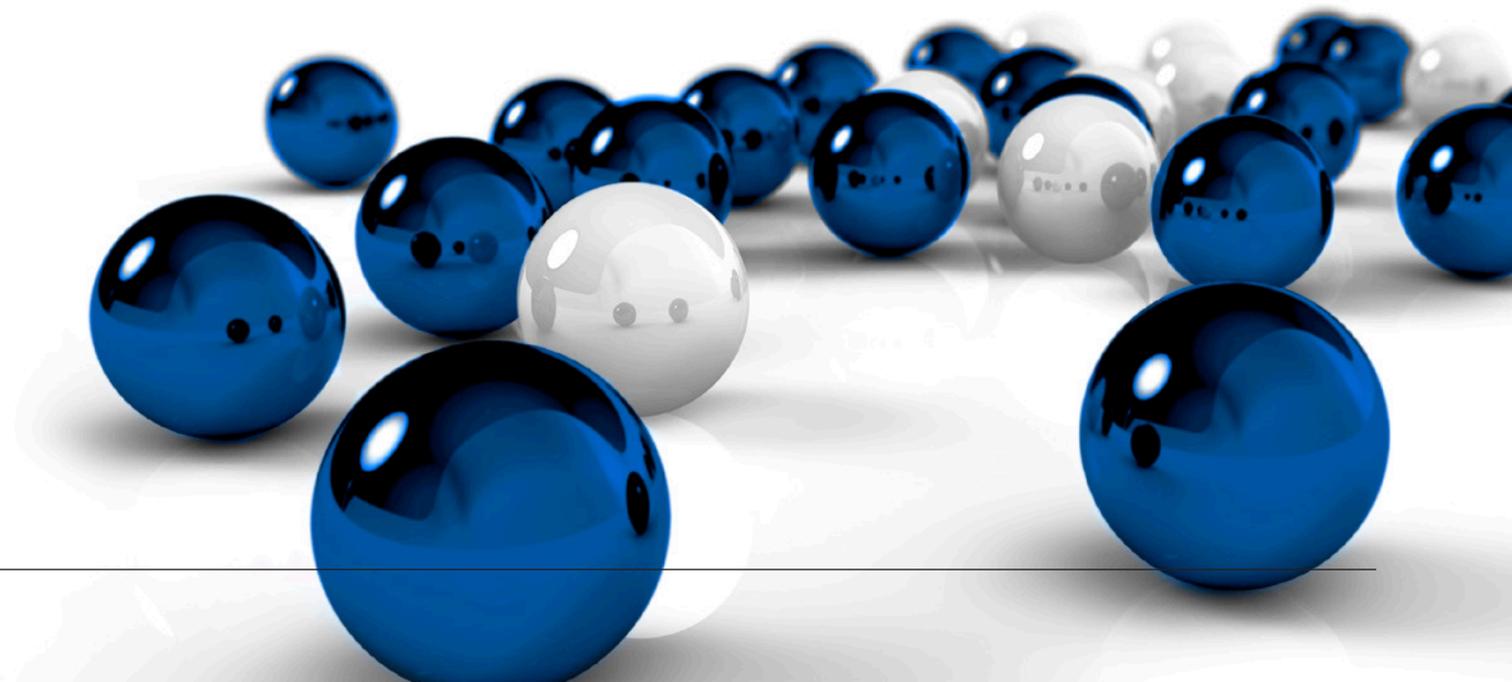


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A Comparative Look at Singapore's Proposed Accountability Regime for Senior Managers and Employees in Material Risk Functions

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Speed read

The MAS is proposing to require financial institutions to clearly identify and delineate the responsibilities of senior management and of employees in material risk functions. The proposed “Guidelines on Individual Accountability and Conduct” identifies five outcomes that should be met in order to ensure that senior management and employees are held accountable for their responsibilities and incentivised to ensure that they and their staff meet these expectations. This update will focus on the proposed Guidelines, compare it to equivalent regimes in the UK, Hong Kong and Australia and consider the steps that can be taken to meet the new regime (if implemented as proposed). A comparative table of the Singapore, UK, Hong Kong and Australia regimes is also included.

In line with measures that have been implemented in the UK (Senior Managers and Certification Regime), Hong Kong (Manager-in-Charge Regime and Management Accountability Initiative) and Australia (Banking Executive Accountability Regime), the Monetary Authority of Singapore (**MAS**) intends to enhance individual accountability of senior managers, enhance the oversight of employees in material risk functions and reinforce standards of proper conduct among employees of financial institutions. Towards this end, it proposed to issue a new set of “Guidelines on Individual Accountability and Conduct” (**proposed Guidelines**). The public consultation period ended on 25 May 2018. As with the regimes in the other jurisdictions, the proposed Guidelines are aimed at ensuring a corporate culture of responsible governance and leadership.

This update will focus on the proposed Guidelines and consider the steps that can be taken to meet it. A table comparing the proposed Guidelines to the Senior Managers and Certification Regime (**SMCR**) in the UK, the Manager-in-Charge Regime (**MICR**) and the Management Accountability Initiative (**MAI**) in Hong Kong, and the Banking Executive Accountability Regime (**BEAR**) in Australia is also set out at the end. For more on the MICR and the MAI, please see our updates, “[The Manager-in-Charge Regime: Ruffling feathers in the year of the Rooster?](#)” and “[Mapping responsibility: HKMA extends focus on management and its accountability](#)”. The BEAR is discussed in our update, “[Increasing banking executive accountability](#)”.

Persons to whom the Guidelines will apply

The proposed Guidelines will apply to banks, insurers, capital markets intermediaries and infrastructures (**FIs**) and on a group-wide basis. For locally incorporated banks and insurers that are headquartered in Singapore, this refers to the group including the holding company in Singapore, as well as local and overseas subsidiaries and branches, where applicable. For

locally-incorporated subsidiaries of foreign banks and insurers, this refers to the local operations in Singapore and downstream subsidiaries and branches in Singapore and overseas, where applicable. We would expect further clarification on group application once the final Guidelines have been issued.

Identifying senior management responsibilities

Under the proposed Guidelines, FIs will need to identify and define clearly who in senior management are responsible for the FI's core management functions. The persons to be identified should be the person (or persons) with actual decision making power within the relevant group and the person thus identified need not be located in Singapore. A list of core management functions has been provided. These include the usual C-suite officers but also extend to persons such as the head of business function, head of human resources and chief regulatory officer, as well as the head of compliance, head of internal audit, chief information officer, chief information security officer and the chief data officer (among others).

This list of core functions as currently proposed is different from those in Hong Kong, UK and Australia in some interesting ways:

- It includes the head of human resources (not included in the Hong Kong MICR or MAI or the UK SMCR but included in the Australian regime) as well as the chief data officer (currently unique to the proposed Guidelines).

- The role of chief information security officer is also currently set out as a separate category, whilst the UK, Hong Kong and Australia regimes, in contrast, refer only to the officer responsible for information technology, subsuming responsibility for information security under this heading. Nevertheless, a number of FIs have a dedicated senior person focused on security for the region.
- Unlike the UK SMCR and the Australian BEAR, non-executive directors are not currently included in the list. Indeed, the MAS expressly states in its consultation paper that “directors are considered senior managers under the Guidelines, only to the extent that they are employed in the capacity of an executive function within the FI”.

Descriptions of the various roles have been set out. The proposed Guidelines do not require specific individuals to be appointed to each role, but FIs will need to map the descriptions against existing roles. FIs will need to ensure that the various senior managers in the group meeting those descriptions (whether one or several of them) are identified and their scope of authority and responsibility made clear.

Identifying employees in material risk functions

In addition to senior management, FIs will also need to identify clearly employees in material risk functions. These are employees whose decisions or activities could materially impact an FI's risk profile. The proposed Guidelines do not provide a list of what constitutes material risk functions and FIs will need to carry out a principles-based

assessment of what the material risks to the business are and then consider which persons are responsible for those aspects of the business that would have an impact on these risks. Among other things, FIs will be required to ensure that such employees are subjected to more stringent oversight and higher conduct standards than other employees.

No formal submissions; MAS to assess compliance through its supervisory assessments

The information on senior management and on employees in material risk functions do not have to be formally submitted to the MAS (in contrast to the UK, Australia and the Hong Kong regimes). However, when conducting its supervisory assessment of the FI, the MAS will consider whether FIs have met these requirements.

The MAS has indicated that its supervisory assessment will be based on outcomes. The proposed Guidelines set out the following five outcomes that FIs will be expected to work towards (the **Outcomes**):

- Outcome 1: Senior managers who have responsibility for the management and conduct of functions that are core to the FI's operations are clearly identified.
- Outcome 2: Senior managers are fit and proper for their roles, and held responsible for the actions of their staff and the conduct of the business under their purview.

- Outcome 3: The FI's governance framework is supportive of and conducive to senior managers' performance of their roles and responsibilities. The FI's overall management structure and reporting relationships are clear and transparent.
- Outcome 4: Employees in material risk functions are fit and proper for their roles, and subject to effective risk governance as well as the appropriate standards of conduct and incentive structure.
- Outcome 5: The FI has a framework that promotes and sustains the desired conduct among all employees.

FIs are free to decide how best to meet these outcomes in a way that is relevant to the nature, size and complexity of their operations.

No new liabilities created

It should be noted that, consistent with the Hong Kong regimes, the proposed Guidelines will not create a new set of liabilities for FIs, and the obligations and liabilities currently existing under the regulatory framework will continue to apply. The proposed Guidelines

are intended to supplement the existing regulatory framework. The MAS may, however, take supervisory action against an FI that does not meet the outcomes set out in the Guidelines.

A whistleblowing channel and other steps proposed in the consultation paper

In addition to identifying and making clear areas of responsibility, the consultation paper proposes various steps that FIs should take to meet the Outcomes. In addition to the usual recommendations of providing training and having proper oversight, these include the following:

- The performance measurement framework for senior managers should include an assessment of how effectively they perform their specified roles and responsibilities, including the actions of their staff and the conduct of business under their purview. The framework should include appropriate incentives and consequences.
- Employees that carry out material risk functions should be accorded the necessary stature and authority where they perform risk management and control functions.
- Employees, whether or not they carry out material risk functions, should be provided with an appropriate incentive structure that should be effective in encouraging behaviour that is consistent with the desired outcomes and which considers risk and control objectives.
- There should be a formalised whistleblowing channel, including procedures to ensure adequate protection of employees who raise concerns over the FI's policies, practices and activities.

Steps to take

Although the proposed Guidelines are still in draft form, it is not too early to lay out some steps that FIs should start considering in the run up to preparing for their implementation:

- **Map out the governance and reporting structure.** A mapping exercise will need to be carried out in order to determine which businesses operate in which legal entities and how senior management fit into that structure. FIs with offices in the UK, Australia and Hong Kong will already have carried out, or will be in the process of carrying out, a similar exercise for their offices there. For them, this will both ease and complicate the exercise for Singapore as the proposed Guidelines are intended to apply on a group basis with no requirement that the relevant senior management be in Singapore. While this means that such FIs will be able to leverage on materials and thinking already developed for their offices in UK/Hong Kong/Australia – and indeed some of the senior management roles will be filled by the same people – it will also mean having to ensure that what has been established for offices outside Singapore will fit with the requirements of the Outcomes.
- **Review and document clearly the responsibilities of senior management.** This will help to determine whether they have sufficient seniority and authority, and to ensure that their responsibilities are consistent with the operation of the business in practice. Particular care should be taken around the edges of responsibility where there is overlap and where there may be more than one senior manager for a specific core management function.
- **Carry out a principles-based assessment of what the material risks to the business are and the persons responsible for those aspects of the business that would have an impact on these risks.** The results of this assessment should be consistent with and feed back into the responsibilities map of senior management. Lines of reporting and responsibility should be made clear and should not be overly complex.
- **Ensure that all employees understand the responsibility map, covering employees in a material risk function to senior managers.** The exercise should include ensuring that appropriate authority and seniority are conferred on the relevant employees and managers. This should be supplemented by training, not just on roles and responsibilities, but also of standards of good conduct and statutory and regulatory obligations.
- **Document the above exercise and ensure that the material is kept updated in line with changes in the business and the organisation.** Based on our experience with the regime in the UK and in Hong Kong, the authorities will want to know, in the event that things go wrong, what could have been done to prevent and correct the incident. This requirement will likely apply equally to the Australia regime.

While implementation of some of the measures (such as training) are easier to establish and are already current in many FIs, others may be more challenging given the soft culture aspect of the Outcomes. FIs will also need to consider how existing applicable regulatory requirements in Singapore and in other jurisdictions will meet the Outcomes in the proposed Guidelines, and where additional steps will need to be taken in order to comply with the proposed Guidelines (in their final form).

Cross-jurisdictional comparison of the accountability regimes in Singapore, Hong Kong, UK and Australia

	Singapore (proposed Guidelines on Individual Accountability and Conduct)	Hong Kong (Manager-in-Charge Regime and Management Accountability Initiative)	United Kingdom (Senior Managers and Certification Regime)	Australia (Banking Executive Accountability Regime)
Scope	Applies to banks, insurers, and capital market intermediaries and infrastructures.	<p>MIC Licensed corporations</p> <p>MAI Registered institutions (RI) (ie licensed banks, restricted licence banks and deposit-taking companies that are registered with the Securities and Futures Commission (SFC) to conduct regulated activities)</p>	<ul style="list-style-type: none"> – Banks (including branches), building societies, credit unions and investment firms authorised by the Prudential Regulation Authority (PRA). – Plans to extend the SCMR to all financial services firms in 2019. 	Authorised deposit-taking institutions (ADI) (unless subject to an exemption) and foreign ADIs that operate a branch in Australia.
Filing/Submissions	None, but it will form part of the MAS's supervisory assessment.	<p>MIC Information relating to each Manager-in-Charge to be submitted to the SFC</p> <p>MAI Information relating to each “principally responsible individual” to be submitted to the Hong Kong Monetary Authority (HKMA) and the SFC</p>	Statements of Responsibilities for each Senior Manager and a Management Responsibilities Map for each legal entity to be submitted to the Financial Conduct Authority (FCA) and/or the PRA. These must be updated and re-filed with the FCA and/or the PRA whenever material changes are made.	Accountable persons to be registered with the Australian Prudential Regulation Authority (APRA) by way of an Accountability Statement for each of its Accountable Persons and an Accountability Map specifying reporting lines and lines of responsibility. As with the UK regime, the APRA is to be notified of any changes.

	Singapore (proposed Guidelines on Individual Accountability and Conduct)	Hong Kong (Manager-in-Charge Regime and Management Accountability Initiative)	United Kingdom (Senior Managers and Certification Regime)	Australia (Banking Executive Accountability Regime)
New or additional liabilities	None. The existing legal and supervisory framework will apply.	<p>MIC None. The existing legal and supervisory framework will apply</p> <p>MAI None. The existing legal and supervisory framework will apply</p>	<ul style="list-style-type: none"> – If a decision taken by a Senior Manager of a UK entity (not a branch of an overseas firm) on behalf of their firm causes their firm to fail, that may amount to a criminal offence if the elements of the offence are satisfied. – All Senior Managers are subject to the Duty of Responsibility. This requires Senior Managers to take reasonable steps to avoid a breach of regulatory requirements from occurring or continuing within their area(s) of responsibility. 	Contravention of the accountability obligations may lead to a fine of up to AUD210 million.
Key persons covered	<ul style="list-style-type: none"> – Senior managers responsible for management and conduct of functions that are core to the FI's operations – Employees whose decisions and activities could materially impact an FI's risk profile 	<p>MIC Individuals principally responsible, either alone or with others, for managing certain "core functions"</p> <p>MAI Individuals principally responsible for:</p> <ul style="list-style-type: none"> – the overall management of the whole of the business; and – specified business lines and middle/back office functions, <p>but only to the extent that the individuals are involved in the management of a business constituting a regulated activity for which the registered institution is registered</p>	<ul style="list-style-type: none"> – In the case of Senior Managers, individuals performing a Senior Manager Function (as defined by the FCA and the PRA) – In the case of Certified Persons, staff who are employed in positions where they pose a risk of significant harm to the firm or any of its customers (as defined by the FCA and the PRA). 	<ul style="list-style-type: none"> – Board members with oversight over the ADI. – Senior executives with responsibility for management or control of significant aspects of the ADI or its subsidiaries. – In respect of a foreign ADI, also includes senior executives with responsibility for the conduct of all the activities of an Australian branch of the foreign ADI.

	Singapore (proposed Guidelines on Individual Accountability and Conduct)	Hong Kong (Manager-in-Charge Regime and Management Accountability Initiative)	United Kingdom (Senior Managers and Certification Regime)	Australia (Banking Executive Accountability Regime)
Requirements as to remuneration	Assessment and remuneration should take into account risk and control objectives	MIC Not addressed MAI The existing requirements will continue to apply	Existing requirements relating to remuneration continue to apply. Disciplinary action by firms against employees for breaching the Code of Conduct and/or failing to be fit and proper may include a reduction in, or recovery of, some of a person's remuneration.	<ul style="list-style-type: none"> – A specified percentage of remuneration for CEOs and senior executives must be deferred over a period of up to four years. – ADIs must also implement a policy that proportionately reduces the variable remuneration of an accountable person if they fail to comply with their accountability obligations.
Whistleblowing requirements	Yes, a formalised whistleblowing channel should be set up	MIC Not addressed MAI The existing requirements will continue to apply	<ul style="list-style-type: none"> – Certain specified firms must appoint a Whistleblowers' Champion. – Additional requirements for firms relating to training that must be provided to employees about whistleblowing (both internally, and to the FCA and the PRA). – Some firms must also report particular information about their whistleblowing programmes and disclosures received to the FCA and the PRA. 	Not addressed in the BEAR regime, but note recent changes have been made to the whistleblowing regime in Australia by way of amendments to the Corporations Act and other ancillary legislation to be introduced from 1 July 2018.
In force date	4Q 2018	MIC Came into force as from 18 April 2017 with staggered roll-out of obligations MAI 16 March 2018	<ul style="list-style-type: none"> – Banks (including branches), building societies, credit unions and investment firms authorised by the PRA, from 7 March 2016. – Expected to be extended to apply to all other financial institutions operating in the UK from mid-2019. 	<ul style="list-style-type: none"> – For large ADIs: 1 July 2018 – For small to medium ADIs: 1 July 2019

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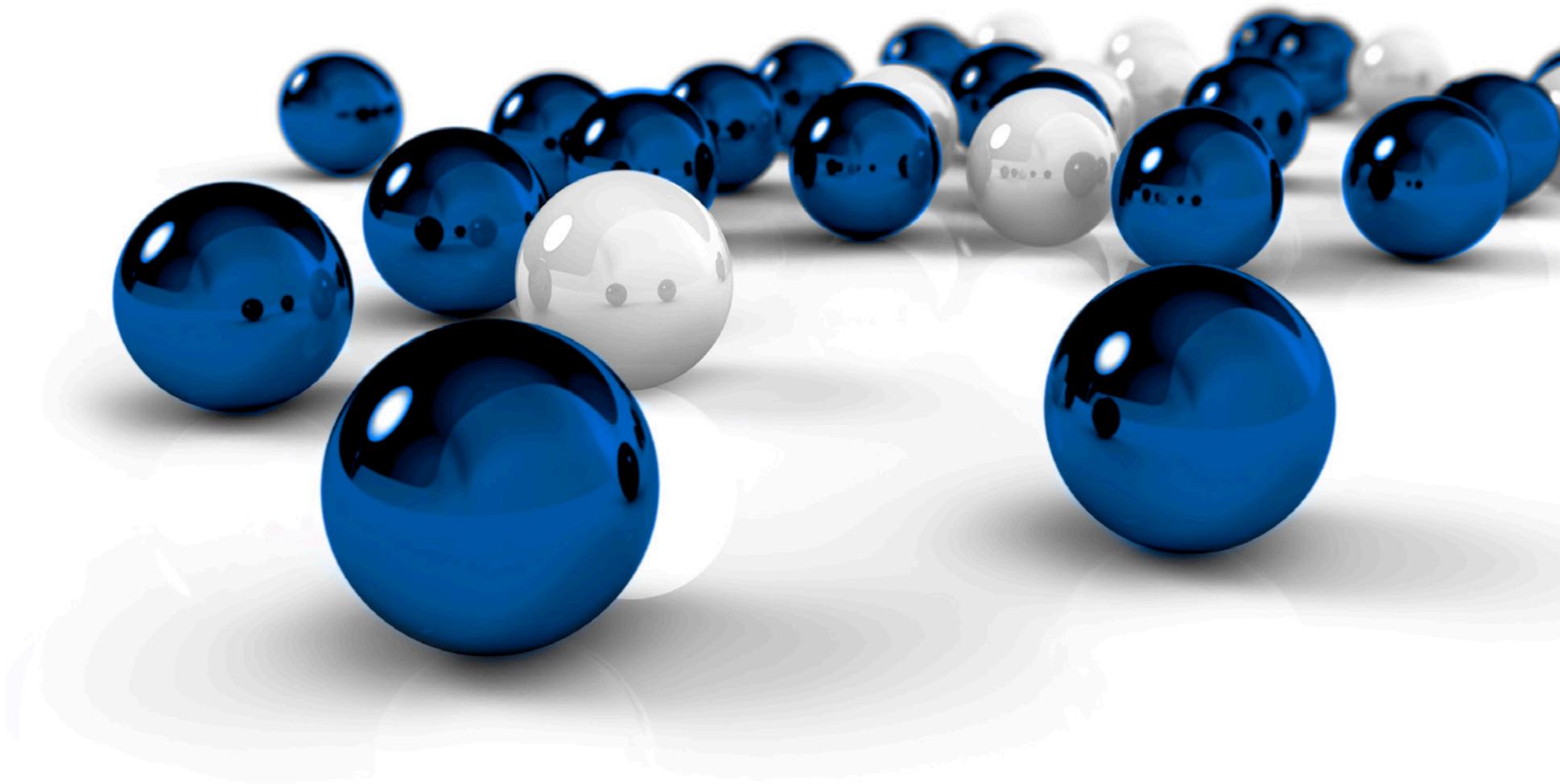
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