory-driven structural change projects for international banks.

She has also assisted a number of international banking institutions with designing and developing their legal entity structures. Kate is a core member of Allen & Overy's Brexit team, working with clients to develop their Brexit plans. She recently led on the regulatory aspects of Allen & Overy's mandate to advise HSBC on ring-fencing and operational continuity implementation.

Kate advises a number of banks and financial market infrastructure bodies (including payment systems) on regulatory matters and outsourcing arrangements. She regularly advises on all aspects of the bank recovery and resolution regime, including operational continuity aspects, and on the structuring of risk mitigation arrangements to ensure robustness insolvency and resolution. Kate has acted as a member of the Banking Liaison Panel, a working group established by HM Treasury to consider bank and investment failure, on behalf of ISDA.

Kate was recognised as "Best in Financial Regulation" at the Euromoney Europe Women in Business Law Awards 2019, is ranked as a "Leading Lawyer – Highly Regarded" in IFLR1000 and is listed as a Next Generation Partner by Legal500 UK 2021 for Financial Services Regulation.



Damian Carolan

Partner - London

Tel +44 20 3088 2495

damian.carolan@allenovery.com

Damian is head of A&O's UK Financial Services regulatory practice. He advises financial institutions on national and international regulations, with a particular focus on derivatives and securities regulation and the development of new markets and clearing settlement systems.

He regularly advises banks on regulatory reform, including changes to custody requirements, payment systems and the authorisation processes to open new branches and subsidiaries. Damian has assisted industry associations with developing standard form documentation and submitting responses to consultations with regulators. He is also a leading legal and regulatory expert in financial market infrastructure and has been involved in a variety of innovative bank and infrastructure projects as digital assets and distributed ledger technology become an ever more important part of the financial landscape.

Damian is ranked as a leading individual for regulatory matters by Legal 500, Chambers & Partners and as a leading lawyer by IFLR1000 and is regularly quoted in the press on regulatory matters.

"Damian is agile and quick-thinking with a very practical and commercial approach. A good communicator." – Chambers UK 2021 – Financial Services: Non-contentious Regulatory.

"Damian Carolan is a good leader who always brings new perspectives or ideas to technical issues." – Legal 500 UK, Financial Services Non-contentious regulatory 2022



Biographies



Bob Penn

Partner - London

Tel +44 20 3088 2582

bob.penn@allenovery.com

Bob advises banks, asset managers, market infrastructure providers and other financial institutions on a wide range of national and international regulations. He has led our substantial work on the European financial services reform agenda, including advising on revisions to capital requirements, the introduction of recovery and resolution plans and retail ring-fencing for banks and on changes to derivatives markets.

Bob is the author of two chapters in the Oxford University Press publication on Financial Markets and Exchanges Law, covering UK recognised investment exchanges and clearing houses and alternative trading systems respectively. Bob gave evidence to the UK Parliamentary Commission on Banking Standards in relation to proposals for the ring-fencing of retail banking activities in the UK. He sits on the IIF Special Committee on Effective Regulation.

Bob is recognised as a leading individual for regulatory advice by Legal 500, Chambers & Partners and IFLR 1000 and is regularly quoted in the press on regulatory matters.



Nick Bradbury

Partner - London

Tel +44 20 3088 3279

nick.bradbury@allenovery.com

Nick is a partner in our Financial Services Regulatory practice. He regularly advises some of the world's leading banks, broker-dealers, asset managers and other financial institutions on regulatory issues. Nick has advised on the full range of regulatory change the financial industry is facing, including recovery and resolution planning, bank structural reform, derivatives trading and clearing, MiFID II, the Senior Managers Regime and Brexit.

An area of particular focus for Nick is on the regulation of the wholesale financial markets and financial market infrastructure (securities and derivatives trading venues, custodians, payment systems and clearing houses). He also has extensive experience of advising on the regulatory aspects of corporate transactions and restructuring in the financial institutions sector.



2023 – the year of divergence?

ALLEN & OVERY

2023 – The year of divergence?

Damian Carolan, Nick Bradbury,
Kate Sumpter and Bob Penn
25 January 2023



Notes



2



Agenda

- 01 **Cross Sector**
 - The Future Regulatory Framework
- 02 **Banks and Bank Regulation**
 - Ring Fencing
 - Depositor protection rules for safeguarding accounts
- 03 **Financial Markets**
 - Operational Resilience and Outsourcing
 - Consumer duty
 - UK and EU MiFID
 - Payment for order flow
 - CCP recovery and resolution impacts
- 04 **Regulation of digital assets**
 - Basel standard on prudential treatment of cryptoasset exposures
 - UKJT consultation on legal statement on digital securities and next steps

© Allen & Overy LLP | 2023 – The year of divergence?

Notes



3

2023 divergence?

Market-wide developments

Financial Services and Markets Bill
 Brexit Freedoms Bill
 Edinburgh Reforms
Operational resilience
 DE&I policies
 SMCR framework review
 New appointed representatives regime
Future UK Regulatory Framework
 New FCA financial promotion rules
 Review of the overseas framework

Financial Crime Regulation

Economic Crime and Corporate Transparency Bill
 AML/CTF regulation review
 EU AMLA

Critical third party service providers

Designated Activities Regime
 Recast Transfer of Funds Regulation
MAR pre-hedging practice review

Consumer/Retail Consumer Duty

Regulation of BNPL products
 EU retail investment strategy
Reform of Consumer Credit Act
 PRIIPs review

Bank Regulation

EU CRD VI / CRR III
 UK strong and simple prudential regime development
Ring-fencing review
 Base1 3.1 proposals

EU disclosure framework for retail investments

RAE
 FRTB
 CMDI

Markets Regulation

Wholesale Markets Review
 Trading venue perimeter
 CCP recovery and resolution
 EU MIFID/MiFIR Review
 EU EMIR 3.0
 CSDR Refit

Payments and Fintech

Digital asset regulation
 EU DLT pilot regime
 UK FMI sandbox
 EU DORA
 CBDCs
 FMI SAR
 EU PSD3
 EU MICA
 Review of PSRs
 EU CESOP

Sustainable Finance

ESG disclosures
 ESAs report on supervision of sustainable finance
EU SFDR RTS
 Greenwashing rules
 Green taxonomy regulation

Fund Regulation

UK OFFR
 UK LTIF
 AIFMD Review
 ELTIF 2.0
 UCITS review

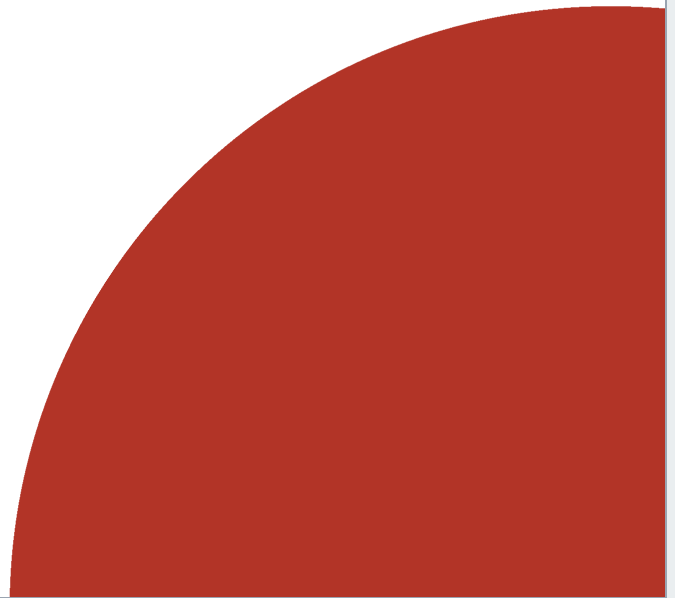
© Allen & Overy LLP | 2023 – The year of divergence?

Notes



4

General – UK Future
Regulatory Framework



Notes

Empty notes area



5

To Edinburgh, and beyond... Reforms (I/II)

Changes to Legacy EU Law



- Publishing the plan for repealing and reforming EU law using powers within the FSM Bill, building a smarter regulatory framework for the UK
- PRA consultation on removing rules for the capital deduction of certain non-performing exposures held by banks
- Repealing the PRIIPs Regulation, and consulting on a new direction for retail disclosure
- Overhauling the UK's regulation of prospectuses
- Intending to repeal EU legislation on the ELTIF, reflecting that the new UK Long-Term Asset Fund (LTAF) provides a better fund structure for the UK market
- Launching a Call for Evidence on reforming the Short Selling Regulation
- Consulting on removing burdensome customer information requirements set out in the Payment Accounts Regulations 2015
- Consulting on reform to the VAT treatment of fund management
- Reforming the Securitisation Regulation
- Publishing a draft Statutory Instrument to demonstrate how the new powers being taken forward in the FSM Bill will be used to ensure that the FCA has sufficient rulemaking powers over its retained EU payments legislation

© Allen & Overy LLP | 2023 – The year of divergence?

Notes



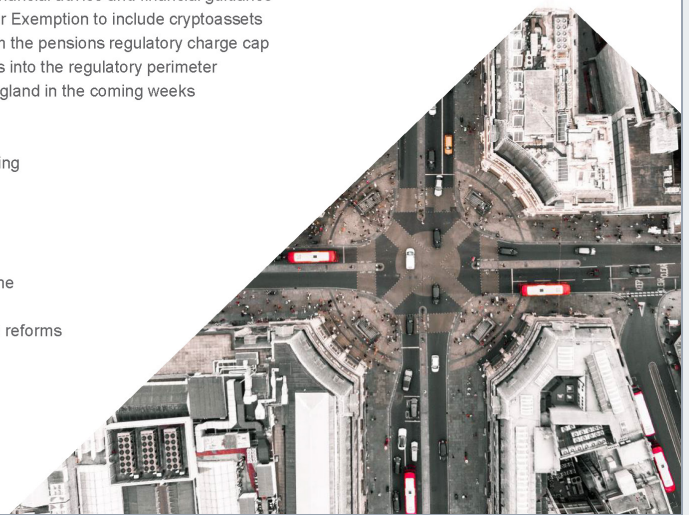
6

To Edinburgh, and beyond... Reforms (II/II)

Changes to Domestic Law

- Working with the regulators and market participants to trial a new class of wholesale market venue which would operate on an intermittent trading basis
- Committing to work with the FCA to examine the boundary between regulated financial advice and financial guidance
- Publishing a response to the consultation on expanding the Investment Manager Exemption to include cryptoassets
- Laying regulations in early 2023 to remove well-designed performance fees from the pensions regulatory charge cap
- Consulting on bringing Environmental, Social, and Governance ratings providers into the regulatory perimeter
- Consulting on a UK retail central bank digital currency alongside the Bank of England in the coming weeks
- Implementing a Financial Market Infrastructure Sandbox in 2023
- Consulting on Consumer Credit Act Reform
- Consulting on new guidance on Local Government Pension Scheme asset pooling
- Reforming the Ring-Fencing Regime for Banks
- Issuing new remit letters for the PRA and FCA
- Announcing changes to the Building Societies Act 1986
- Committing to establish the independent Investment Research Review
- Commencing a review into reforming the Senior Managers & Certification Regime
- Establishing an Accelerated Settlement Taskforce
- Bringing forward secondary legislation to implement Wholesale Markets Review reforms
- Committing to having a regime for a UK consolidated tape in place by 2024
- Increasing the pace of consolidation in Defined Contribution pension schemes
- From April 2023, improving the tax rules for Real Estate Investment Trusts
- Delivering the outcomes of the Secondary Capital Raising Review
- Publishing an updated Green Finance Strategy in early 2023

© Allen & Overy LLP | 2023 – The year of divergence?



Notes

Empty rectangular box for notes.



7

HMT Implementation Tranches

Tranche 1

- The Wholesale Markets Review (WMR) - MiFID
- The Listing Review - Prospectus Regulation
- The Securitisation Review - Securitisation Regulation
- The Solvency II Review - UK legislation and regulation implementing the Solvency II Directive

Tranche 2

- Remaining aspects of the WMR
- Remaining aspects of the Solvency II Review
- The Packaged Retail and Insurance-Based Investment Products (PRIIPS) Regulation
- The Short Selling Regulation
- The Taxonomy Regulation
- The Money Market Funds Regulation
- Payment Services Directive and the E-Money Directive
- Insurance Mediation and Distribution Directives
- The Capital Requirements Regulation and Directive
- Long-Term Investment Funds Regulation
- The consumer information rules in the Payment Accounts Regulations 2015

Tranche 3

- ???

© Allen & Overy LLP | 2023 – The year of divergence?

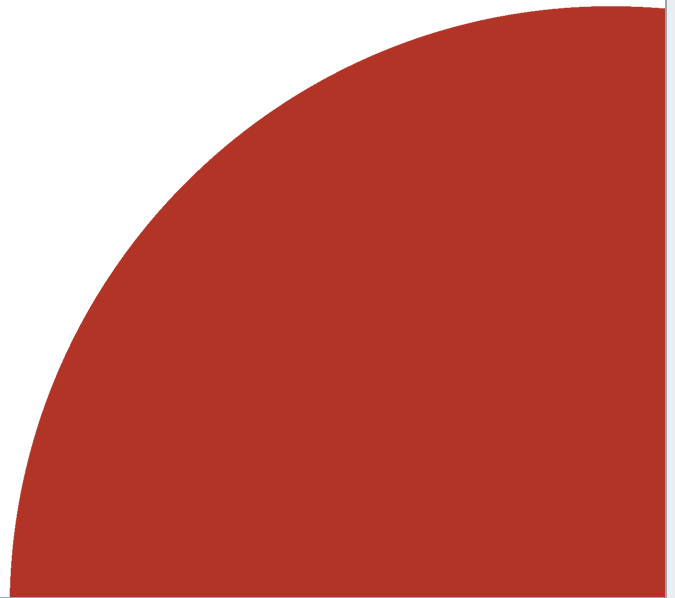


Notes



8

Bank Regulation – Ring Fencing



Notes



9

Ring-fencing Review – where are we and what to expect?



- 1 Government response to the Independent Review on Ring-fencing and Proprietary Trading published as part of the Edinburgh Reforms package on 9 December 2022
- 2 Two consultations expected:
 - a) Q1 2023: a call for evidence on alignment of the ring-fencing and resolution regimes; and
 - b) Mid-2023: a consultation on proposed 'near-term' reforms to the ring-fencing regime.
- 3 Government intends to bring-forward secondary legislation on the 'near-term' reforms later in 2023.
- 4 Longer-term future of the ring-fencing regime to be considered in light of the outcome of the call for evidence, with decisions to be taken later this Parliament.

© Allen & Overy LLP | 2023 – The year of divergence?

8

Notes



10

Ring-fencing Review – proposed ‘near-term’ changes



Increased threshold to £35bn

- Presently £25bn
- Government flagged an overall increase in GBP deposits since 2015
- Is it a big enough increase to make a meaningful difference?



Disapplication of the regime where the Group has no major investment banking operations

- Intended to support domestic competition
- What constitutes ‘major’ for this purpose?



Review the ‘relevant financial institution’ definition

- Overly complex, presenting a substantial compliance burden
- Presents a barrier to certain small businesses (e.g. financial advisors) obtaining banking services



Remove geographical restrictions

- Allow RFBs to operate subsidiaries and services clients outside of the EEA
- Query whether the deposit threshold should continue to reference EEA deposits?



Address various technical amendments to remove unintended consequences

- Government was not specific as to which technical amendments it will take forward
- Skeoch report refers to:
 - Transitional periods for M&A transactions
 - Permitting NRFBs to service foreign central banks
 - Clarifying the status of trustees and insolvency practitioners
 - Removing the notice of declaration requirement for NRFB customers



Review permitted activities

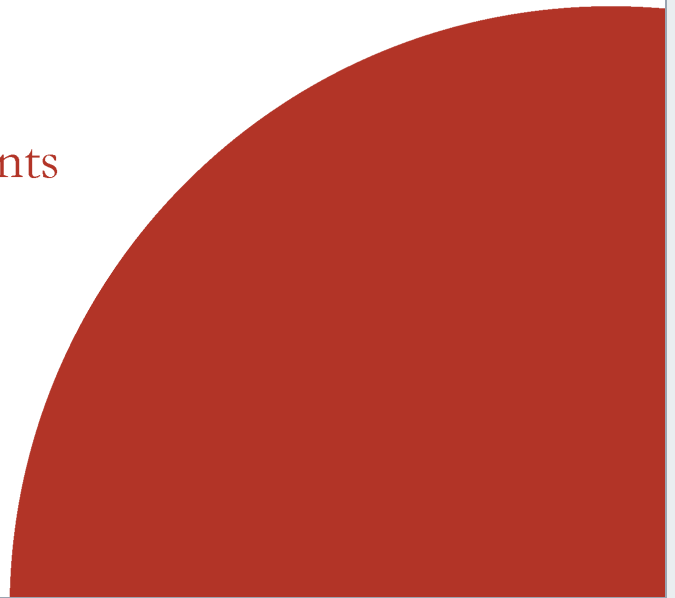
- For example: permitting hedging of mortality risk, permitting inflation swaps for project finance purposes, allowing greater flexibility in the debt for equity swaps exemption, and allowing strategic stakes in technology companies

Notes



11

Bank Regulation – Banking services for approved payments (APIs) and e-money (EMIs) institutions



Notes

Empty box for notes



12

Depositor protection and safeguarding accounts

- 01 English Court of Appeal determined in *Re Ipagoo* that the safeguarding regimes provided for in the E-Money Regulations 2011 do not give rise to a statutory trust. The decision effectively calls into question the equivalent regime in the Payment Services Regulations 2017.
- 02 Following *Re Ipagoo*, it is questionable as to whether the payment service user customers of APIs and EMIs have an 'absolute entitlement' to safeguarded funds and hence whether deposits of such funds with UK credit institutions are to be treated as beneficiary accounts.
- 03 Beneficiary accounts are eligible for FSCS protection in the event of failure of the account bank. Such protection is made available to the beneficiaries themselves, where they are eligible.
- 04 PRA CP 9/22, dated 23 September 2022, seeks to clarify that deposits of safeguarded funds should be treated by the account bank as beneficiary accounts, such that eligible payment service users will be protected should the account bank fail.
- 05 The CP closed on 16 December. Timing for a Policy Statement is unknown, but H1 2023 would seem likely.

© Allen & Overy LLP | 2023 – The year of divergence?

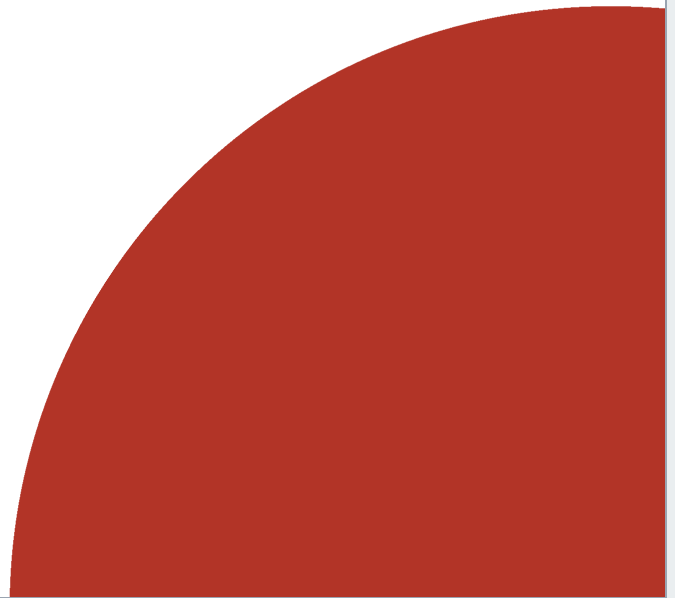


Notes



13

Financial markets –
Outsourcing, operational
resilience and critical third
parties



Notes

Empty box for notes.

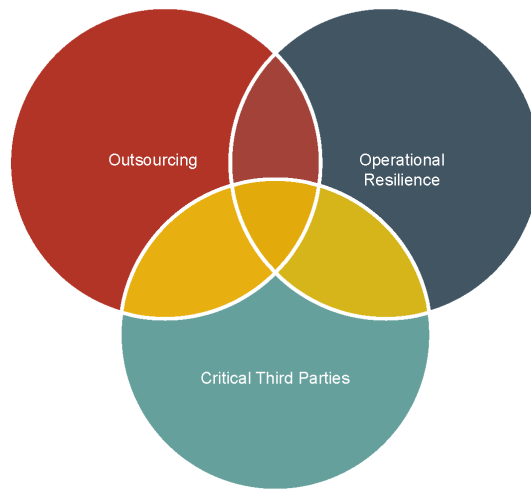


14

Operational Resilience, Outsourcing and Critical Third Parties

PRA expectations set out in SS2/21:

- As contracts renew, firms should now be ensuring they meet the revised expectations
- Expectations now extended to non-outsourcing third party agreements



Regulatory focus for 2023:

- Use of the operational resilience framework and the testing that firms are conducting to assess whether they can remain within impact tolerances

Proposed new regime for CTPs oversight provided for in the FSMB.

Joint discussion paper (PRA DP 3/22 / FCA DP 33/2):

- framework for the regulators to recommend CTPs for designation;
- minimum resilience standards for CTPs; and
- tools for testing resilience of services provided by CTPs to firms.

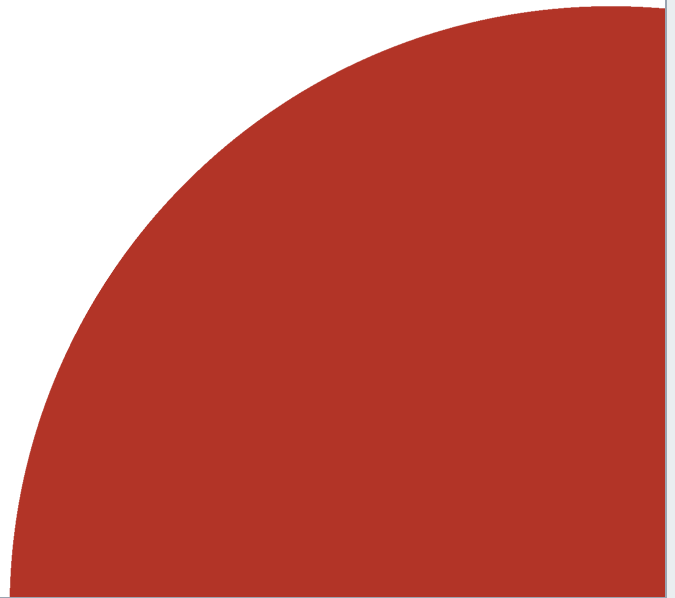
Impact on firms reliant on CTPs?

Notes



15

Financial markets –
Consumer duty



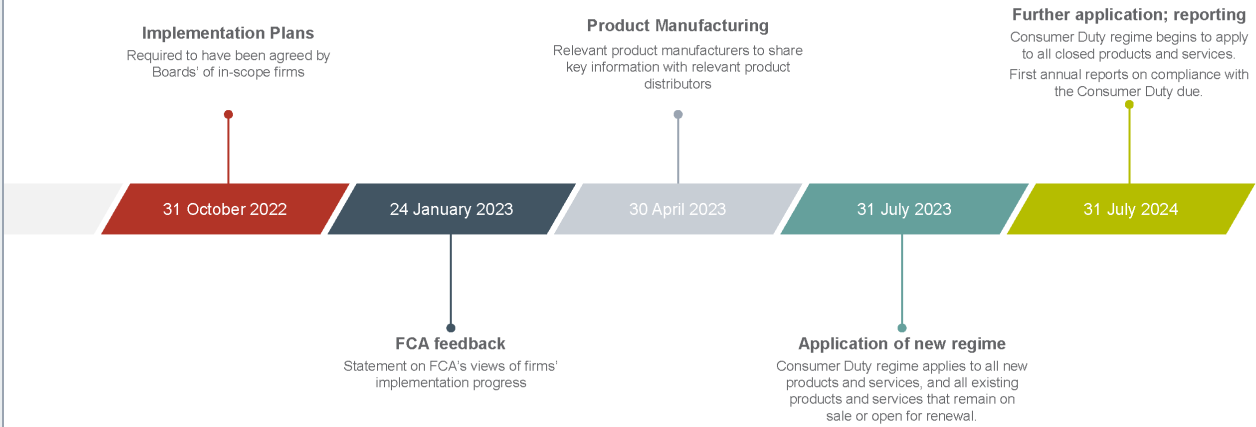
Notes

A large, empty rectangular box with a thin black border, intended for taking notes.



16

FCA Consumer Duty – key milestones



Notes



17

The Consumer Duty and Consumer Principle

Consumer Principle

A firm must act to deliver good outcomes for retail customers

The **Consumer Principle** is developed by the other elements of the Consumer Duty and reflects the overall standards of behaviour required from firms.

Cross-cutting rules

Firms must

1. Act in good faith toward retail customers
2. Avoid foreseeable harm to retail customers
3. Enable and support retail customers to pursue their financial objectives

The **Cross-cutting rules** develop the overarching expectations that apply across all areas of firm conduct.

Four Outcomes

1. Products and services
2. Price and value
3. Consumer understanding
4. Consumer support

The **Four outcomes** give more detailed expectations for the key elements of the firm-consumer relationship.

- The Consumer Duty is underpinned by the concept of **reasonableness**
- The Consumer Duty requires firms to focus on the needs of customers, including those with **characteristics of vulnerability**
- The Consumer Duty does not remove **consumers' responsibility** for their choices and decisions

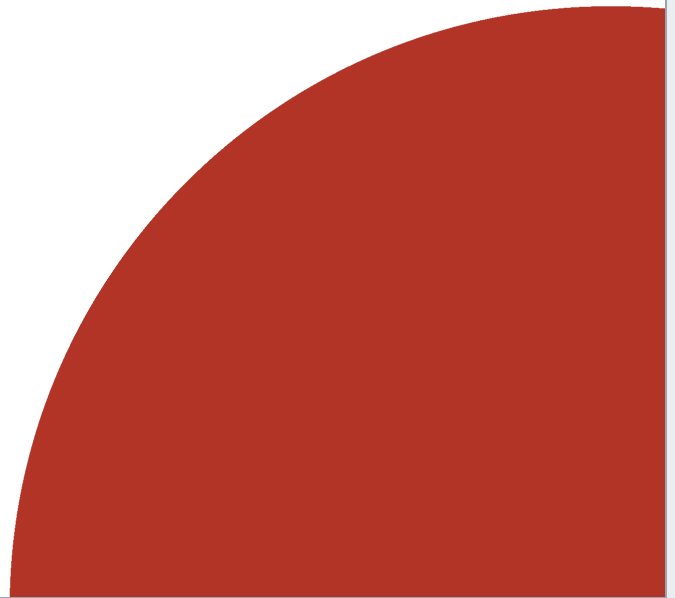
© Allen & Overy LLP | 2023 – The year of divergence?

Notes



18

Financial markets – UK and EU MiFID



Notes



19

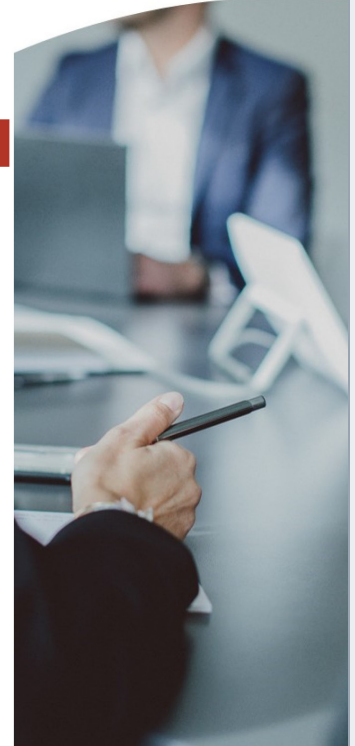
UK Wholesale Markets Review



Implementation of the UK Wholesale Markets Review

- The Wholesale Markets Review was established to improve the UK's regulation of secondary trading of financial instruments in the UK following Brexit, by making these rules better calibrated for UK markets.
- The FSM Bill takes forward the outcomes of the Wholesale Markets Review, with the aim of removing restrictions on trading in wholesale markets and to promote investments.
- The FSM Bill will make amendments to UK MiFIR, including:
 - i. replacing the pre-trade transparency waiver regime;
 - ii. stripping away the double volume cap;
 - iii. removing the share trading obligation;
 - iv. aligning the derivatives trading obligation (DTO) with the clearing obligation under UK EMIR;
 - v. exempting post-trade risk reduction services from the DTO;
 - vi. giving the FCA a permanent power to modify or suspend the DTO;
 - vii. simplifying the transparency regime for fixed income and derivatives;
 - viii. simplifying the position limits regime;
 - ix. changing the definition of a systematic internaliser; and
 - x. removing restrictions on midpoint crossing for trades.

© Allen & Overy LLP | 2023 – The year of divergence?



Notes



20

Financial markets – Edinburgh Reforms



Consolidated
Tape

Updated regulatory regime

- The Government plans to work with the FCA to have a regulatory regime in place by 2024 to support a consolidated tape for market data.
- This will bring together market data from multiple platforms into one continuous feed.
- A consolidated tape could enhance market transparency, efficiency, and competition, lower costs for firms and investors, and make UK markets more attractive and competitive.
- This reform comes off the back of MiFID II, which proposed the creation of a consolidated tape to provide consolidated data on prices and volume of traded securities in the EU, thereby improving overall price transparency across trading venues.



Investment
Research

Independent review

- The Government plans to launch an independent review into investment research and its contribution to the effectiveness of UK capital markets.
- This forms part of the Government's wider commitment to enhance the UK's ability to attract listings.
- The review will look at the effects of the EU's MiFID unbundling rules.
 - Under MiFID II, asset managers were no longer allowed to "bundle" payment for research with the trading commissions charged to their funds.
 - Most opted to pay directly out of their own profits. This led to a big fall in spending on third-party research.

© Allen & Overy LLP | 2023 – The year of divergence?

Notes



21

Financial markets – UK trading venue perimeter

FCA consultation paper

- On 22 September 2022, the FCA published a consultation paper on proposed guidance on the regulatory perimeter for multilateral trading facilities and on possible future changes to smaller trading venues' regulatory obligations.
- Many respondents to the Wholesale Markets Review 2021 felt the trading venue framework did not make sufficient distinction between bilateral and multilateral trading.

New guidance

- As part of the new guidance, the FCA intends to clarify which types of activities will constitute a multilateral system that will require authorisation as a trading venue.
- The FCA also plans to publish Q&As in the Perimeter Guidance manual (PERG) on the application of the general guidance to specific types of arrangements covering voice brokers, internal matching systems, primary market platforms, bulletin boards and blocking trades onto regulated trading venues.
- In particular, it has stated that that Q&As 7, 10, 11 and 12 in Section 5 of the ESMA market structures Q&As should not form part of its supervisory expectations once its final guidance has been published.

Next steps

- The FCA's consultation on the trading venue perimeter guidance closed on 11 November 2022.
- The draft guidance, and a policy statement, will be published in the second quarter of 2023.

© Allen & Overy LLP | 2023 – The year of divergence?

Notes



22

EU to publish final report on review of MiFID II product governance guidelines



MiFID II Product Governance Guidelines

- ESMA published a consultation paper on the review of the 2017 Guidelines on MiFID II product governance requirements.
- ESMA is proposing to update the guidelines following a number of recent regulatory and supervisory developments, including the findings of ESMA's 2021 Common Supervisory Action (CSA) on product governance.
- The results of the CSA showed that while firms do define a target market, the definition of a target market is approached as a tick box exercise and is not completed with sufficiently clearly defined terms.
- Main proposals in the draft guidelines relate to:

Firms identifying sustainability-related objectives as part of target market assessment

Identifying a target market for a cluster of products

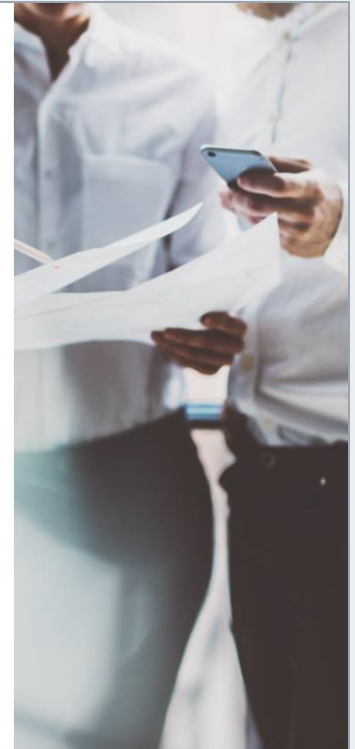
Compatible distribution strategy regarding complex products

Periodic review of products, including applying proportionality principle



- The consultation closed on 7 October 2022 and ESMA expects to publish the final report in the first quarter of 2023.

© Allen & Overy LLP | 2023 – The year of divergence?



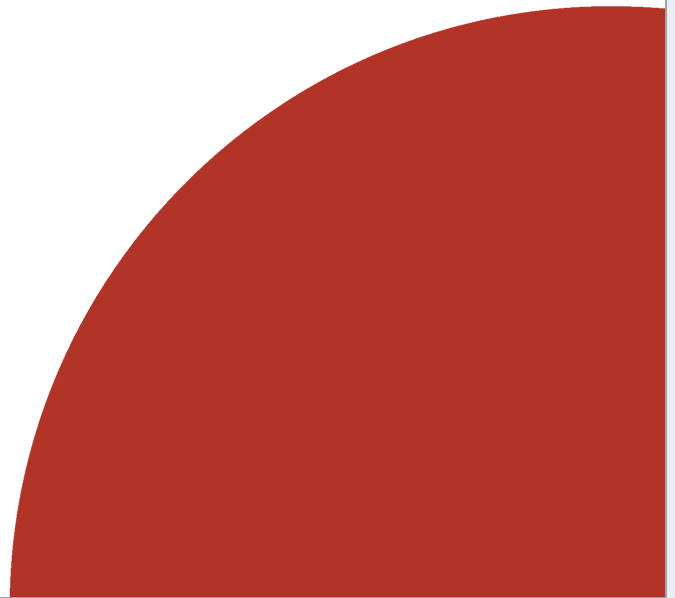
Notes

Empty box for notes



23

Financial markets –
Payment for order flow



Notes

Empty box for notes.



24

Payment For Order Flow – views from around the world

The European Union

- Under MiFID II, the European Commission had proposed a ban on such payments.
- However, in December 2022, EU member states rejected the ban at an EU-wide level, ensuring that member states retain discretion to allow the practice in their own territory.

The United Kingdom

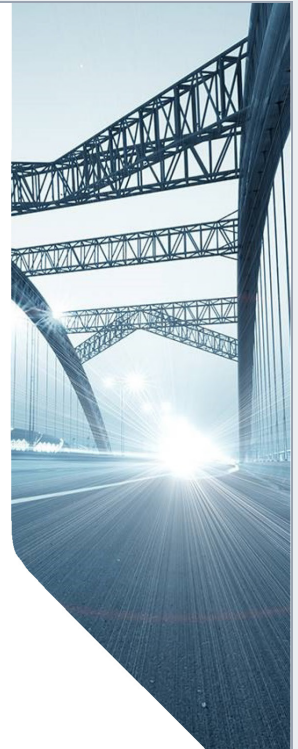
- In comparison, PFOF is effectively banned in the UK.
- The FCA has stated that:

"PFOF in relation to retail and professional client business is incompatible with our rules on conflicts of interest and inducements, and risks compromising firms' compliance with best execution."

The United States of America

- In December 2022, the U.S. SEC also stopped short of a ban on PFOF and proposed more transparency instead.

© Allen & Overy LLP | 2023 – The year of divergence?

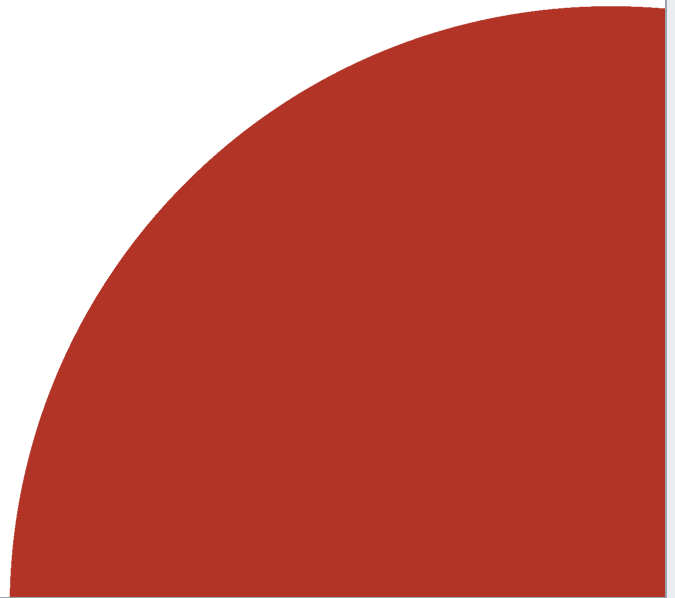


Notes



25

Financial markets –
CCP Recovery and
Resolution



Notes

Empty box for notes.



26

Recovery and Resolution of CCPs (UK)



UK Financial Services and Markets (FSM) Bill

The Bill furthers the move to a model of regulation established by the FSMA, where the setting of regulatory and technical standards is delegated to expert regulators.

The Bill establishes a new framework for the Bank of England's regulation of Financial Market Infrastructure and in particular central counterparties (CCPs) and central securities depositories (CSDs). In particular:

- The Bill grants the Bank of England greater rule-making powers over CCPs and CSDs.
- The Bill expands the Bank's objective to expressly capture two areas of importance to the Bank's function as regulator of CCPs and CSDs.
- It will also expand the **recovery and resolution regime for CCPs** to build on the existing regime with eight stabilisation options achieved through the exercise of three stabilisation powers. The Bank's powers will include, amongst others:
 - temporarily restricting or prohibiting any remuneration of equity for CCP shareholders or variable remuneration for a CCP's senior staff;
 - suspending clearing members' early termination rights that arises as a result of the CCP being placed in resolution;
 - suspending rights to enforce security interests; and
 - taking control of the CCP.

A number of the Bank's stabilisation options could have direct consequences for clearing members as they will require contractual pass-through of certain rights.

© Allen & Overy LLP | 2023 – The year of divergence?

Notes



27

Recovery and Resolution of CCPs (EU)



CCP Recovery and Resolution regime in the EU

- The CCP Recovery and Resolution Regulation (CCPRRR) entered into force on 11 February 2021. With certain limited exceptions, the new framework established by the Regulation applied from 12 August 2022.
- In May 2022, ESMA published six final reports on RTS and guidelines on the CCPs resolution regime under CCPRRR.
- In November 2022, the EU Commission adopted three RTS on CCP resolution framework.
- In the same month, ESMA published two Final Reports on the CCPs resolution regime under the CCPRRR.
 - The guidelines on the assessment of resolvability set out common aspects to be assessed by resolution authorities when evaluating the extent to which a CCP may be resolved without relying on certain types of external financial support, including public financial support or central bank assistance.
 - The guidelines on the cooperation arrangements specify provisions to be included in cooperation arrangements that shall be entered into between authorities of Member States and relevant third-country authorities.
- The Final Reports take into account responses received to the two Public Consultations published in May 2022. ESMA also sought the advice of the Securities and Markets Stakeholder Group.
- The two guidelines will apply following their publication by ESMA on its website in the official languages of the European Union.

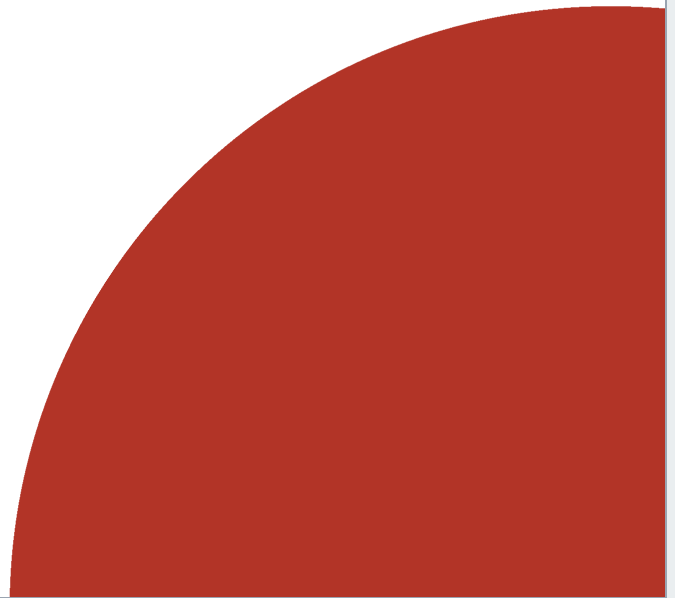
© Allen & Overy LLP | 2023 – The year of divergence?

Notes



28

Regulation of digital
assets



Notes

A large, empty rectangular box with a thin black border, intended for taking notes. It occupies the bottom half of the slide.



29

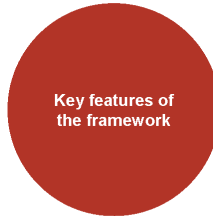
Basel Committee on Banking Supervision – prudential standard on cryptoasset exposure

Overview

- Following a consultation in June 2022, the Basel Committee on Banking Supervision (BCBS) finalised its prudential standard on cryptoasset exposures in December 2022.
- Proposed framework focuses on the emergence of cryptoassets as a new asset class that presents unique risks to banks.
- Cryptoassets are split into groups:
 1. **Group 1:** Tokenised traditional assets and cryptoassets with effective stabilisation mechanisms; and
 2. **Group 2:** Cryptoassets not meeting the conditions for Group 1.

Criteria

- Some of the criteria for Group 1 cryptoassets include:
 - infrastructure risk – which is to be taken into account based on any observed weaknesses in the infrastructure on which the cryptoassets are based; and
 - stablecoins must be issued by supervised and regulated entities that have robust redemption rights and governance.



Changes following industry feedback

- The proposed capital add-on for distributed ledger technology infrastructure risks will no longer apply by default;
- Changes to the quantitative test that stablecoins must meet in order to qualify for Group 1. No longer need to assess the risk of the stablecoin's market value falling relative to the asset by reference to which it is stabilised.
 - However, the stablecoin must be issued by a prudentially regulated entity.

Next steps

- The finalised standard is to be implemented by **1 January 2025** and could well be subject to further refinements and clarifications before.
- The BCBS plans to monitor implementation and issue additional refinements over time. It has flagged that it will, in particular, be considering, amongst other things:
 - the introduction of new quantitative tests to distinguish stablecoins suitable for Group 1 qualification; and
 - whether deployments on permissionless blockchains should be capable of qualifying for Group 1 treatment.

© Allen & Overy LLP | 2023 – The year of divergence?

Notes



30

UK Jurisdiction Taskforce consultation on digital securities

UKJT consultation: 'The Issuance and Transfer of Digital Securities Under English Private Law'



Public consultation on digital securities

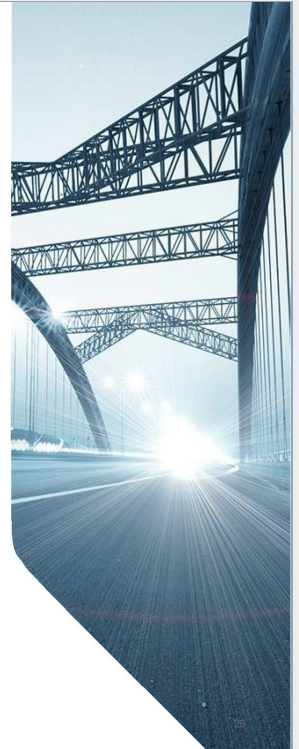
- This consultation is part of efforts to establish English law as the preferred legal basis for managing the issuance and transfer of digital securities on blockchain and distributed ledger technology systems.
- The focus of the consultation was on whether English law satisfactorily caters for:
 - Equity or debt securities issued or transferred in capital markets; and
 - Minted or listed as tokenised blockchain-based assets.
- Other complementary English law reform:
 - FMI Sandbox in FSM Bill
 - Law Commission review of personal property rights and digital assets
- EU law Pilot Regime for digital securities



Next steps

- The consultation closed on 30 November 2022.
- A sub-committee of the UKJT are currently preparing the Legal Statement on Digital Securities for publication.

© Allen & Overy LLP | 2023 – The year of divergence?



Notes



31

Contacts



Damian Carolan
 Partner, London
 Financial Services Regulatory
 Tel +44 20 3088 2495
 Mob +44 7500 841 530
 damian.carolan@allenoverly.com



Nick Bradbury
 Partner, London
 Financial Services Regulatory
 Tel +44 20 3088 3279
 Mob +44 7971 249 680
 nick.bradbury@allenoverly.com



Kate Sumpter
 Partner, London
 Financial Services Regulatory
 Tel +44 20 3088 2054
 Mob +44 7825 595 837
 kate.sumpter@allenoverly.com



Bob Penn
 Partner, London
 Financial Services Regulatory
 Tel +44 20 3088 2582
 Mob +44 7818 521 254
 bob.penn@allenoverly.com

© Allen & Overy LLP | 2023 – The year of divergence?

Notes



32

Questions?

Allen & Overy is an international legal practice with approximately 5,600 people, including some 580 partners, working in more than 40 offices worldwide. A current list of Allen & Overy offices is available at allenoverly.com/global/global_coverage. Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. Allen & Overy LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen & Overy (Holdings) Limited is a limited company registered in England and Wales with registered number 07462870. Allen & Overy LLP and Allen & Overy (Holdings) Limited are authorised and regulated by the Solicitors Regulation Authority of England and Wales. The term partner is used to refer to a member of Allen & Overy LLP or a director of Allen & Overy (Holdings) Limited or, in either case, an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP's affiliated undertakings. A list of the members of Allen & Overy LLP and of the non-members who are designated as partners, and a list of the directors of Allen & Overy (Holdings) Limited, is open to inspection at our registered office at One Bishops Square, London E1 6AD.

© Allen & Overy LLP 2022. These are presentation slides only. This document is for general information purposes only and is not intended to provide legal or other professional advice.

© Allen & Overy LLP | 2023 – The year of divergence?
0010023-0027091 UKCO1-2010649319-1

Notes



Notes



Notes



Notes



Notes

For more information, please contact:

London

Allen & Overy LLP
One Bishops Square
London
E1 6AD
United Kingdom

Tel +44 20 3088 0000
Fax +44 20 3088 0088

Global presence

Allen & Overy is an international legal practice with approximately 5,600 people, including some 580 partners, working in more than 40 offices worldwide. A current list of Allen & Overy offices is available at [allenoverly.com/global/global_coverage](https://www.allenoverly.com/global/global_coverage).

Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. Allen & Overy LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen & Overy (Holdings) Limited is a limited company registered in England and Wales with registered number 07462870. Allen & Overy LLP and Allen & Overy (Holdings) Limited are authorised and regulated by the Solicitors Regulation Authority of England and Wales (SRA number 401323).

The term partner is used to refer to a member of Allen & Overy LLP or a director of Allen & Overy (Holdings) Limited or, in either case, an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP's affiliated undertakings. A list of the members of Allen & Overy LLP and of the non-members who are designated as partners, and a list of the directors of Allen & Overy (Holdings) Limited, is open to inspection at our registered office at One Bishops Square, London E1 6AD.