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FSR Momentum Monitor

Global Analysis Edition 2: March 2023

Global Analysis

A year on from our first snapshot, what changes are we seeing in the FSR Momentum Monitor? As a recap in terms of regulatory developments, we label jurisdictions from red (that is having the potential to seriously impact the financial sector) to amber (potential to impact) through to green (not expected to significantly impact). Broadly, the momentum we saw last year has been maintained. Of our themes, **fintech, AI and data** remains out in front with two-thirds of jurisdictions being red, requiring investment from the financial sector in regulatory change. Again, **environmental, social and governance (ESG)** issues mostly remain either red or amber, reflecting the increasing momentum toward meeting carbon net-zero targets. Similarly, **operational risk and resilience** continues to see significant impacts. In comparison, regulatory developments in **governance and culture** together with **financial crime** show not only greater variance across jurisdictions, but higher proportions of green.

In large part, the similarity in what we see across jurisdictions reflects the global nature of markets and the interconnectedness of the world's economies, where international standard-setting bodies are becoming ever more important in raising standards and sharing best practices. They are numerous and include the Financial Action Task Force (FATF), the Bank for International Settlements, the International Organization of Securities Commissions, the International Association of Insurance Supervisors and the Financial Stability Board.

To take a closer look at what's happening, the 27 member states of the EU are generally in lockstep, as most financial services legislation is harmonized across the union, although implementation and supervision can vary significantly. On **fintech, AI and data**, the Markets in Crypto Assets Regulation (MiCA) will establish harmonized rules for crypto assets and related activities and services, which is timely as it closely follows the dramatic failings in crypto markets in 2022. The UK (and potentially the US) is also legislating on crypto with more measures likely to come, especially around governance, transparency and the separation of client assets. In Asia on the other hand, Singapore, a hub for fintech, is an outlier not expecting a significant impact, rather seeing an evolving regulatory landscape over the next year.

As for **ESG**, the EU continues to be in the vanguard of regulation with businesses now preparing for the implementation of the Corporate Sustainability Reporting Directive with further proposed legislation on corporate due diligence being debated by its co-legislators. The Corporate Sustainability Reporting Directive should help financial institutions report on the businesses that they finance, while the further proposed legislation promises to increase the compliance burden. In the US, climate change is a key priority of the Biden administration, but there is currently no coherent regulatory framework for ESG. That said, the US securities regulator has recently proposed rules that, if implemented, could significantly impact public companies, investment advisers and investment companies. Elsewhere, in Latin America, Brazil is amber, but all businesses may see faster change with the new administration of Lula da Silva. In Japan, which is red, the Financial Services Agency is expected to amend disclosure regulations under the Financial Instruments Exchange Act.

The rise in importance of **operational risk and resilience** is linked to digitalization creating new dependencies and vulnerabilities. In the UK, financial institutions should be undertaking mapping and testing exercises under new rules and a forthcoming new critical third-parties regime — thinking especially of cloud-based services — that is to be finalized in 2023. Meanwhile, in the EU, the Regulation on Digital Operational Resilience for the Financial Sector (DORA), which upgrades information communication technology (ICT) risk requirements, will require financial institutions in each member state to review their compliance, including in Germany where the regulator, BaFin, has only recently updated its circular "Minimum Requirements on Risk Management" or MaRisk. The outlook is similar in Asia where, for example, Hong Kong SAR, China and Japan all expect significant impacts — except for Thailand which, having issued rules last year on cyber resilience, has no plans for further initiatives in 2023 and therefore goes from amber to green. Finally, in the US, there is potential for serious impact with significant new rules on cybersecurity risk management proposed last year for investment advisers, investment companies, public companies and broker-dealers, and enforcement being ramped up in this area.

As for **governance and culture**, the US is amber, with its federal securities regulator using its rule-making, examination and enforcement authority to encourage, alongside the "tone from the top," a "bottom-up" approach to align the activities of financial institutions and their personnel with clients' best interests. Other jurisdictions such as the UK and Germany in the EU and Japan have similar ratings, and enhanced consumer protection is also an issue here. In contrast, a number of Asian jurisdictions such as Malaysia and Singapore expect a greater potential impact to the sector, being red.

Our final theme, **financial crime**, continues to remain front and center of regulators' concerns, in part fueled by worries over the exploitation of crypto to launder the proceeds of crime, exemplified by recent action against crypto exchanges together with the knock-on effects of the crisis in Ukraine, such as sanctions contravention. Alongside this, we continue to see financial institutions subject to enforcement for systems and controls failures over anti-money laundering and terrorist financing. That said, certain jurisdictions such as key money centers are by their nature more exposed and, of course, the resolve of the authorities to compliance and enforcement varies.

One Global Financial Services Regulatory Team

The financial services industry is undergoing sweeping changes driven by regulatory developments, rapidly advancing technology and continued consolidation in the sector. The far-reaching impact of financial reforms, intricacies in their implementation, and conflicting regulations in different jurisdictions can expose businesses to unforeseen risk.

Our global team provides financial institutions guidance on navigating through regulatory complexities in both established and emerging markets. Our lawyers have long-standing relationships with financial services regulators, and are experienced in helping financial institutions deliver financial services efficiently and cost-effectively in a compliant manner.

From set-up and structuring, new business and product offerings, operational support as well as representation in non-contentious and contentious matters, we apply our industry knowledge and regulatory expertise to deliver result-oriented and compliant solutions for all types of financial institutions including banks, insurance companies, payments companies, securities firms and asset managers.

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