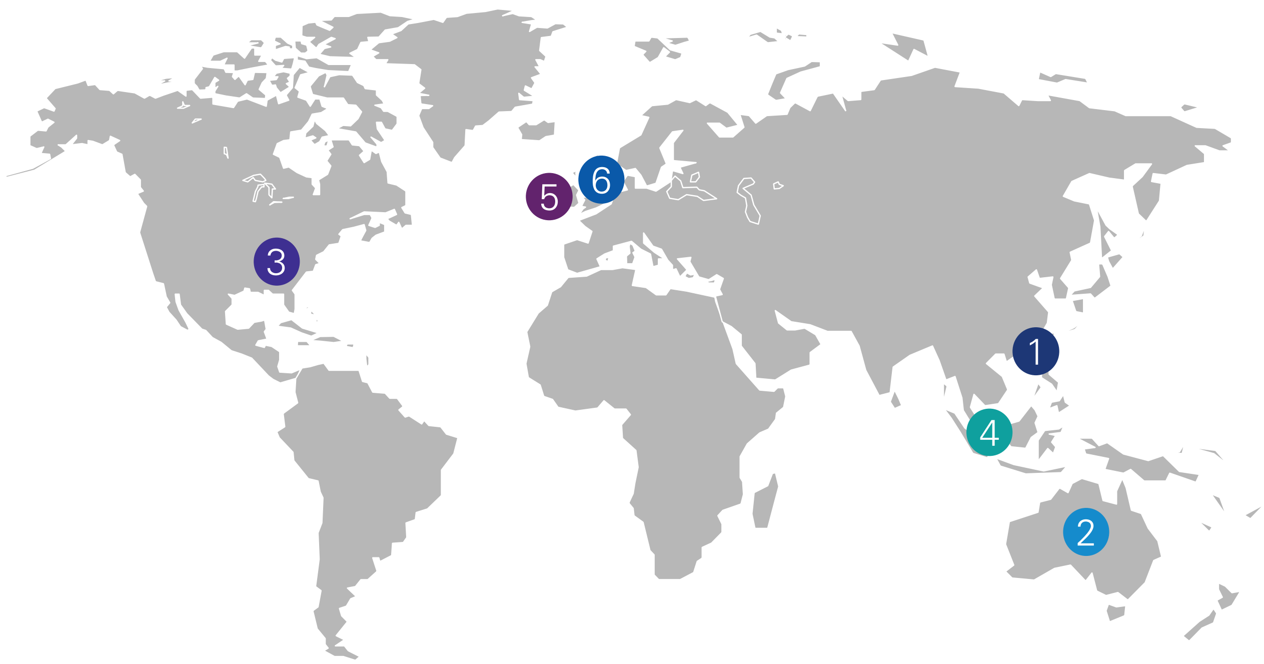
# KPMG in the Channel Islands

## Personal liability – A 'fine' mess

Regulators around the world are increasingly focusing on personal accountability, and the Channel Islands regulators are no different. With increased regulatory focus, the onus is on the individual to ensure they have taken 'reasonable steps' to prevent regulatory breaches. Demonstrating and evidencing these 'reasonable steps', in a time of ever-growing regulatory requirements, is not a straightforward exercise. Do you worry about your firm's compliance and corporate governance? Do you find the concept of personal liability daunting? Does it keep you awake at night? You are not alone!

The introduction of the Senior Manager and Certification Regime ('SMCR') in the UK, has required regulated firms to identify senior managers, allocate responsibilities and ensure that senior managers are fit and proper for their roles and meet conduct rules. This concept is gradually becoming a global phenomenon as other countries introduce measures to reinforce individual liability.




1 **Hong Kong**
Manager-in-Charge regime came into effect October 2017.

2 **Australia**
The Banking Executive Accountability Regime came into effect for the largest banks in Australia on 1 July 2018, and other Authorised Deposit-taking Institutions on 1 July 2019.

3 **United States**
Ratings based on management of business lines and independent risk management and controls are expected for all Large Financial Institutions by early 2020.

4 **Singapore**
Consultation on proposed guidelines on individual accountability and conduct concluded in June 2019. Further consultation is ongoing on a proposal to expand the scope to a wider population of financial institutions.

5 **Ireland**
Senior Executive Accountability Regime for financial institutions. This proposal was accepted in June 2019 and the legislation is expected to be published towards the end of 2019 for consultation.

6 **United Kingdom**
The Financial Stability Board highlighted the importance of individual responsibility and accountability in a paper, published in April 2018, on strengthening governance frameworks to mitigate misconduct risk.

## Fine facts & reputational risk

Unsurprisingly, increased personal accountability seems to be having a similar effect on individual fines. Despite the dramatic decrease in the total value of fines issued by the Financial Conduct Authority (FCA) in 2018, compared to the previous year, average individual fines more than tripled last year. This trend has continued into 2019 where there have already been two significant individual penalties of £76 million and £3.2 million respectively, issued by the FCA.

| | 2017 | 2018 | |
|---|---|---|---|
| **FCA Total Fines** | £ 229.5 million | £ 59.4 million | 74% |
| **FCA Average Individual Fines** | £ 54.5 k | £ 170.4 k | 213% |

Despite the varying levels of sophistication in each jurisdiction's regime, the global pressures on increased accountability are likely to continue to escalate the use of financial penalties and disciplinary sanctions. Specifically in the Channel Islands, recent years have shown the widening of the Jersey civil penalties regime, which grants the Jersey Financial Services Commission powers to impose civil penalties to any 'principle person', and in Guernsey the increase of discretionary financial penalties available to the Guernsey Financial Services Commission.

Individuals are more likely to be fined or suffer disciplinary sanctions unless they can show that they took 'reasonable steps' to prevent wrongdoing.

Although the significant penalties can threaten you financially, the consequences of being found personally liable can also be devastating to your reputation and future earning potential. The public nature of fines and disciplinary sanctions can lead to the collapse of a career, leaving a reputation built up over decades destroyed by just one incident.

## Reasonableness vs Commerciality

In the face of these growing regulatory requirements, it is becoming increasingly difficult to comply with regulatory demands in a commercial manner solely using traditional approaches. Consider the greater use of technology to help increase your coverage and improve accuracy, helping you comply with regulatory requirements. Use digital tools to automate rule based and repetitive requirements freeing up your time, and that of your team, to focus on the matters requiring greater diligence and analysis. Continually challenge your own decision-making process and ensure that you document the desired approach and thought processes in case you need to provide it to a Regulator. Adopting a dynamic and fluid approach to regulatory change is key to staying on top of the tidal wave and ensuring you can evidence 'reasonable steps'.

### How KPMG in the Channel Islands can help

Our team leverages local expertise and global capabilities to help you manage your corporate and personal responsibilities. Including:

— Advising on how to leverage technology and implement automated controls that reduce human error and streamline processes
— Review and design of frameworks to support senior managers taking reasonable steps to avoid regulatory breaches
— Conducting gap analysis against regulatory requirements and industry standards
— Reviewing policies and procedures
— Operational effectiveness reviews, including board effectiveness reviews
— Policy and procedure mapping to Business Risk Assessments

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