



Individual accountability

Global regulatory developments
in financial services



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01.

Introduction

In recent years a number of regulators, including Ireland and the UK, have focused increasingly on individual accountability. Regulated firms are being required to identify senior managers, allocate responsibilities to these senior managers, draw together responsibility maps for the firm, and ensure that senior managers (and in some cases a wider range of staff) are fit and proper for their roles and meet conduct rules established by the regulator. In Ireland, the Central Bank has put forward its proposals for a new Individual Accountability Framework, which incorporates many of the elements introduced by the UK Senior Managers Regime. The Central Bank has recommended, in a report to the Department of Finance, that legislation be introduced by the Government to facilitate the introduction of the new Framework.

Individual accountability is now a global concept and is becoming a regulatory focus area around the world – as, for example, in Australia (the Banking Executive Accountability Regime), Hong Kong (the Manager-in-Charge regime), Ireland (proposed Individual Accountability Framework, including Senior Executive Accountability Regime and new Conduct Standards), Singapore (proposed guidelines on individual accountability and conduct), the UK (the Senior Managers and Certification Regime, which is being rolled out to almost all regulated firms), the US (the latest guidance on the management of business lines and risk management), and in the Financial Stability Board’s work on governance and misconduct. More countries are likely to follow suit over the coming years.

This increasing focus on individual accountability has been driven by three main factors. **First, to constrain excessive credit and market risk taking**, in particular by banks, through a focus on both heads of business lines and heads of control functions such as Compliance, Risk Management and Internal Audit.

Second, together with the greater emphasis on culture, to mitigate retail and wholesale misconduct risks through a focus on conduct standards and on senior managers taking reasonable steps to prevent regulatory breaches in the areas for which they are responsible. This is also part of a wider focus of both regulators and financial institutions to restore trust in the financial sector.

Third, to hold individual senior managers to account (including through lower remuneration and disciplinary actions) when regulatory breaches and other failures do occur.

Internationally, firms have taken the shift to greater individual accountability seriously, perhaps not least because of the potential consequences on individual senior managers of a failure to do so. In Ireland firms will need to undertake large-scale reviews and updates of governance structures, management reporting structures, individual responsibilities, governance maps, and management information.





02.

The potential Irish Regime

“Culture is set from the top down. It is a matter for boards and senior management, in the first instance, to set an effective culture that places the best interests of their customers first. Banks still have a distance to go to live up to their slogans of putting customers first.”

Dervile Rowland, Director General Financial Conduct, Central Bank of Ireland

On 24 July, the Irish Central Bank published the Behaviour and Culture Report into the five main Irish retail banks. The report was requested by the Minister for Finance under section 6A of the Central Bank Act 1942 at the end of 2017 as a result of the ongoing Tracker Mortgage Examination and was conducted in collaboration with the Dutch regulator, De Nederlandsche Bank ('DNB').

A series of culture reviews were undertaken in Ireland's retail banks which analysed:

- The leadership behaviours of the executive committee including the drivers of this behaviour in terms of group dynamics and mind-set; and
- The interplay between the executive committee and relevant internal stakeholders in the context of strategic decision-making.

As part of its report the Central Bank has recommended that that legislation be introduced by Government to facilitate the introduction of an Individual Accountability Framework referred to as the “Senior Executive Accountability Regime” and a Consultation Paper is expected imminently. This new accountability framework, would apply to banks and other regulated financial services providers and would go significantly beyond the current requirements for staff to be fit and proper, setting conduct standards for staff and ensuring clearer lines of accountability within firms.

The proposed Individual Accountability Framework will serve as a toolkit for the Central Bank comprising various methods by which to promote the desired culture of compliance in financial services firms. This Individual Accountability Framework will be consisted of:

- Standards of behaviour for regulated financial services providers and the individuals working within them (the Conduct Standards);
- A Senior Executive Accountability Regime, which will be designed to ensure clearer accountability;
- Enhancements to the existing Fitness and Probity Regime; and
- A unified enforcement process.

Conduct Standards

While certain conduct standards are already embedded in the current regulatory framework in the form of the Consumer Protection Code and the Fitness and Probity Regime, the Central Bank has proposed enhancing these with the introduction of three new sets of standards:

- Common Conduct Standards for all staff in regulated financial services providers;
- Additional Conduct Standards for senior management, which will apply to staff in PCF roles and/or Senior Executive Functions;
- Standards for Business, i.e. common standards which will be applicable to firms across the regulated financial services sector.

Senior Executive Accountability Regime

A key recommendation arising from the Central Bank's report is the introduction of a Senior Executive Accountability Regime. The Central Bank envisages this regime applying in the first instance to:

- Credit institutions (excluding credit unions);
- Insurance undertakings (excluding reinsurance undertakings, captive (re)insurance undertakings and Insurance Special Purpose Vehicles);
- Investment firms which underwrite on a firm commitment basis and/or deal on own account and/or are authorised to hold client monies/assets; and
- Third country branches of the above.

The regime will introduce Senior Executive Functions (SEFs) including board members, executives reporting directly to the board and heads of critical business areas. The current indication is that while some SEFs may be mandatory, the Central Bank intends to allow for a degree of flexibility in terms of how firms structure their senior management team. Each SEF will have prescribed responsibilities which will be proposed by the Central Bank in order to ensure that there is an SEF responsible for all key conduct and prudential risks relevant to each firm. Additionally, and in line with the current UK Senior Managers Regime, SEFs will be required to prepare a Statement of Responsibilities documenting their role and areas of responsibilities and firms will be required to produce Responsibility Maps documenting key management and governance arrangements.

Enhancements to Fitness and Probity Regime

The Central Bank has proposed supplementing the existing Fitness and Probity (F&P) Regime with the introduction of a certification regime. The new regime would oblige firms to certify on an annual basis that the individuals in question are fit and proper persons to perform their functions.

The Central Bank is also seeking the implementation of its previous recommendation to publish refusals of appointments to PCF roles and to investigate those who performed PCF roles in the past.

Unified Enforcement Process

Under current enforcement rules, the Central Bank may only pursue action against an individual where that individual is a 'person concerned in the management' of the firm and where the case has been proven against the firm and it can be proven that the individual participated in the breach. The Central Bank is seeking to remove these hurdles in order to pursue individuals directly for their misconduct.

Implications for Irish financial services firms

The introduction of an Individual Accountability Framework will present a number of challenges for Irish financial services firms. In the first instance, firms will need to clearly understand their obligations. This will involve some interpretation of prescribed responsibilities and also of any principle-based standards, in particular, the new Conduct Standards. The new regime will also present a number of operational challenges, particularly in relation to the formulation of Responsibility Maps and individual statements of responsibility as well as the maintenance of documentation and the need to meet training needs for staff as a result of the new rules.

Senior manager roles covered by the SMCR for banks

PRA population of senior managers	FCA population of senior managers (in addition to the PRA population)
Chair of the board	Chair of nominations committee of the board
Chairs of risk, audit and remuneration committees of the board	Executive directors
Senior independent director	MLRO
CEO, CFO, CRO	Head of Compliance
Head of internal audit	Other overall responsibility senior managers
Heads of key business areas	
Group entity senior manager	
Chief of operations	

Individuals undertaking these roles must:

1. Be assessed as being fit and proper for the role by the financial institution.
2. Be approved by the regulator(s) to undertake the specific role in a specific financial institution (the approval does not carry across to other roles or to other financial institutions). This approval may be granted on the basis of a review of the application forms alone, or the regulator(s) may supplement this with one or more interviews of a candidate.
3. Have clear and succinct individual statements of responsibilities. This should include, but not be confined to, an assignment of the "prescribed responsibilities" listed by the regulators. In addition, the financial institution should develop a comprehensive and up to date overall "management responsibilities map" that shows how all the individual responsibilities fit together, together with reporting lines and committee structures (indeed, one of the prescribed responsibilities that has to be allocated to a senior manager is the responsibility for maintaining this mapping).
4. Meet the Conduct Rules for senior managers and for all non-ancillary staff. In particular, senior managers are required to take "reasonable steps" to ensure that the business of the firm for which they are responsible is controlled effectively and complies with relevant requirements and standards of the regulatory system. What is "reasonable" will depend on the specific facts of any particular situation, but a senior manager must be able to satisfy the regulator that they took 'reasonable steps' to avoid any regulatory breach occurring in their area of responsibility.

Applying the UK SMCR standard, the below evidence is required to substantiate compliance with the regime.

Evidence to meet the "reasonable steps" test

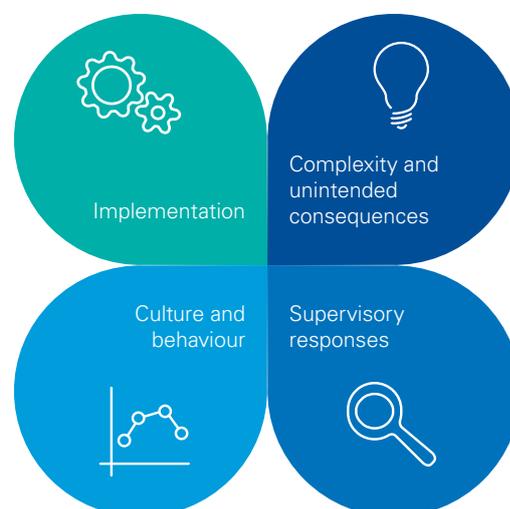
Structure	Execution	Information	Non-executive directors
Governance framework	Systems and controls in place	Management information	Challenge of the executive
Policies and procedures	Appropriate delegations	Regular reporting	Forward looking and proactive approach
Reporting lines	Active management	Minutes of meetings	Regular and effective meetings of the board and board committees
Committee memberships	Proactive participation in committees	Incident/breach escalation Regulatory correspondence and meetings/interviews	Competent and active members of the board and board committees Sufficient management information to assess risks and significant business activities



03. Experience with the UK regime

The UK's SMCR and SIMR have had a significant impact on banks' and insurers' governance frameworks, and to some extent on their culture and behaviours. Some implementation issues have arisen, in particular in more complex groups and the UK subsidiaries of overseas banks and insurers. Supervisory attention has focused primarily on the approval of senior managers, and on checking that financial institutions have the main elements of the regime in place.

We focus in this chapter on the experiences of UK banks and insurers with the implementation of the SMCR and the SIMR respectively. This covers how these financial institutions have approached the implementation challenge, what has changed in terms of culture and behaviours, the main issues arising, and the focus of supervisors. Some lessons emerge for the further roll-out of the SMCR in the UK and for the introduction of similar regimes in other countries.



Implementation

Banks and insurers have taken a wide range of approaches to implementing the SMCR and the SIMR.

At a minimum, some firms have simply “ticked the boxes” by producing sets of individual responsibilities for senior managers and an overall mapping of governance arrangements, not least because these components are essential for gaining approvals for candidates for senior manager roles. Such firms are more likely to find that they have not allocated responsibilities with sufficient clarity or to sufficiently senior managers, have not focused sufficiently on what each senior manager is actually responsible for, have not covered all relevant business functions and activities, and have not provided sufficient information on governance arrangements (including reporting lines and committee structures and memberships).

In most cases, however, firms have gone beyond this and engaged more with the spirit of the new regime. The duty of responsibility on senior managers may have been particularly important in concentrating minds here. Firms at this more active end of the spectrum have taken the opportunity to review their governance arrangements, and to clarify and refresh roles and responsibilities, management information, reporting and escalation routes. These firms have followed some combination of:

- Established SMCR/SIMR programmes with clear leadership and buy-in from the Chair and CEO. Senior leadership has been fundamental in driving willing adoption and adherence.
- Allocated ownership across a number of key functions with clear roles and responsibilities for meeting each element of the new regime.
- Undertaken a gap analysis of their current state against the SMCR and SIMR requirements.
- Reviewed their current allocation of responsibilities. In most cases this has led to changes in allocation and to a general “cleaning up” and updating of responsibilities, and in some cases to more streamlined and more effective management.
- Reviewed governance structures, including senior manager structures, board and executive committee terms of reference and memberships, and individual and committee reporting lines. This has led to an overhaul of the governance framework in some firms.
- Developed a “reasonable steps” framework to assist in evidencing that senior managers have taken reasonable steps to avoid regulatory breaches.
- Reviewed management information to assist senior managers in discharging their responsibilities. Some firms have overhauled their risk management system as it became clear that management information was inadequate and did not enable some senior managers to gain assurance that necessary systems and controls were in place and were working effectively.
- Enhanced the training and development of current and candidate senior management (including board members), including on the nature and objectives of the SMCR/SIMR.
- Established quality assurance reviews of programme deliverables (for example statements of responsibilities, reasonable steps framework and the firm’s conduct breach methodology).
- Engaged proactively with regulators.

Successful programmes have usually been based on a willingness to use the SMCR/SIMR as an opportunity to reassess the appropriateness and effectiveness of current governance arrangements and to challenge the roles of both individuals and committees. This has facilitated improved governance, and in some cases enabled a degree of rationalisation and simplification of governance structures. However, some firms found that because this re-engineering was poorly managed or thought through it resulted in arrangements that were not fit for purpose or were overly complicated or burdensome, requiring further re-working to create an effective and efficient governance framework.

Successful programmes have also usually leveraged templates and documentation that were already in place and sought to align new processes and procedures with existing practices and IT systems, and recognised competing priorities, dependencies (for example with some elements of MiFID 2 and Solvency 2) and stress points.

New entrants to the UK market (subsidiaries and branches of overseas parents, and new UK-headquartered challenger firms) have engaged with the SMCR/SIMR and generally understood the importance of governance framework design and of allocating responsibilities to appropriate individuals, taking into consideration proposed reporting lines and overall responsibility for certain functions and business lines. In some cases this has had an impact on recruitment decisions (for example whether to hire someone with an understanding of the regime and the necessary skills and expertise to discharge their responsibilities appropriately), and on the allocation of responsibilities and reporting lines between the subsidiary or branch and its parent.

One key implementation challenge that has emerged relates to the ownership of the regime and the transition from implementation to business as usual. At the implementation stage, and for the business as usual operation of the senior managers element of the new regime, most firms have allocated ownership to the CEO’s office. For the business as usual operation of the Certification Regime, firms have allocated ownership more evenly between the COO/CEO office, Compliance and HR. Some firms have underestimated the operational resources required to establish and operate a Certification Regime.

The importance of HR, and of an effective working relationship between HR and a firm’s control functions, has become clearer in firms with a large number of certified persons, where the firm will be responsible for assessing their fitness and propriety on an annual basis, and for conducting enhanced checks at the recruitment stage. Some firms have introduced technology to facilitate data collection, reporting and record keeping in this area. HR functions in some firms are challenging themselves on whether they have the right skills and capabilities to run these regimes on a business as usual basis.

Culture and behaviour

Given the timescales required to achieve significant and tangible cultural change, the jury is still out on the extent to which the SMCR/SIMR has driven large scale changes in culture. However, there are clearer indications that the regimes have led to improved governance in many banks and insurers.

Senior managers have reviewed and challenged their own personal responsibilities and considered whether these are appropriate. Even where the SMCR/SIMR largely codified existing responsibilities, a much brighter spotlight has been targeted on senior manager accountability.

Senior managers have become wary of the possible sanctions on them for regulatory breaches in their areas of responsibility, and this has promoted greater control and scrutiny over their respective areas. But, as a result, senior managers have become more empowered by this clarification of accountability and delineation of responsibilities.

Similarly, there have been reports that senior managers have become more involved at board, board committee and executive committee meetings, with more active participation and discussion. The downsides of this may be (a) a corresponding decision-making paralysis at lower levels, with lower level management becoming more reluctant to make decisions themselves and escalating more to senior managers and to senior manager level committees; and (b) committees becoming an advisory panel for the (senior manager) chair of the committee.

Some firms have linked to some extent the SMCR/SIMR with other initiatives on culture, values and behaviours. Conduct risk has become better integrated within the overall risk framework, and training on conduct has become more of a business as usual activity than it used to be.

Complexity and unintended consequences

Firms have struggled with the implementation of the SMCR/SIMR in five key areas.

First, some firms and senior managers have found it difficult to understand fully their obligations in a number of areas. Many firms have found it difficult to define how far they – and their senior managers – should go to establish that “reasonable steps” have been taken to avoid regulatory breaches, and the extent to which second and third line of defence control functions and internal audit should be involved in monitoring this and providing assurance that the appropriate steps have been taken.

Firms have also struggled with how to interpret some of the prescribed responsibilities such as those relating to culture; with the identification and notification (internally, and to the regulators) of breaches of the Conduct Rules; and – for the banks, building societies and major investment firms so far subject to the Certification Regime – with the identification of populations for the Certification Regime (including the interpretation of “significant harm” and the extent to which roles requiring formal qualifications should be captured).

A more recent challenge here relates to the roles and responsibilities of a firm’s chief of operations, not least in the context of the many issues for firms emerging from fintech, operational continuity, legacy IT systems and cyber security.

Second, some firms have found it difficult to establish the identification and role of group entity senior managers and the application of the “other overall responsibility” senior manager function. Some banks and insurers with overseas parents have struggled to identify and to allocate a clear set of responsibilities to group level senior managers (including not just business managers, but also in cases where risk and compliance functions are provided in part at parent level), and to define how responsibilities will be shared with UK-based senior managers within a matrix management structure.

In some cases an overseas parent has been reluctant to designate managers based outside the UK as senior managers, even if they meet the significant influence test. In other cases this has led to a multiplicity of designated senior managers at both parent and subsidiary/branch levels, which can seem disproportionate to the size of the subsidiary/branch. Further complexity has arisen where an overseas parent operates through both a subsidiary and a branch in the UK, with some senior managers undertaking senior management functions in both UK entities.

Even within the UK, issues have arisen where individuals in an unregulated group entity have a significant influence over one or more regulated entities within the group.

Firms are also often unclear about how many senior managers should be allocated to the group entity senior manager function – some firms may have identified too many senior managers to this function, and in some cases have identified managers who are too junior (in both cases this blurs accountability).

Third, firms have faced a series of operational challenges, such as resourcing issues, particularly in Compliance and HR functions; the cost associated with tailored training for different cohorts of senior management and certification regime staff; preparing and maintaining documentation, and ensuring consistency between the management responsibilities map and individual statements of responsibilities; communicating the change in an effective way across the entire organisation; and obtaining and providing regulatory references.

Fourth, where branches of European banks are re-authorising as non-EEA branches this has resulted in these branches having to apply the non-EEA Branch SMCR regime, which captures a wider range of senior manager roles and is not specifically designed with some of the smaller European branches in mind.

Finally, some firms have struggled to implement the SMCR/SIMR at the same time as introducing organisational change as a result of other regulatory requirements (recovery planning, resolution and the ring-fencing of retail banks), Brexit, mergers and acquisitions, or other group restructurings.

Supervisory responses

During the transition period in 2016 most of the supervisory scrutiny was on larger banks, investment firms and insurers, many of which were asked to make changes to the designation of senior manager roles, statements of individual responsibilities, and the management responsibilities map. Smaller banks and insurers were generally left to implement the SMCR/SIMR without the same level of scrutiny, except where supervisors were engaged with the firm in other areas, where there were obvious issues in implementation, or where new candidates were nominated for senior manager roles.

On a more steady state basis, supervisors will usually review individual statements of responsibilities and the firm's management responsibilities map in preparation for meetings with senior management. Supervisors may also use meetings with senior managers to test how well the SMCR/SIMR has been embedded. This may highlight inadequacies that need to be addressed.

For example, in some cases management responsibility maps have been criticised by supervisors for being too complex and unwieldy, making them not only hard to navigate but also difficult to maintain as live documents. In other cases firms have been requested to provide more detail in management responsibility maps on governance arrangements, particularly their interactions with parent firms and group arrangements more generally (for example where senior executive remuneration is determined by a group-level remuneration committee, or where IT and other infrastructure issues are owned and managed at group level).

Supervisors have also sometimes asked for additional rationale for allocations of responsibilities that do not appear to be 'standard'.

Other areas in which supervisors have expressed an interest include:

- challenging firms where senior manager roles have not been allocated to the most senior relevant individual in the firm (the supervisors refer to this as 'juniorisation');
- challenging firms where global heads based in the UK have not been designated to be senior managers;
- requesting information on Certification arrangements, and even requesting firms to undertake an internal audit on their application of the Certification Regime;
- indicating concern where responsibility for financial crime has been allocated to a money laundering reporting officer who is not of sufficient seniority, or has been split across individuals; and
- requesting that firms present information about the way in which different entities might be linked from a governance perspective (especially in the event of matrix management, where individuals have dotted reporting lines into other entities).

The PRA and FCA also now have much greater insight and clarity on regulatory breaches as a result of the reporting and notification requirements in the SMCR/SIMR. These data are likely to inform future supervisory and thematic activity across firms and sectors.

Finally, the SMCR/SIMR is likely to be reinforced over time through enforcement actions against senior managers. For example, the FCAs May 2018 enforcement notice against the CEO of a major UK banking group made specific reference to the role of a CEO within the SMCR and to Individual Conduct Rule 2 (acting with due skill, care and diligence).





04.

UK next steps

The SMCR is being rolled out to most regulated firms in the UK. This will extend to almost all regulated firms the core elements of the SMCR – senior manager roles and statements of responsibility, the duty of responsibility on senior managers, the Certification Regime, and the Conduct Rules. Near final rules for this extension were published in July 2018. The Central Bank Consultation Paper will determine the extent of the proposed Irish Regime.

Insurers

Insurers will be subject to the full set of SMCR requirements from 10 December 2018. This will extend the current SIMR and modified approved person requirements currently being applied to insurers by the PRA and FCA respectively. In particular, this extension will:

- apply the statutory duty of responsibility to senior managers;
- require Solvency 2 insurers and large non-Directive insurers to take all reasonable steps to ensure that a senior manager is provided with all the information and materials they would reasonably expect in order to perform a new senior management function;
- require insurers to assess and certify (annually from December 2019) the fitness and propriety of staff covered by the Certification Regime (including staff capable of causing significant harm to the firm or its customers); and
- require all Certified staff to meet the Conduct Rules from 10 December 2018, and for all non-ancillary staff to do so from December 2019.

Solvency 2 insurers and large non-Directive firms will need to submit a conversion notification, statements of individual responsibilities and a management responsibilities map to the FCA to convert existing approved individuals to new senior management roles. However, individuals will not have to re-apply for approval if the proposed senior management roles can be mapped directly from the modified approved persons regime. The PRA requires no re-approval in transitioning from the SIMR.

Individuals at small insurers not covered by Solvency 2, at insurers in run-off, or at an insurance special purpose vehicle, will be converted automatically from their current modified approved person functions to the corresponding senior manager roles.

Other regulated firms

Most other regulated firms will be subject to the SMCR from 9 December 2019, although for these firms the Certification Regime will not be fully operational until December 2020 (when these firms will be required to certify relevant employees as being fit and proper for the first time). All regulated firms will be subject to most elements of the SMCR, including statements of responsibility for senior managers, the duty of responsibility on senior managers, criminal record checks for the approval of a senior manager, the Certification Regime for staff who could cause significant harm to the firm or its customers, fit and proper requirements and regulatory references for senior managers and staff covered by the Certification Regime, and the Conduct Rules for senior managers and for all non-ancillary staff.

There are also some adjustments for specific types of firm. For example, asset managers will be subject to the additional requirement to identify a senior manager (this is expected to be the Chair of the board) with overall responsibility for overseeing the 'value assessment'. And the Certification Regime will be extended to cover functions subject to qualification requirements such as investment and mortgage advisers, the client dealing function, CASS oversight, proprietary traders, algorithmic traders, and any manager (other than a senior manager approved under the Senior Manager Regime) of staff covered by the Certification Regime.

However, some proportionality is being introduced through categorising firms as enhanced, core or limited scope (see table below), and by applying differentiated requirements to each type of firm. So, for example, while enhanced firms will be subject to essentially the same SMCR requirements as apply to banks and insurers, core and limited scope firms will have to designate senior managers to a much narrower set of roles, will be subject to a shorter list of prescribed responsibilities (none for limited scope firms), will not be required to produce management responsibility maps, and will not be subject to handover procedures.

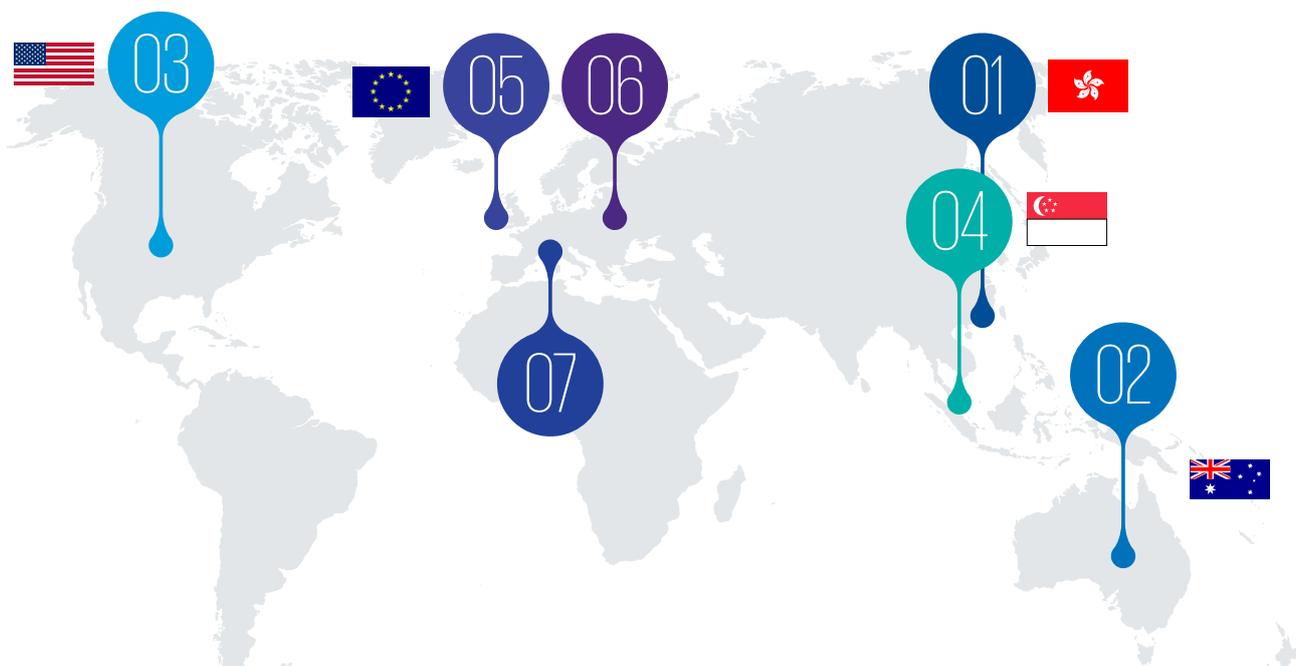
Categorisation of firms

Enhanced Firm	Core Firm	Limited Scope Firm
<p>Firms with annual regulated revenue generated by regulated consumer credit lending of £100 million or more per annum (three year rolling average)</p> <p>Significant investment (IFPRU) firms</p> <p>Large CASS Firms</p> <p>Firms with assets under management above £50 billion (three year rolling average)</p> <p>Firms with total intermediary regulated business revenue of £35 million or more per annum (three year rolling average)</p> <p>Mortgage lenders and administrators that are not banks with 10,000 or more regulated mortgages outstanding</p> <p>Other firms allocated to this category by the regulator</p>	<p>All firms not allocated to the enhanced firm or limited scope firm categories</p>	<p>Firms that currently have a limited application of the Approved Persons regime, including:</p> <p>Limited permission consumer credit firms</p> <p>Sole traders</p> <p>Authorised professional firms whose only regulated activities are in non-mainstream regulated activities</p> <p>Service companies</p>



05. The wider international context

Other countries are also introducing measures to reinforce individual accountability for senior managers, and in some cases codes of conduct applicable to a wider range of staff. These measures are broadly similar to the UK SMCR, although the details vary across countries. In addition, the Financial Stability Board (FSB) has highlighted the importance of individual responsibility and accountability in a recent paper on strengthening governance frameworks to mitigate misconduct risk.



01 Hong Kong

The Securities and Futures Commission (SFC) introduced the Manager-in-Charge (MIC) regime in October 2017, following a six-month transition period. It is intended to drive better decision-making, and to heighten awareness of individual senior manager accountability, regulatory obligations and potential liabilities.

The SFC requires licensed corporations to appoint a MIC as the person primarily responsible for each core function – overall management oversight, key business lines, operational control and review, risk management, finance and accounting, IT, compliance, and AML and counter-terrorist financing. A single individual may be the MIC for more than one of these functions if this is appropriate for the size and nature of the firm, or two or more individuals may be appointed to manage a specific core function.

There may be some overlap with directors and responsible officers, who together with MICs are regarded by the SFC as constituting the senior management of a licensed corporation.

Senior management is expected to meet the obligations set out in various SFC codes and guidelines. In particular, the senior management of a licensed corporation should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures; should manage properly the risks associated with the business of the corporation; and should be ultimately responsible for the adequacy and effectiveness of the corporation's internal control systems.

Licensed corporations are required to submit to the SFC an organisational chart depicting their management and governance structure, business and operational units, and key human resources and their respective reporting lines (this should cover all MICs engaged by the corporation), and to notify the SFC of any changes in their appointment of MICs.

The SFC intends to conduct a thematic review of licensed corporations' management structure and effectiveness, including board governance and the responsibilities of MICs and how they discharge them.

Similarly to the experience in the UK, a number of practical issues have arisen with the implementation of the MIC regime, including MICs operating from outside Hong Kong (and sometimes from different time zones) and the appointment of a deputy in charge; complexities in management information systems to support individual accountability; and how senior management accountability links in with committee structures and the wider agenda for improving culture.

02 Australia

The Banking Executive Accountability Regime (BEAR) came into effect for the largest banks in Australia on 1 July 2018, and will come into effect for other Authorised Deposit-taking Institutions (ADIs) a year later. The regime is designed to make senior executives in banks more accountable for their actions and for the outcomes arising from these actions. It applies to all ADIs and their subsidiaries, and any Australian branches of foreign owned banks.

BEAR requires each ADI to:

- identify its "accountable persons";
- provide the Australian Prudential Regulation Authority (APRA) with the roles and responsibilities of each accountable person and with accountability maps;
- notify APRA of any changes to accountable persons, responsibility statements and accountability maps, and of any breaches of BEAR;

- implement specific remuneration policies under which the ADI would reduce the variable remuneration of an accountable person if the person did not comply with their accountability obligations; and
- comply with any APRA direction to reallocate responsibilities.

All accountable persons must:

- be registered with APRA; and
- conduct the responsibilities of their position as an accountable person with honesty and integrity, due skill, care and diligence, to prevent an adverse impact on the prudential standing or reputation of the ADI.

Accountable persons include board members, the CEO, CRO, CFO, COO and CIO, heads of significant business units, and heads of compliance, AML, HR and internal audit; and any person that has actual or effective responsibility for management or control because of the position they hold in, or relating to, an ADI.

Similarly to the UK, the introduction of BEAR has put enormous pressure on the banks – from mapping accountabilities and making accountability statements, to reviewing their overarching governance processes. In the absence of prescriptive guidelines, banks have also had to take their own view on how an accountable person can demonstrate due skill or diligence, that reasonable steps have been implemented, and that management information is in place that would alert an accountable person to potential problems.



US

The Federal Reserve proposed supervisory guidance on management of business lines and independent risk management and controls for large financial institutions in January 2018. This would apply to banks with assets of \$50 billion or more, and to systemically important non-banks.

The proposed guidance will form part of the Federal Reserve's rating system for large financial institutions, as a sub-set of governance and controls (the other two parts of which cover board effectiveness and recovery planning).

The objective of the guidance is to delineate the roles and responsibilities of individuals and functions related to risk management – senior management, business line management, management of independent risk management and internal audit – and to set out core principles of effective senior management.

The guidance relates mostly to collective senior management responsibilities (for the core group of individuals directly accountable to the board for the sound and prudent day to day management of the firm). However, specific expectations are set out for the CRO (to establish and maintain independent risk management appropriate for the size, complexity and risk profile of the firm) and for the Chief Audit Executive (to establish and maintain internal audit appropriate for the size, complexity and risk profile of the firm).



Singapore

The Monetary Authority of Singapore (MAS) issued a consultation paper in April 2018 on proposed guidelines on individual accountability and conduct, with the intention of finalising the guidelines by the final quarter of 2018.

The proposed guidelines are firmly embedded within the MAS's overall approach to culture and conduct. The objective of the guidelines is to reinforce financial institutions' responsibilities in three key areas – promoting the individual accountability of senior managers (the proposed guidelines do not apply to non-executive directors); strengthening the oversight of employees in material risk functions (MRF); and embedding standards of proper conduct among all employees. The guidelines would apply to banks, insurers, securities firms and financial market infrastructures.

Financial institutions will be required to:

- identify senior managers who have responsibility for the management and conduct of functions that are core to the firm's operations (actual oversight and decision making responsibilities, irrespective of location);
- ensure that senior managers are fit and proper, and are held responsible for the actions of their staff and the conduct of business under their purview;
- demonstrate that senior managers are fit and proper;
- seek MAS approval for CEOs and other senior managers;
- establish and maintain a governance framework that is supportive of and conducive to senior managers' performance of their roles and responsibilities, with clear overall management structure and reporting relationships;
- ensure that MRF employees are fit and proper for their roles, and are subject to effective risk governance, oversight and appropriate standards of conduct and incentives; and
- promote and sustain the desired conduct among all employees, based on the expected standards of conduct set out in the guidelines.



European Commission

The European Commission has proposed a new Whistleblowing Directive designed to guarantee increased protection for whistle-blowers under EU law. The new law will establish safe channels for reporting both within an organisation and to public authorities. It will also protect whistle-blowers against dismissal, demotion and other forms of retaliation and require national authorities to inform citizens and provide training for public authorities on how to deal with whistle-blowers. In a financial services and culture context, the new whistleblowing rules should encourage individuals to voice their concerns, in particular in relation to poor conduct and practices. This will be reinforced by the proposed Senior Executive Accountability Regime.



ECB

Although the European Central Bank (ECB) has not introduced an individual accountability regime as such, internal governance and risk management are key supervisory responsibilities for the ECB and failings in these areas drive the highest scores under the ECB's supervisory review and evaluation of banks. The ECB and the European Banking Authority (EBA) has published guidance on internal governance, and on fit and proper assessments of individuals.



FSB

The FSB published in April 2018 a "toolkit" to strengthen governance frameworks to mitigate misconduct risk in both retail and wholesale markets. This supplements earlier FSB work on risk governance, remuneration, benchmark setting and culture; and an earlier FSB stocktake of efforts by international bodies, national authorities, industry associations and firms to strengthen governance frameworks to reduce misconduct risk.

The FSB's toolkit focuses on three main areas - cultural drivers of misconduct; individual responsibility and accountability; and the "rolling bad apples" phenomenon, whereby individuals who engage in misconduct are able to obtain subsequent employment elsewhere without disclosing their earlier misconduct to their new employer.

The toolkit relating to individual responsibility and accountability is very similar in approach to the UK's SMCR and the Hong Kong SFC's Manager-In-Charge Regime. The toolkit calls for supervisory authorities to develop a framework that identifies key responsibilities in a firm, including for the mitigation of the risk of misconduct; allocates these responsibilities to specific individuals; and holds individuals accountable for the responsibilities to which they have been assigned.

This may have a significant impact on supervisors and firms that have previously focused more on the collective responsibility of a firm's Board or senior management.





06. How KPMG can help

KPMG's Risk and Regulatory Consulting team comprise of experts in Fitness & Probity, Conduct Risk and SMCR specialists who've assisted clients in the design and implementation of these regimes.

Our team has unparalleled experience in financial services risk and regulation and can help you understand your requirements, how to practically implement these changes into your existing business model in order to ensure the requirements are properly embedded and remain fit for purpose.

Members of our team having worked in the UK, both with the PRA and firms, have a deep understanding of the SMCR/SIMR. They have worked with a range of banks, building societies, major investment firms and insurers to support the design and implementation of SMCR/SIMR readiness programmes, and to identify and address the typical SMCR/SIMR challenges/issues that arise across governance, people, process and technology.



1. Design and implementation

2. Linking accountability regime implementation to wider initiatives such as governance effectiveness and cultural change
3. Drafting role profiles and individual statements of responsibility
4. Developing management responsibilities maps and ensuring overall consistency
5. Formulating individual responsibility policies and procedures
6. Conduct Rules training and awareness
7. Development and implementation of technology solutions to aid compliance
8. Preparations for senior manager approval interviews, handover meetings, files and induction
9. Record keeping



2. Reasonable steps

- Review and design of frameworks to support senior managers taking reasonable steps to avoid regulatory breaches
- Workshops to review, implement and embed a reasonable steps approach
- Gap analysis against regulatory expectations and peers
- Conducting 'scenario analysis' testing to ensure the outcomes are effective and as intended
- Continuing reasonable steps assurance



3. Assurance

- Conducting a gap analysis against regulatory requirements and industry standards
- Review of policies and procedures – for both implementation and business as usual
- Internal audit support
- Business as usual operational effectiveness reviews, including board effectiveness reviews



4. Remediation

5. Providing support to deliver requirements following feedback from supervisors
6. Providing support to deliver requirements from the outcomes of post-implementation internal audit reviews or other external assurance reviews (including Supervisory Risk Mitigation Programmes)

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