



Regulatory update

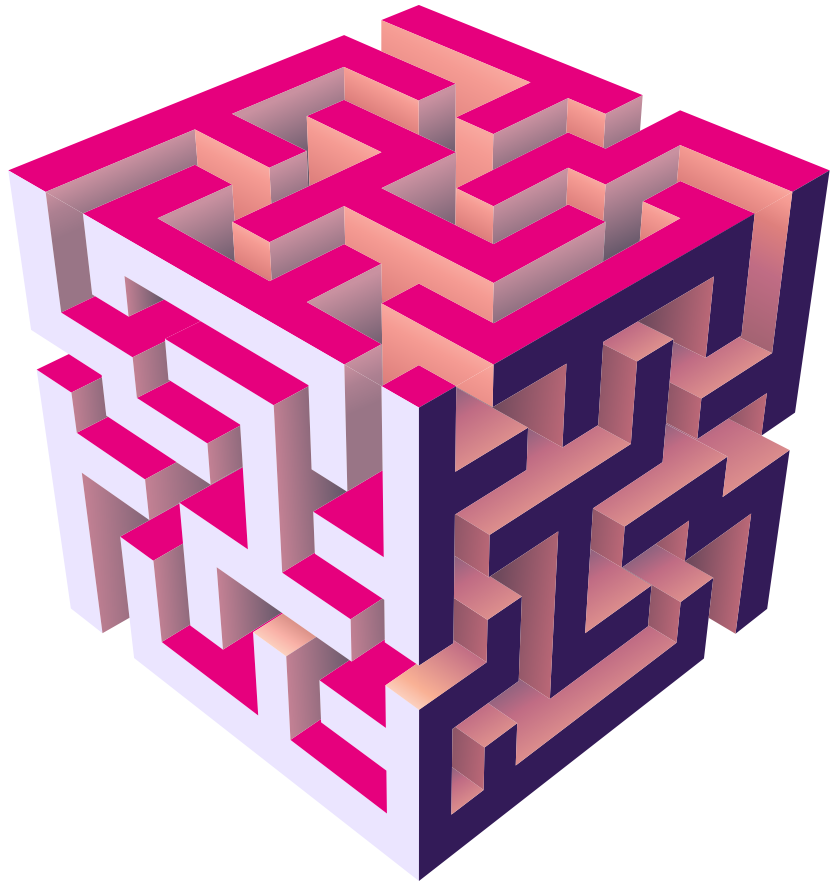
September 2022

Welcome to the latest edition of the **Regulatory update**, which pulls together recent developments from across the UK's regulatory – to help you navigate the regulatory maze.

In this edition we take a look back at key regulatory developments over summer including the new register of overseas entities, government consulting on narrowing sovereign investor tax immunity, workplace fatality statistics, financial services & markets bill, Appointment Representative regime, FRC opens ARGAs funding consultation and much more!

Please do not hesitate to contact me, or your normal RPC contact, if you would like to discuss any of the topics highlighted or have any suggestions for areas you would like to see in future updates.

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A handwritten signature in black ink, which appears to read "Gavin Reese". The signature is stylized and cursive.

Gavin Reese
Partner, Head of Regulatory

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WHITE COLLAR CRIME

Sam Tate

The new Register of Overseas Entities is now live

The Register of Overseas Entities came into force in the UK on 1 August 2022 through the new Economic Crime (Transparency and Enforcement) Act 2022.

Companies House maintains the new Register of Overseas Entities, which requires overseas entities that own land or property in the UK to declare their beneficial owners and/or managing officers. Those who do not comply will face severe penalties, including restrictions on buying, selling, transferring, leasing, or charging their land or property in the UK.

The government is introduced the Register of Overseas Entities to crack down on foreign criminals using UK property to

launder money.

Overseas entities wishing to buy, sell, or transfer property or land in the United Kingdom must register with Companies House and identify their registrable beneficial owners or managing officers. Overseas entities that already own or lease land or property in the UK must register with Companies House and identify their registrable beneficial owners or managing officers by 31 January 2023.

Click [here](#) to read more.

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Belarus will face new economic sanctions from the UK

The UK government will impose new economic, trade, and transportation sanctions on Belarus.

The package extends to Belarus some of the significant sanctions imposed on Russia, including import and export bans on goods worth around £60 million.

This includes the following:

- exports of petroleum refining products
- advanced technology components, such as those used in quantum computing, are exported.
- luxury goods exports, including British artwork and designer handbags
- Belarusian iron and steel imports

The UK government is also limiting Belarus' access to the financial services sector in the UK, prohibiting more Belarusian companies from issuing debt and securities in London.

Click [here](#) to read more.

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TAX

Adam Craggs

Government announces UK implementation of OECD proposals for global minimum corporate tax rate to be deferred to 2024

The government has announced that the UK legislation on the implementation of the OECD proposals for a global minimum corporate tax rate will apply to accounting periods ending on or after 31 December 2023. In the UK's consultation on UK implementation of this particular aspect (pillar two) of the OECD's wider proposals on addressing the tax challenges arising from the digitalisation of the economy, the original proposed start date was 1 April 2023.

The government has acknowledged concerns raised in the consultation about the lead-in time before UK implementation, given the complexity of the rules, ongoing discussions with the OECD concerning policy and administrative issues, and the need

for businesses to take preparatory steps to ensure compliance. The deferral of the start date will be confirmed in a formal consultation response to be published later this summer.

Click [here](#) to read more.

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Government consults on narrowing sovereign investor tax immunity

HM Treasury has launched a consultation on sovereign immunity from direct taxation. The consultation closes on 12 September 2022, and those wishing to attend meetings during the consultation must contact HM Treasury by email before 25 July 2022.

The proposal is to put sovereign immunity on a statutory basis from April 2024, replacing the current regime (based on case law and common practice) with a narrower statutory exemption that is limited to UK source interest income and available to a defined class of persons (including all constituent territories of federated states). Exemption will require prior approval by HMRC. Trading income and income and gains from immovable

property, including dividends from REITs, would become taxable. International organisations will continue to qualify for exemptions required by the UK's treaty obligations.

Click [here](#) to read more.

You can subscribe to monthly Tax updates [here](#).

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HEALTH, SAFETY & ENVIRONMENTAL

Gavin Reese

Heat alert: Employers must plan for a warmer future

Employers need to act now to make sure their workplaces are ready for warmer weather in the future. The Health and Safety Executive (HSE) advises businesses to consider how they will adapt to warmer working conditions for their employees. Following the recent record-breaking temperatures, the HSE is urging employers to incorporate extreme heat into their long-term planning. Employers are required by law to assess risks to workers' health and safety under the Management of Health and Safety

at Work Regulations. They must review their risk controls and, if necessary, update them. This includes the risks posed by more frequent extreme weather events, such as heatwaves.

Click [here](#) to read more.

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Workplace fatality statistics have been released

According to figures released by the Health and Safety Executive (HSE), 123 workers were killed in work-related accidents in the UK in the year 2021/2022. There were 2,544 deaths in 2020 through past exposure to asbestos. The annual data release spans the period from April 2021 to March 2022, when most pandemic restrictions were lifted and the economy began to recover. Construction (30), agriculture, forestry, and fishing (22), and

manufacturing (22), had the most fatalities; however, agriculture, forestry, and fishing had the highest rate of fatal injury per 100,000 workers.

Click [here](#) to read more.

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EA publishes a summary of the environmental performance of England's 9 water and sewerage companies

The Environment Agency (EA) issued its strongly worded environmental performance report, which provides a summary of the environmental performance of the nine water and sewerage companies operating in England in 2021.

According to the report, 2021 was the worst year for environmental performance that the EA had seen in years, with most companies' performance declining and the sector's pollution performance being "shocking." In light of this poor performance, the EA is now calling for harsher penalties to be imposed on companies and their top executives. The EA has called for the following measures to be implemented:

- Courts to impose much higher fines for serious and deliberate pollution incidents, where current fines often amount to less than a chief executive's salary

- prison sentences for chief executives and board members whose companies are responsible for the most serious incidents
- repeat offenders to expect criminal prosecutions for less serious environmental incidents
- and company directors to be struck off so they cannot "simply delete illegal documents, environmental damage from their CV and move on to their next role."

Click [here](#) to read more.

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PRODUCT REGULATION

Gavin Reese

HFSS product restrictions to be delayed by a year

Restrictions on placing high in fat, salt or sugar (HFSS) products in prominent locations (in store or online) will still be coming into force in October 2022, however all other restrictions are to be delayed by a year.

According to the Department of Health and Social Care, this is “to allow the government to review and monitor the impact of the restrictions on the cost of living in light of an unprecedented global economic situation”. The prohibited actions, and the date they are each now set to be introduced, are set out in our legal update below.

Click [here](#) to read more.

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DATA & PRIVACY

Jon Bartley

Government publishes a framework and approaches on regulating AI

The new AI paper published outlines the government's approach to regulating the technology in the UK, with proposed rules addressing future risks and opportunities so businesses are clear how they can develop and use AI systems and consumers are confident they are safe and robust.

The approach is based on six core principles that regulators must apply, with flexibility to implement these in ways that best meet the use of AI in their sectors. Responses will be considered alongside further development of the framework in the forthcoming AI White Paper which will explore how to put the principles into practice.

The government has also published the first [publication](#) to show how it is delivering against the National AI Strategy and identifying new priorities for the year ahead.

The ten-week call for evidence will run until 26 September 2022. Organisations and individuals working across AI are encouraged to provide feedback to inform the government's work in this area.

Click [here](#) to read more.

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ADVERTISING

Oliver Bray

Debt management ads by insolvency practitioners and lead generators – CAP Enforcement Notice

The Committee of Advertising Practice (CAP) have published an Enforcement Notice which addresses ads placed by lead generation companies and licenced insolvency practitioners that ultimately advertise services for individual voluntary arrangements (IVAs) [in England, Wales, and Northern Ireland] or protected trust deeds (PTDs) [in Scotland]. When advertising these services, care must be taken not to mislead potentially vulnerable consumers.

In summary, ads must:

- explain the risks and fees involved
- include a clear and prominent statement for lead generators that they are a lead generation company that will pass on customer leads to third parties.

Ads must not:

- imply affiliation with or approval from the government, debt charities, or regulated advisory bodies
- in the absence of strong documentary evidence, claim that customers “can write off up to 85% of their debts” or something similar
- exaggerate the ease or speed of the process or claim that customers can “Lower their debt today” or similar.

Click [here](#) to read more.

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COMPETITION

Melanie Musgrave

Most Favoured Nation/Parity Clauses

In November 2020, the CMA had issued an [infringement](#) decision and fined the price comparison website (PCW), Compare the Market, £17.9 million for having imposed wide ‘most favoured nation’ (MFN) or parity clauses on thirty-two home insurance providers selling through its platform. The CMA had concluded that these clauses had the appreciable effect of preventing, restricting or distorting competition and infringed the prohibitions on anti-competitive agreements under Chapter I of the Competition Act 1998 and under Article 101 of the TFEU (this was prior to the UK’s departure from the EU). Compare the Market’s appeal against the CMA’s decision has been successful with the Competition Appeal Tribunal’s (the CAT) recent [unanimous judgement](#) overturning the CMA decision. The CMA has until 16th September 2022 to seek permission to appeal against this judgment.

Under the wide MFN clauses, the home insurance providers were restricted from not only offering lower prices on their own websites and their other direct sales channels (which would constitute a narrow MFN clause), but also from offering lower prices on any other sales channel, i.e. any other PCW. The CMA had concluded that these clauses restricted competition between PCWs and between home insurance providers selling through PCWs.

In its judgment, the CAT considered that the CMA’s market definition was “materially wrong” and “flawed”. In addition, as this was a ‘by effect’ case rather than ‘by object’ (where the CMA would not be required to demonstrate the anti-competitive effects), the CMA had failed to establish that the wide MFN clauses had the anti-competitive effects set out in its decision. The CAT also considered that much of the CMA’s analysis on the alleged anti-competitive effects “operated at the level of theory or base

assertion” and that the evidence relied upon by the CMA was “anecdotal at best and lacked depth and consistency with the CMA’s theory of harm”. The CAT did “not consider the theoretical argument against [wide] MFNs to be particularly strong in the markets under consideration”.

Prior to the judgment being delivered, on 1 June 2022, the new EU and UK vertical restraints block exemptions took effect which provide an exemption from the application of EU and UK competition law respectively for agreements which fall within their parameters. The UK has taken a different, stricter stance towards wide retail MFN clauses than the European Commission. Under the UK Vertical Restraints Block Exemption Order, these clauses are now treated as hardcore restrictions (i.e. within the most serious category of restrictions which are generally considered to have as their object an adverse effect on competition), such that the whole agreement loses the benefit of the block exemption. Under the EU Vertical Restraints Block Exemption Regulation, these clauses are not classified as hardcore restrictions and it is only the restrictions themselves, and not the agreement as a whole, which loses the benefit of the block exemption. The CMA’s new guidance highlights that agreements contain wide retail MFN clauses are presumed to restrict competition under the Chapter I prohibition and are unlikely to fulfil the exemption criteria. Thus, the CAT’s judgment is somewhat at odds with the CMA’s stance.

Click [here](#) to read more.

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CMA settlement

The [CMA](#) has closed its investigation into a capacity sharing agreement between P&O Ferries and DFDS for driver-accompanied freight shipments on the Dover-Calais route. Following consultation, it has accepted commitments from the ferry operators to address its concerns. The agreement provides a 'turn up and go' service so that the freight customers on this route are allowed to take the next available ferry irrespective of whether they had booked with that operator.

The aim was to reduce journey times and congestion at ports. The CMA recognised that the arrangements provided flexibility and benefits to customers, but was concerned that certain aspects could lead ultimately to higher prices and fewer sailings. The ferry operators had created a single schedule and removed some sailings from the timetable with further reductions to follow. The CMA had further concerns that the arrangement would encourage them to cancel off-peak sailings at short notice and to fix how many freight customers each would carry.

The CMA has accepted the following commitments from the parties:

- not to agree between them the number of sailings each would operate;
- a strict limit on the number of sailings which they could cancel; and
- to agree to amend the agreement to clarify that they were not fixing the volume of freight customers;
- subject to the following additional obligation:
- to appoint a monitoring trustee to oversee compliance with the sailing cancellation commitment.

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Other CMA developments

On the recurring topic of resale price maintenance or RPM where retailers are restricted by their suppliers from selling (or advertising online) below a certain price, the CMA has published a [blog](#) reminding businesses of the harm to consumers and the potentially severe consequences of this illegal practice. The CMA receives more complaints about RPM than any other anti-competitive practice and increasingly these concern online RPM, where the illegal practice is 'particularly damaging'. To date, the CMA's fines for RPM infringements total over £20 million.

In another investigation in the construction sector, the CMA has [announced](#) that it has issued a Statement of Objections setting out its provisional findings that ten suppliers of demolition and removal of asbestos services have infringed competition law

as a result of bid rigging. This took the form of cover bidding where a competing firm or firms would agree to submit bids "that were deliberately priced to lose the tender" and, on a number of occasions, the designated losing bidder would then be compensated by the successful bidder. Eight of the firms have admitted their involvement in bid rigging activities and two have made leniency applications.

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INSURANCE AND FINANCIAL SERVICES

Jonathon Cary and Matthew Griffith

Financial Services & Markets Bill published

The Financial Services and Markets Bill was introduced to Parliament on 20 July 2022. The Bill plans to tailor financial services regulation to UK markets to boost the UK's competitiveness as a global financial centre and deliver better outcomes for consumers and businesses following the UK's exit from the EU.

The legislation will:

- implement the Future Regulatory Framework (FRF) Review's recommendations
- maintain the UK's status as an open and global financial hub

- utilise the benefits of emerging technologies in financial services
- increase the competitiveness of UK markets and encourage the efficient use of capital
- support the agenda for levelling up, financial inclusion, and consumer protection.

Click [here](#) to read more.

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FCA confirms new rules to strengthen Appointed Representative regime

The Financial Conduct Authority (FCA) has confirmed new rules that will hold authorised financial firms more accountable for their appointed representatives (ARs).

ARs are not authorised by the FCA, but they may provide certain financial services or products on behalf of authorised firms (known as principals). Principal firms are responsible for ensuring that their ARs comply with our rules. While some principals do this effectively, many do not adequately supervise the activities of their ARs.

As a result, the rules will help to prevent consumers from being misled or misled by ARs, as well as AR misconduct undermining markets' ability to operate fairly and safely. Principal firms must comply with them by:

- improved oversight of their ARs, including ensuring adequate systems, controls, and resources
- assess and monitor the risk that their ARs pose to consumers and markets, with the same care that they would give to their own business

- Annually, review information on their ARs' activities, business, and senior management, and be clear on when they should terminate an AR relationship
- Notify the FCA of any future AR appointments 30 days before they take effect
- Annually, provide the FCA with complaints and revenue information for each AR.

These changes will take effect on 8 December 2022 following a four month implementation period.

Click [here](#) to read more.

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Businesses face ‘significant work ahead’ to comply with FCA’s new Consumer Duty

The Financial Conduct Authority (FCA) have published the final rules and guidance for a new Consumer Duty, which will establish higher and clearer standards of consumer protection across financial services and require firms to prioritise the needs of their customers. These rules and guidance will come into force on a phased basis.

RPC’s Whitney Simpson (Of Counsel), who specialises in non-contentious consumer finance and payment related matters, said: “While the FCA has revised the implementation timetable from 9 months to 12 months on new and existing products still

being sold or renewed and a further year for closed products, this is still a shorter period than previously provided for other policy changes and presents the challenge of tight timeframes for several businesses. Having to have Boards agree implementation plans by the end of October 2022 is certainly not an easy feat. Read her full comments.

Click [here](#) to read more.

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PROFESSIONAL SERVICES

Rob Morris and Graham Reid

SRA launches new research into unregulated legal market and wider provision of unreserved legal services

The Solicitors Regulation Authority (SRA) have commissioned independent research to conduct an in-depth examination of the unreserved legal services market in England & Wales.

Frontier Economics, one of Europe's leading economic insight consultancies, will deliver the new research, which will aim to:

- better comprehend the size and scope of the market for unreserved legal services offered by both regulated and unregulated providers
- identify potential risks and opportunities for consumers that the unregulated sector may present.

The findings of the final report, which is expected before the end of the year, will be used by the SRA and other stakeholders to help shape future thinking about how to improve access to legal services while maintaining proportionate levels of public protection.

Click [here](#) to read more.

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FRC opens ARGA funding consultation

The Financial Reporting Counsel (the FRC) has launched a consultation on plans to fund the new Audit Reporting and Governance Authority (ARGA).

The ARGA will be the successor to the FRC, and its role will be to protect the interest of investors, other users of corporate reporting and the wider public interest. The government intends to give ARGA statutory powers to raise a levy so as to fund its activities on an independent and durable basis. The government has asked the FRC to consult on how the ARGA levy should operate in order to ensure that levies are proportionate and that the proposed arrangements comply with the Regulator's Code.

The consultation invites views on the high-level principles on which ARGA's funding models should be based and follows on from the approach set out in the White Paper, "Restoring trust in audit and governance". The intention is for the levy to be paid by various market participants.

The proposed market groups for funding are as follows:

Recognised supervisory bodies (RSBs). RSBs would fund the supervising regulatory functions and recognised qualifying bodies,

as well as contributing to the setting of auditing standards. Their annual levy should be based on the size of their membership.

The auditors of Public Interest Entities (PIEs). PIE auditors would meet the costs of audit regulation, standard-setting, supervision and enforcement. They would pay an annual levy based on their fee income from PIE audits.

Accountancy professional bodies, who would fund the costs of overseeing the performance of their regulatory roles.

Listed companies, large private companies and other entities that constitute PIEs. Listed companies would fund corporate governance and audit committees through an annual levy based on market capitalisation. PIEs would fund the regulation of corporate reporting and enforcement against directors. PIE entities would pay a levy based on turnover or equivalent measures of size.

Actuarial professional bodies, large pension schemes, insurers and funeral plans. Actuarial professional bodies would fund ARGA actuarial regulation, along with the main intended beneficiaries.

Institutional investors, such as investment managers and insurance companies that are FCA authorised, would pay a levy in line with FCA methodology and structure. Pension schemes would contribute through a separate levy.

Therefore, most of the entities that currently contribute to the FRC will be subject to the ARGA levy, although some entities won't be included, such as AIM listed companies. Some entities will fall within more than one group, and the paper states that they should be 'levied accordingly'. Equally, entities which ARGA brings cases against are likely to have to contribute to the cost of those cases.

The consultation closes in October 2022, following which the FRC aims to run further consultations on detailed aspects of the proposed arrangements. As such, we will wait and see what proposals are put forward regarding the funding model for the new regulator.

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NAVIGATING THE MAZE

From the world's largest financial, corporate and professional services firms, to highly successful entrepreneurs and individuals, many turn to our specialist Regulatory team to navigate the maze. They do this because they know we don't sit on the fence, we work with our clients to ask the tough questions and challenge conventions; ensuring they continue to thrive in a rapidly evolving regulatory world.

From helping to implement robust compliance strategies to conducting investigations and defending against enforcement proceedings, our multidisciplinary team can be relied on to add value, provide ideas and deliver a complete regulatory service whatever challenges you face, now and in the future.

- **White collar crime and investigations:** The burden of facing a regulatory or criminal investigation can be significant. We defend clients under investigation for regulatory breaches, corruption including; breaches of financial sanctions, false accounting, insider dealing and market misconduct.
- **Anti-bribery and corruption:** Our team works closely with clients to implement robust, cost effective anti-bribery programmes in line with international standards, and to manage risks and responses when things go wrong.
- **Anti-money laundering:** AML continues to be one of the most significant regulatory risks to firms. We help clients from implementing effective AML processes and controls to defending clients under investigation of breaches.
- **Data protection:** Protecting the data you hold has never before been so essential to your business. We regularly advise on data regulations, including GDPR, relating to subject access requests, data handling, sharing and processing, breaches, and training strategies.
- **Product liability and compliance:** Our Products team have the expertise you needed if you are faced with product recall or class actions.
- **Health, safety and environmental:** our expert team can support you whether you are shoring up your health, safety and environmental protocols, or facing an investigation in respect of an incident.
- **Tax investigations and dispute resolution:** Our dedicated tax dispute lawyers provide a comprehensive service covering pre-emptive advice on a wide range of risk issues, tax investigations and litigation before the tax tribunals and higher courts.
- **Insurance and financial services:** Our specialist lawyers advise on regulation, business and financial crime and compliance, including both contentious and non-contentious matters to ensure our clients avoid the pitfalls.
- **Competition and anti-trust:** No business can afford to ignore competition law. We help clients through all issues including; compliance, investigations, merger control, cartels and litigation.
- **Dawn raids:** A dawn raid situation can be extremely stressful – and if you get it wrong, the repercussions can be severe. Our experienced team can provide an immediate response to help you on the ground, as well as in the all-important preparation for the possibility of a dawn raid.
- **Professional practices:** Our team combines sector knowledge with regulatory expertise to provide comprehensive support and advice for professional services firms, covering all aspects of their regulated business.
- **Advertising and marketing:** Some of the world's largest corporates rely on us to keep their brand communications above board, from advertising standards to consumer regulation we help clients to simplify the complex.



RPC is a modern, progressive and commercially focused City law firm. We have 114 partners and over 900 employees based in London, Hong Kong, Singapore and Bristol. We put our clients and our people at the heart of what we do.

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