

# REGULATION THREATENS THE FUTURE OF ASIA'S FINANCIAL BENCHMARKS IN EUROPE SAYS NEW ASIFMA-HERBERT SMITH FREEHILLS REPORT

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Deals and cases

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Asia's financial indexes and benchmarks could be dropped from important financial products in Europe and potentially other countries if their administrators fail to register under a new EU regulation.

The issues and concerns are outlined in a new [ASIFMA](#) report, co-authored with Herbert Smith Freehills.

The new EU Benchmarks Regulation comes into force on 1 January 2018, with full compliance required by 1 January 2020.

The regulation applies to high profile indexes such as the Hang Seng Index and the Nikkei, along with thousands of smaller benchmarks.

Benchmarks are used to determine amounts payable under a financial contract or are tracked by investment products to generate a return for investors.

However, with less than four weeks until the new regime comes into force, the registration process has yet to be announced.

Given the time pressures and lack of information about the process, ASIFMA is concerned that very few of Asia Pacific's benchmarks will be registered by the end of the two-year grace period in January 2020.

"Our members have identified at least 55 important benchmarks in Asia Pacific that stand to be affected by the regulation, including several in large markets such as Hong Kong, Japan and South Korea," said Wayne Arnold, Head of Policy and Regulatory Affairs at ASIFMA.

"With few benchmarks likely to be registered by the final 2020 deadline, we also fear that banks and investors may be forced to either scramble into benchmarks they believe likely to win EU approval or simply cut back investments in the region. We're already seeing a drop in benchmark availability, and this is likely to be amplified by the new regulation," Mr Arnold said.

A sample survey of Asia Pacific benchmark administrators conducted by Herbert Smith Freehills found many still struggling for information about the process and disappointed at the lack of consultation and outreach by the EU.

"Three-quarters of administrators surveyed had benchmarks affected, and over half intended to seek EU recognition, but very few had concrete plans in place," explained Herbert Smith Freehills partner [William Hallatt](#).

"Ultimately, there is a risk that firms and individuals will be denied the ability to utilise financial products such as derivatives, loans, bonds and mortgages, which reference non-EU recognised benchmarks, causing issues with liquidity, existing contractual arrangements and market access."

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**ASIFMA** is an independent, regional trade association with over 100 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, they harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia.

With a 30-year history in Asia, Herbert Smith Freehills has over 300 lawyers and legal professionals in the region, advising clients on complex corporate, disputes and finance matters from offices in Bangkok, Beijing, Hong Kong, Jakarta\*, Kuala Lumpur, Seoul, Shanghai, Singapore and Tokyo.

*\*In Jakarta, Herbert Smith Freehills' international counsel practise alongside its affiliate firm, Hiswara Bunjamin & Tandjung, one of Indonesia's leading commercial and corporate law firms.*

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