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Outside the US, drive to implement rules is relentless

Chapter 3

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Outside the US, drive to implement rules is relentless

Regulators around the globe continue to focus on governance, culture and conduct.

Within **Europe**, MiFID II[1] is king, but has thrown up a number of implementation issues and questions about fragmentation of the single market.

Elsewhere, there is little standardization about how corporate governance is defined and implemented, with each jurisdiction focusing on areas of concern to local investors and politicians. There are a number of emerging themes, though, which chime with developments in Europe, such as increasing focus on named individuals and clarity of roles, and on risk and compliance functions.

Product governance and disclosures remain firmly in regulators' sights, as do fund distributors in general and financial advisers in particular. And the protection of client data has become a major priority.

[1] Markets in Financial Instruments Directive, revised

Governance now a global issue

In September 2017, the EBA and ESMA published joint guidelines for assessing the suitability of members of management bodies and key function holders. The aim was to harmonize and improve suitability assessments and to ensure sound governance arrangements in investment firms, in line with CRD IV[2] and MiFID II.

In **Hong Kong** in 2017, the SFC[3] issued changes to the Fund Manager Code of Conduct (FMCC), including point-of-sale transparency, effective from 17 November 2018.

The driving force behind the changes to the FMCC is the perceived need for Hong Kong to comply with broader international initiatives, such as those of IOSCO.

> "thematic review of best execution found inadequacies or deficiencies"

The SFC also issued on 30 January 2018 a circular reminding brokers and asset managers of their best execution obligations. Its thematic review of best execution found inadequacies or deficiencies in a number of firms in Hong Kong in relation to governance and supervision, staff responsibilities, controls and monitoring, best execution factors, and relations with affiliates, connected persons and third parties. It also identified good practices that go beyond the SFC's expected standards.

Expanded scope of Hong Kong code of conduct

The scope of the revised FMCC is considerably broader than that of the FMCC currently in force. The revised FMCC applies not only to licensed and registered persons whose businesses involve the management of collective investment schemes (whether authorized or not), but also to intermediaries that manage discretionary accounts. The FMCC revisions relate specifically to securities lending and repurchase agreements (repos), custody, liquidity risk management and disclosure of leverage. The revised FMCC will affect fund managers of offshore and onshore private funds.

Firms in **Singapore** are expected to be subject to enhanced best execution rules, following a consultation by MAS in November 2017.

"Best interest" has been a focus of the **Canadian** Securities Administrators (the CSA). In 2016, they explored an explicit best interest standard for dealers and advisers. Now, however, they have softened their approach and are considering changes to refine or eliminate some aspects of the original proposals.

In the **UAE**, culture and conduct have been looked at recently in more detail by the regulators, although no additional governance rules have yet been made as a direct result. One of the challenges faced in the UAE is that the vast majority of wealth and asset manager workers are ex-pats, which creates different cultural challenges than in many other jurisdictions. The DFSA[5] has recently looked in particular at compensation and corporate governance.

The new FinSA/FinIA[6] regulations in **Switzerland** introduce supervisory rules of conduct for asset managers and investment advisers. FinSA sets out duties relating to organization and governance, suitability and appropriateness when providing investment advice or portfolio management, information, documentation and accountability, as well as transparency and diligence for client orders. Such conduct rules already existed in Switzerland but had their legal basis only in civil law. FinSA will introduce the rules into supervisory law, which allows FINMA[7] to enforce them.

The **Indian** regulator is proposing a different approach. In January 2018, it issued a consultation proposing amendments to the investment adviser regulation that would prohibit an entity from both advising clients on investments and selling investments to them. This approach is in response to concerns about conflicts of interest.

In **Australia**, governance rules have come thick and fast following a series of scandals at banks and their captive asset managers, which led to the Future of Financial Advice review a few years ago, the ramifications of which are ongoing.

Recent reports issued by ASIC[8] include a deep dive into the quality of financial advice and the adequacy of the internal audit functions of managers. The recently-created Financial Adviser Standards and Ethics Authority has considerable powers, including setting qualifications and exams for practitioners.

[2] Capital Requirements Directive, revised
[3] Securities and Futures Commission
[4] Monetary Authority of Singapore
[5] Dubai Financial Services Authority
[6] Financial Services Act and Financial Institutions Act
[7] Financial Market Supervisory Authority
[8] Australian Securities and Investments Commission

The introduction of Professional Standard of Financial Advisers rules establishes an education and professional standards framework for the financial planning profession. New financial planners from 1 January 2019 will require a degree, need to undertake a year of professional work and have to pass an exam. All financial planners will be required to undertake continuing professional development (CPD), be subject to a code of ethics (from 1 January 2020) and pass an exam (by 1 January 2021).

Into the rush of reports and regulations in Australia, a Royal Commission was added in February 2018. The first hearings of the Royal Commission took place in March 2018 in Melbourne, and wealth managers and asset managers were in scope, but much of the testimony related to banks. Unusually, the Royal Commission also called for submissions by regulators – with both APRA[9] and ASIC invited to describe their roles during various misconduct events.

In response to the testimony, in April 2018 the government announced reforms significantly to strengthen criminal and civil penalties for corporate misconduct, and further boosted powers such as banning powers of ASIC.

Then there is the proposed Banking Executive Accountability Regime (BEAR), designed to make senior executives in banks more accountable for the actions and outcomes of their organization. It impacts mainly large and bank-owned asset and wealth managers, obliging them to undertake more compliance obligations, defining of roles and responsibilities, and remuneration planning, than currently exists. BEAR comes into effect on 1 July 2018.

BEAR clearly borrows from the **UK**'s Senior Managers and Certification Regime (SMCR), under which UK asset managers with GBP 50 billion or more in assets under management – estimated to be around 100 firms – will fall within the so-called enhanced regime, meaning they have to have a senior manager responsible for every area, activity and management function.

In fact, UK asset managers will not have to comply with SMCR until mid-2019 at the earliest, the FCA[10] announced in December 2017. It was originally slated to take effect in 2018. The industry awaits confirmation of the implementation date, but notes that compliance with the new "value for money" governance rules (see Chapter 4) is due by 30 September 2019.

The FCA said it will take action against the executive responsible in cases where there is a contravention of a relevant requirement by a firm, but adds that the burden of proof will be on the regulator to show that the senior manager did not take reasonable steps. In addition, the FCA has proposed that the boards of fund management companies should include independent directors, to address. the "under-reporting" of issues such as cyberattacks (see Chapter 6).

Japan's seven principles

Japan has put in place seven "Principles for Customer-oriented business Conduct" for financial institutions, including asset managers:

1. Formulation and publication of policy on customer oriented asset management and intermediation
2. Pursuit of the best interest of customers
3. Appropriate management of conflicts of interests
4. Clarification of commission fees
5. Ease of understanding on important information
6. Provision of services suitable for customers
7. Appropriate motivation framework for employees

In 2017, the **French** AMF[11], in its annual report on corporate governance, executive compensation, internal control and risk management in listed companies, put forward recommendations for companies and called on the professional associations to amend their code. It also discussed the requirements introduced by the Sapin II Act, which goes beyond the requirements of the EU Shareholder Rights Directive II and requires two binding votes: one, *ex ante*, on the management's remuneration policy (effective from 2017) and a second, *ex post*, on the actual amount of fixed and variable remunerations granted to management for a given year (effective in 2018 in relation to 2017 compensation).

In **Ireland**, senior executives at fund firms could face conduct rules modelled on the UK's regime. The CBI[12] included within its response to the recent Law Reform Commission's Paper on Regulatory Enforcement and Corporate Offences a suggestion that measures should be adopted to strengthen the accountability of senior personnel in regulated financial service institutions. It also suggested consideration of the introduction of a criminal offence for "egregious recklessness" by the chiefs of financial firms that fail.

Meanwhile, new rules and guidance seeking to ensure the effectiveness of fund management companies take full effect from July 2018. This new framework sets out the regulatory expectation in relation to delegate

[9] Australian Prudential Regulatory Authority
[10] Financial Conduct Authority
[11] Autorité des Marchés Financiers
[12] Central Bank of Ireland

oversight, organisational effectiveness, directors' time commitments, managerial functions, and various operational and procedural issues.

In **Luxembourg**, the CSSF[13] is also focusing on the accountability of senior management and boards. It has taken a very active approach through detailed onsite inspections for all regulated entities. It has focused on the quality of the internal controls framework and the oversight and monitoring of delegates.

AML[14] practices are key governance areas in **Switzerland** and the **Channel Islands**, too. In 2018, the Swiss regulator stated in several press releases that AML is a key priority. Over recent years, the regulator has issued on average more than ten enforcement rulings a year, imposing sanctions including the dissolution of a bank, a license withdrawal from a fiduciary company and the disgorgement of illegally-generated profits.

Already rated as some of the best performing jurisdictions in combatting money laundering and terrorist financing, the **Guernsey** and **Jersey** regulators' approach to financial crime is to maintain these standards. They are seeking to implement the updated Financial Action Task Force requirements, as well as the AMLD IV[15] and recommendations from recent MONEYVAL inspections, in addition to codifying substance requirements.

The Central Bank of **Bahrain** (CBB) has enhanced its AML and counter-terrorist financing framework to include guidance for asset managers to take reasonable steps to verify the identity of beneficial owners for their legal entity clients. It also requires asset managers to implement and comply with United Nations Security Council resolutions.

In December 2017, the **Cayman Island** Monetary Authority (CIMA) published updated guidance notes on the practical interpretation and application of the AML Regulations that came into force in October 2017. In the light of comments from the industry that the notes were causing some ambiguity and uncertainty, CIMA issued in April 2018 a notice confirming that all funds must designate money laundering reporting officers, deputy money laundering reporting officers and AML compliance officers. Funds, which have to date relied on their administrators to comply with AML requirements, must demonstrate compliance by 30 September 2018.

Meanwhile in **Cyprus**, in line with wider requirements for stronger governance structures, the minimum number of directors for self-managed AIFs[16] was increased, to a minimum of three to four directors (depending on the precise AIF structure).

[13] Commission de Surveillance du Secteur Financier
[14] Anti-money laundering
[15] Anti-Money Laundering Directive IV
[16] alternative investment fund

> ESMA says the assessment of suitability is one of the most important requirements for investor protection in the MiFID framework

Cyprus has also mandated the appointment of separate legal compliance and internal audit functions, where justified by the size and complexity of the AIF.

And in **Singapore**, from 1 January 2019, appointed representatives under the Securities and Futures Act will have to fulfil nine hours of CPD, with a minimum of six hours on rules or ethics, based on accredited courses.

MiFID II spearheads investor protection

In the unlikely case you missed it, MiFID II came into force at the start of 2018. It is wide-ranging, covering areas such as transparency in the capital markets, trading venues, reporting to the regulator, company governance, disclosures to clients, product governance, inducements, conflicts of interest and advice.

MiFID II introduces for the first time at **European** level the concept that detailed product governance should include the identification of a product's "target market" (see last year's report for further details[17]). It also bans commissions paid to independent financial advisers and wealth managers, and requires information about third-party payments to be provided to clients.

The path to MiFID II has not been easy. Regulators and asset managers alike have struggled with implementation. ESMA[18], for instance, was still consulting on draft guidelines on certain aspects of the MiFID II suitability requirements after the implementation deadline and does not expect to have released all the final MiFID II guidelines until later in 2018.

ESMA says the assessment of suitability is one of the most important requirements for investor protection in the MiFID framework. It applies to the provision of any type of investment advice (whether independent or not) and to portfolio management services. Firms have to provide suitable personal recommendations to their clients or make suitable investment decisions on behalf of clients.

Suitability has to be assessed against clients' knowledge and experience, financial situation and investment objectives. To achieve this, investment firms have to obtain the necessary information from clients.

[17] https://home.kpmg.com/xx/en/home/insights/2017/05/evolving-investment-management-regulation-fs.html
[18] European Securities and Markets Authority

It is reported that in response to the enhanced requirements, some continental European banks are reviewing whether they wish to continue to offer financial advice to mainstream retail clients.

MiFID II implementation issues

Unsurprisingly, the many data-related issues and extra-territorial questions thrown up by MIFID II – and its close cousin on product disclosures, the PRIIP KID[19] – left some firms unable fully to implement all aspects of the rules by January 2018, causing a block to the distribution of some funds. In particular, fund managers were concerned they would have to issue predicted performance and cost figures that could be misleading.

A week after the implementation date, for example, many products sold in **Germany** still lacked data required under MiFID II. According to data from NFS Netfonds, target market data was missing on 5,239 share classes, while 5,479 share classes lacked the necessary information on costs and charges.

MiFID II suitability obligations

The objectives of the suitability assessment remain unchanged from MiFID, but the obligations have been further strengthened and detailed by:

- reference to the fact that the use of electronic systems in making personal recommendations or decisions to trade shall not reduce the responsibility of firms
- the requirement for firms to provide clients with a statement on suitability (the 'suitability report') prior to the conclusion of the recommended transaction
- further details on conduct rules for firms providing a periodic assessment of suitability
- the requirement for firms performing a suitability assessment to assess, taking into account the costs and complexity, whether equivalent products can meet the client's profile
- the requirement for firms to analyze the costs and benefits of switching from one investment to another
- the strengthened requirement for firms to consider the client's risk tolerance and ability to bear losses
- the extension of suitability requirements to structured deposits.

One German fund platform warned in January 2018 that it would no longer sell funds that lack target market data. FondsKonzept, which has over EUR 7.3 billion in assets under administration, said it would pull the products from its range. German fund data provider WM Datenservice said that only half the funds it covers provided the necessary data.

However, Allfunds, Europe's largest third-party fund platform, said it would not delist funds that had not yet provided the data.

BaFin[20], the German regulator, subsequently told asset managers that it would be flexible in its approach to the implementation of MiFID II. Felix Hufeld, president of BaFin, said: "We are not going to bite somebody's head off if they are genuinely trying to implement the new rules on time, but fail to do so because they are having problems with something like IT."

In **France**, the AMF said it will not subject asset managers to SPOT controls (see Chapter 1) over new regulations such as MiFID II or the PRIIP KID until 2019. In its key priorities for 2018, the AMF said it would assist market participants with the implementation of these and other new rules, such as the MMFR[21], and carry out shorter inspections.

A major extra-territorial issue of MiFID II is that it is in conflict with the **US** regulation on research payments. US brokers are not allowed to receive separate research payments unless they register as investment advisers – a status that carries with it extra obligations and liabilities.

In October 2017, at the "eleventh hour" and after intense discussions between the European Commission and the US, the SEC[22] published three no-action letters, offering ways for brokers and asset managers to deal with the MiFID II unbundling rules for payment for investment research.

"Staff's letters take a measured approach in an area where the EU has mandated a change in the scope of accepted practice, and accommodate that change without substantially altering the U.S. regulatory approach," SEC Chairman, Jay Clayton, said. "These steps should preserve investor access to research in the near term, during which the Commission can assess the need for any further action."

In tandem, the European Commission published guidance setting out how EU firms can receive brokerage and research services from institutions in non-EU jurisdictions under MiFID II.

[19] Packaged Retail Investment and Insurance-based Product Key Information Document
[20] Bundesanstalt für Finanzdienstleistungsaufsicht
[21] Money Market Funds Regulation
[22] Securities and Exchanges Commission

Market structure implications of MiFID II

The full ramifications of MiFID II will emerge over time, but some implications are already becoming clear.

For instance, asset managers are likely to cut back on the external research providers they use. In **Germany**, the Deutsche Vereinigung für Finanzanalyse und Asset Management, for example, an association of investment professionals, said local fund houses may cut their number of research providers by half. The association predicted that the culling process will only really start in 2019, even though MiFID II came into effect in January 2018.

This cull is perhaps natural given the costs involved. Investment firms are expected to pay external research providers an average of USD 10 million (EUR 8.5 million) for every USD 10 billion in equity assets they manage, according to a study. The survey, conducted by the CFA Institute among 365 individuals from 330 asset managers and other investors, shows the median annual cost of external equity research to be about 10 basis points of assets under management. Much lower costs are expected for fixed income, alternative and quantitative research.

Meanwhile, the larger German asset managers said they would not pass on costs of external research to customers. Elsewhere in Europe, some firms are absorbing the cost themselves (and may seek to renegotiate management fees), while others are operating research payment accounts with a budget for research costs, agreed with and paid for by their clients.

In the **UK**, the FCA said in February 2018 it would investigate the prices asset managers are paying for research under MiFID II. Some brokers have applied large discounts to their research in order to keep larger asset managers as clients – which may be in breach of inducement rules and detrimental to smaller investment firms.

Another challenge for fund managers is that MiFID II rules are implemented in different ways by EU member states. The **Netherlands** and the **UK** continue to stand alone in imposing a wide-spread ban on all commission payments to any form of distributors to retail investors. Other member states have not followed suit.

Germany, for example, said it would allow lenders with large branch networks to continue receiving inducements. Under German government proposals, banks with extensive branch networks will be able to continue to receive retrocessions from investment firms. Berlin argued that in order to give savers across the country access to financial advice, inducements are acceptable.

The rules on inducements are not being interpreted consistently. In order to keep receiving inducements under MiFID II, non-independent distributors have to demonstrate that the payment enhances the service offered to the client. However, what regulators mean by "enhancing the quality" is uncertain. Differing interpretations could lead to further fragmentation of the European fund market over the next two years. This fragmentation between countries potentially means less cross-border fund distribution and makes it harder for smaller boutiques to compete.

In general, there is likely to be increased competition among fund providers if there is a reduction in the number of fund providers that intermediaries and distributors do business with. In particular, countries with more expensive fund models could come under pressure.

Fund distribution in **Italy**, for instance, may face disruption with the disclosure of "retrocessions". The Italian market is the most expensive in Europe, according to Morningstar's Global Fund Investor Experience Study, partly due to high retrocessions paid to distributors.

Banks and networks of tied agents – known as consulenti finanziari – control about 90 percent of fund distribution in Italy, according to consultancy Platforum. Consulenti are already adapting to deal with changes under MiFID II, including the need for non-independent intermediaries to demonstrate that they "enhance the quality of the relevant service to the client" to continue to receive inducements.

As elsewhere, the increasing pressure on costs may lead to greater ETF[23] appetite in Italy, with discretionary fund managers using passives as a more significant part of portfolios.

There are concerns in **Germany** that the new rules for the provision of investment advice are irritating retail clients. Talking through the required disclosures regarding costs, risks and target market is taking at least an extra 30 minutes, extending the session time for advice on a simple investment portfolio. Firms are hopeful that BaFin will conclude it has been interpreting the rules too strictly and that the guidelines may be relaxed in places.

On a positive note (for ETF providers, anyway), the visibility of increased trading volumes may attract more investor inflows into ETFs. Competition will increase between traditional exchanges and other trading venues such as multilateral trading facilities for ETF order flow. The improvements in fund cost disclosure requirements should help to speed the adoption of ETFs among financial advisers and retail investors.

MiFID II is having a potential market impact outside the EU, too. In the **US**, in the light of the new MiFID II rules on unbundling of research payments, institutional investors such as the New York City pension fund and the Colorado state pension plan have publicly expressed concerns the US brokers will continue to receive payments embedded in trading commissions. The Council of Institutional Investors, which represents 120 US asset owners, said its members would be disadvantaged if they are not able to pay for investment research directly while their European counterparts can. Given the current deregulatory climate in the US, it seems unlikely that their wishes will be granted in the near term.

There's more to investor protection than MiFID II…

MiFID II is far from the only investor protection game in town. Across most of the globe, local regulators are firmly focused on preventing mis-selling, misrepresentation and other scandals that could hurt consumers and create political and media storms.

In **Switzerland**, the handling of commissions and inducements has been clarified by the Swiss Federal Court. In a nutshell, asset managers are allowed to pay and receive inducements if they disclose them to their clients in good time and the clients agree. After the introduction of FinSA, the court ruling was transposed into supervisory law.

Also, FINMA is introducing a new client categorization regime, which, in echoes of MiFID II, demands that funds must clearly state whether they are targeting retail clients, professional clients or institutional clients. Certain retail clients can request to be treated as professional clients, and professional clients can request to be treated as retail clients.

FinSA comes into force in 2019 and also imposes requirements relating to suitability and appropriateness of advice, and the duty to provide key information documents and prospectuses.

In addition, under the new regulation, independent asset managers will be regulated for the first time in Switzerland. Up until now, they have been required to join an SRO[24] only for AML purposes, whereas asset managers of funds are subject to FINMA authorization and prudential supervision under the Collective Investment Schemes Act.

In **Canada**, the CSA in 2017 published a consultation paper on the discontinuation of embedded commissions and hosted a series of roundtables. The paper sought input on the potential effects on investors and market participants and on potential measures that could mitigate any negative impacts of a change.

[23] exchange-traded fund
[24] self-regulatory organization

The **Channel Islands**, on the other hand, have explicitly said there is no appetite to create an equivalent regime to MiFID II in Jersey or Guernsey due to the European-centric nature of the EU legislation and limited business in the Channel Islands that will be caught.

Germany announced in February 2018 that it would bring previously lightly-regulated independent financial advisers under the supervision of BaFin. Independent financial intermediaries in Germany, which have a so-called paragraph 34 license, were not regulated by BaFin, with their licenses awarded by regional authorities. As part of the agreement signed by the new German government, these advisers will be brought under the direct supervision of BaFin.

Product innovation risks

The proliferation of innovative and traditional fund strategies is also keeping some regulators awake at night. With the goalposts constantly moving, it is not easy for regulators to ensure that investors are protected against each and every danger to their future wealth.

In **Hong Kong**, the SFC launched a three-month consultation on proposed amendments to the unit trust code to address risks posed by financial innovation and fast-moving market developments. The local market, according to the SFC, has been "flooded by newcomers". Key proposals include strengthening requirements for investment firms, trustees and custodians, and providing enhanced safeguards for funds' investment activities, particularly in relation to derivatives, securities lending, and repo and reverse repo transactions.

In **Australia**, the regulator has introduced tough new "Product, Distribution & Intervention Powers", as part of the government's response to the Financial System Inquiry. The rule gives a temporary product intervention power to ASIC when there is a risk of significant consumer detriment.

Pension protections

With the pensions market rapidly moving from the defined benefit model to a defined contribution model, risks are increasingly borne by individuals. This has spurred regulators to consider consumer protection issues in the pensions industry, something that in the past was the preserve of sponsoring companies.

In **Sweden**, following a number of pension "incidents" involving sub-par funds and rogue providers, the government mandated the Swedish Pensions Agency to tighten the conditions for fund companies wanting to be part of the Pillar I system. The current 850 providers from which pension savers can choose is likely to be substantially reduced. At the time of writing, the Pensions Agency powers were likely to take effect in late 2018.

> "keeping personal data of citizens secure and protected"

In **Australia**, where the asset management industry is dominated by the large superannuation funds, the regulator APRA is examining the sustainability of funds and member outcomes. APRA has written to about 30 funds regarded as operating at sub-scale asking for reassurance about their sustainability. It is likely that this focus will lead to rationalization of the sector, which is one of the aims of the regulator.

Data protection regulation is all-pervasive

Possibly the ultimate investor protection regulation – the General Data Protection Regulation (GDPR) – which aims to strengthen individual data protection rights, while ensuring the free movement of personal data across the **EU**, came into force on 25 May 2018.

GDPR applies universally but is particularly onerous for service-oriented companies with large customer registers, such as asset managers. GDPR is a big deal in that it covers any data that could be used to identify an individual, either directly or indirectly. Firms will need to significantly improve the way they develop their operations.

GDPR applies to all firms that are processing data related to the offering of products and services to individuals residing in the EU and this means non-EU based fund managers and distributors come under its scope. Activities such as distributing marketing materials to EU citizens or tracking and analyzing visits to a website, even if that website is hosted outside the EU, could fall under GDPR. For example, using data related to the products an investor viewed online, in order subsequently to market products to that investor, would fall under GDPR.

Firms that fall foul of GDPR face hefty fines, paying up to either EUR 20 million or 4 percent of global turnover, whichever is the largest. Companies must also report a breach to regulators within 72 hours.

Further complexity arises if a firm is transferring data outside the European Economic Area. The Commission has so far recognized countries including **Argentina**,

Canada and **Switzerland** as having adequate rules. At the time of writing, there was no adequacy decision with the **US**, though the US EU privacy shield, which covers transatlantic data flows, may apply.

Aware of the challenges in implementing GDPR, the European Commission in February 2018 issued guidance to asset managers. The Commission also urged member states to speed up the adoption of national GDPR legislation and noted that national authorities should be suitably funded and staffed in order "to guarantee their independence and efficiency".

The Commission pledged to monitor member state compliance and to continue its multi-stakeholder group engagement, with a review of stakeholder experience due in May 2019 and an evaluation report expected by May 2020.

In response, **Switzerland** is updating its Data Protection Act. The revised act is designed to enhance transparency and strengthen individuals' control over their data. It also takes into account the revision of the Council of Europe's Data Protection Convention. Compared to the GDPR, the draft provides no right to data portability, no extra-territorial scope, lower requirements with respect to consent, certification mechanisms and codes of conduct, and limited sanctions.

In the Channel Islands, both **Guernsey** and **Jersey** have enacted data protection legislation to provide equivalence to GDPR. Challenges to meeting the May 2018 deadline were created by conceptual differences in transparency versus privacy legislation. This brings into conflict the need to disclose under transparency legislation, such as the UK Trust register, against the requirements for privacy and data protection under GDPR.

In **Australia**, the Notifiable Data Breaches scheme has made notification of data breaches to the Office of Australian Information Commissioner mandatory. For the first time in Australia, all entities covered under the Privacy Act, including those operating in the asset management industry, now have obligations to report on data breaches, as of 22 February 2018.

And at the end of 2017, the **Indian** government set up a committee of experts to study various issues relating to data protection in India, to make specific suggestions on principles underlying a data protection bill and to draft such a bill. The objective is to "ensure growth of the digital economy while keeping personal data of citizens secure and protected."

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