



# Financial Institutions in Singapore to Ensure a Culture of Responsibility and Accountability Applies from the Top Down

## Speed read

The MAS has issued its finalised Guidelines on Individual Accountability and Conduct (Guidelines), which will come into effect on 10 September 2021. Most financial institutions regulated by the MAS will be covered by the new Guidelines. They will accordingly need to clearly identify and delineate the responsibilities of senior management and material risk personnel. The Guidelines identify 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 bulletin will focus on the key features of the Guidelines and consider the steps that can be taken to comply with the new regime.

The Monetary Authority of Singapore (**MAS**) has issued the Guidelines on Individual Accountability and Conduct (**Guidelines**), which will come into force on 10 September 2021. Financial institutions (**FIs**) will have about a year to work towards compliance with the new Guidelines. The finalised Guidelines follow from an initial Consultation by the MAS in April 2018, followed by a further Consultation in June 2019, which had proposed extending the regime to all FIs.

The Guidelines are consonant with measures which have been implemented in the UK (Senior Managers and Certification Regime) (**SMCR**), Hong Kong (Manager-in-Charge Regime and Management Accountability Initiative) (**MICR/MAI**) and Australia (Banking Executive Accountability Regime) (**BEAR**). This update will focus on the Guidelines and consider the steps that can be taken by FIs to meet it. For ease of reference, we also include a table setting out a comparison of the Guidelines to the equivalent measures under the SMCR, the MICR/MAI, and the BEAR as well as the proposed Financial Accountability Regime (**FAR**) in Australia.

## Key outcomes

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The Guidelines set out the MAS' general principles and expectations on accountability and conduct. In particular, the MAS expects that FIs will achieve the following key outcomes (**Outcomes**):

- Outcome 1: Senior managers responsible for managing and conducting the FI's core functions are clearly identified.
- Outcome 2: Senior managers are fit and proper for their roles, and held responsible for the actions of their employees and the conduct of the business under their purview.
- Outcome 3: The FI's governance framework supports senior managers' performance of their roles and responsibilities, with a clear and transparent management structure and reporting relationships.
- Outcome 4: Material risk personnel are fit and proper for their roles, and subject to effective risk governance, and appropriate incentive structures and standards of conduct.
- Outcome 5: The FI has a framework that promotes and sustains among all employees the desired conduct.

## Applicability of Guidelines

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Broadly, the Guidelines are divided into two areas: first, the Outcomes (as set out above) and second, specified guidance, which elaborate on the Outcomes by setting out procedures to be adopted in order to achieve the outcomes. Save for a narrow set of FIs who are exempt (see below), the Guidelines apply to all regulated FIs as follows:

- FIs who have a headcount of more than 50 are expected to achieve the Outcomes and specified guidance (which are relevant to, and as adapted for its business);
- FIs who have a headcount of less than 50 are expected to achieve only the Outcomes.

In determining the headcount, the MAS' FAQs on Guidelines on Individual Accountability and Conduct (**FAQs**) provide that the headcount should comprise all personnel that

engage in or support the FI's core management functions, whether on a full or part time basis. FIs whose headcount expands beyond 50 will be given a transition grace period of 12 months to comply with the specific guidance in the Guidelines once they cross the 50 person threshold.

- While most regulated FIs will need to comply with the Guidelines to a certain degree, the MAS has confirmed that certain FIs are exempt from compliance with the Guidelines. These can largely be categorised into small financial advisers, corporate finance advisers and FIs/ service providers who deal primarily with accredited investors operating under licensing exemptions, or recognised market operators and clearing houses incorporated outside Singapore.

## Identifying senior management responsibilities

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Under the Guidelines, FIs will need to identify and define clearly the senior management who are responsible for functions that are core to the management of the FI's affairs. The persons to be identified should be those with actual oversight responsibility and decision-making authority within the relevant group. These need not be persons located in Singapore. A list of core management functions has been provided in the Guidelines. These include the usual C-suite officers but also extend to business and support function heads, 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 is distinguishable from those in Hong Kong, UK and Australia in a few aspects:

- It includes the head of human resources (this is not included in the MICR /MAI or the SMCR but included in the BEAR regime) as well as the chief data officer (currently unique to the Guidelines).
- The role of chief information security officer is 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 SMCR and BEAR/FAR, non-executive directors are not currently included in the list. The Guidelines expressly state 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".

## Material risk functions

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In addition to senior management, FIs will also need to identify clearly material risk personnel, i.e. individuals who have the authority to make decisions or conduct activities that can significantly impact the FI's safety and soundness, or cause harm to a significant segment of the FI's customers or other stakeholders.

The Guidelines do not prescribe a list of material risk functions and FIs will need to carry out a principles-based assessment of the material risks to the business and the persons responsible for those aspects of the business that would have an impact on these risks. In making this assessment, the Guidelines require

FIs to establish criteria that consider:

- the financial and non-financial risks which the FI is or may be exposed to such as credit, market, liquidity, operational, technology, conduct, money laundering and terrorist financing, legal, regulatory, reputational, and strategic risks; and
- the materiality of the impact that an individual's decisions or activities could have on this risk profile, based on appropriate quantitative and qualitative indicators.

## No formal submissions and no additional liability

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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, Australian and the Hong Kong regimes). However, when conducting its supervisory assessment of the FI, the MAS will consider whether FIs have met the Outcomes. It should be noted that, consistent

with the Hong Kong regime, the Guidelines are intended to supplement the existing framework and do 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 MAS may, however, take supervisory action against an FI that does not meet the Outcomes.

## Steps to Take

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While FIs have until September 2021 to comply with the Guidelines, it is not too early to prepare 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 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, Australia 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.
- **Reviewing internal assessment frameworks and consider implementation of guidance suggested by the MAS.** In addition to the usual recommendations of providing training and having proper oversight, FIs should also be assessing if they have (or will need to) put in place a performance measurement framework and incentive structure to encourage compliance with the Outcomes. If not already done, FIs may also wish to establish a formalised whistleblowing channel, including procedures to ensure adequate protection of employees who raise concerns over the FI's policies, practices and activities.

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, and where additional steps will need to be taken in order to comply with the Guidelines.

# Cross-Jurisdictional Comparison of the Accountability Regimes in Singapore, Hong Kong, UK and Australia

	<b>Singapore</b> (Guidelines on Individual Accountability and Conduct)	<b>Hong Kong</b> (Manager-in-Charge Regime and Management Accountability Initiative)	<b>United Kingdom</b> (Senior Managers and Certification Regime)	<b>Australia</b> (Banking Executive Accountability Regime)	<b>Australia</b> (proposed Financial Accountability Regime)
<b>Scope</b>	<p>Applies to all FIs regulated by the MAS except a narrow set of FIs, which include the following:</p> <ul style="list-style-type: none"> <li>– Persons providing financial advisory services for up to 30 AIs;</li> <li>– Persons giving advice on corporate finance to only AIs, EIs or IIs;</li> <li>– Corporations dealing in OTC derivatives contracts or block futures contracts with only AIs, EIs or IIs; and</li> <li>– Persons exempted from the requirement to have a license to carry on a business of providing any payment service.</li> </ul>	<p><u>MIC</u> Licensed corporations</p> <p><u>MAI</u> Registered institutions (<b>RI</b>) (i.e. licensed banks, restricted licence banks and deposit-taking companies that are registered with the Securities and Futures Commission (<b>SFC</b>) to conduct regulated activities)</p>	<ul style="list-style-type: none"> <li>– Banks (including branches), building societies, credit unions and investment firms authorised by the Prudential Regulation Authority (<b>PRA</b>), as well as insurers.</li> <li>– Solo-regulated firms under Financial Services and Markets Act 2000 (<b>FSMA</b>) – asset managers, fund managers, private equity firms, broker dealers, credit reference agencies, other firms that are regulated under FSMA but only by the FCA</li> <li>– From December 2020: Benchmark administrators</li> </ul>	<p>Authorised deposit-taking institutions (<b>ADI</b>) (unless subject to an exemption) and foreign ADIs that operate a branch in Australia.</p>	<p>All entities regulated by the Australian Prudential Regulation Authority (<b>APRA</b>), namely:</p> <ul style="list-style-type: none"> <li>– all general and life insurance licensees;</li> <li>– all private health insurance licensees;</li> <li>– all registrable superannuation entity licensees; and</li> <li>– licensed non-operating holding companies.</li> </ul>
<b>Filing/Submissions</b>	<p>None, but it will form part of the MAS's supervisory assessment.</p>	<p><u>MIC</u> Information relating to each Manager-in-Charge to be submitted to the SFC.</p> <p><u>MAI</u> Information relating to each "principally responsible individual" to be submitted to the Hong Kong Monetary Authority (<b>HKMA</b>) and the SFC</p>	<p>Statements of Responsibilities for each Senior Manager and (for dual-regulated firms and enhanced solo-regulated firms only) a Management Responsibilities Map for each legal entity to be submitted to the Financial Conduct Authority (<b>FCA</b>) and/or the PRA. These must be updated and re-filed with the FCA and/or the PRA whenever material changes are made.</p>	<p>Accountable persons to be registered with the Australian Prudential Regulation Authority (<b>APRA</b>) 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.</p>	<ul style="list-style-type: none"> <li>– This requirement will only apply to enhanced compliance entities. Enhanced compliance entities will be those with total assets above a specified threshold.</li> <li>– Core compliance entities will be required to identify and register accountable persons but will not be required to submit Accountability Statements or Accountability Maps.</li> </ul>

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<b>New or additional liabilities</b>	None. The existing legal and supervisory framework will apply.	<u>MIC</u> None. The existing legal and supervisory framework will apply.  <u>MAI</u> None. The existing legal and supervisory framework will apply.	<ul style="list-style-type: none"> <li>– If a decision taken by a Senior Manager of a UK bank (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.</li> <li>– 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.</li> </ul>	Contravention of the accountability obligations may lead to a fine of up to AUD210m.	<ul style="list-style-type: none"> <li>– The maximum penalties under the FAR will be the greater of the following: <ul style="list-style-type: none"> <li>– 50,000 penalty units (currently AUD10.5m);</li> <li>– if the court can determine – the benefit derived or detriment avoided by the body corporate because of the contravention, multiplied by three; or</li> <li>– 10% of the annual turnover of the body corporate, but to a maximum monetary value of 2.5m penalty units (currently AUD525m).</li> </ul> </li> </ul>
<b>Key persons covered</b>	<ul style="list-style-type: none"> <li>– Senior managers responsible for management and conduct of functions that are core to the FI's operations</li> <li>– Employees whose decisions and activities could materially impact an FI's risk profile</li> </ul>	<u>MIC</u> Individuals principally responsible, either alone or with others, for managing certain "core functions"  <u>MAI</u> Individuals principally responsible for: <ul style="list-style-type: none"> <li>– the overall management of the whole of the business; and</li> <li>– specified business lines and middle/back office functions,</li> </ul> but only to the extent that the individuals are involved in the management of a business constituting a regulated activity for which the RI is registered	<ul style="list-style-type: none"> <li>– In the case of Senior Managers, individuals performing a Senior Management Function (as defined by the FCA and the PRA)</li> <li>– 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).</li> <li>– In the case of the FCA Code of Conduct, most employees of SMCR firms based in the UK with the exception of those who perform 'ancillary functions'.</li> <li>– In the case of the PRA Code of Conduct, all individuals who are approved by the PRA or FCA as Senior Managers, and all individuals who fall within the PRA's Certification Regime.</li> </ul>	<ul style="list-style-type: none"> <li>– Board members with oversight over the ADI.</li> <li>– Senior executives with responsibility for management or control of significant aspects of the ADI or its subsidiaries.</li> <li>– 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.</li> </ul>	<ul style="list-style-type: none"> <li>– Board members with oversight over the FAR entity.</li> <li>– Senior executives with responsibility for management or control of significant aspects of the FAR entity or its subsidiaries.</li> <li>– In respect of a foreign FAR entity, also includes senior executives with responsibility for the conduct of all the activities of an Australian branch of the foreign ADI, Category C insurer or Eligible Foreign Life Insurance Company.</li> </ul>

	<b>Singapore</b> (Guidelines on Individual Accountability and Conduct)	<b>Hong Kong</b> (Manager-in-Charge Regime and Management Accountability Initiative)	<b>United Kingdom</b> (Senior Managers and Certification Regime)	<b>Australia</b> (Banking Executive Accountability Regime)	<b>Australia</b> (proposed Financial Accountability Regime)
<b>Requirements as to remuneration</b>	Assessment and remuneration should take into account risk and control objectives	<u>MIC</u> Not addressed <u>MAI</u> 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 an individual's remuneration.	<ul style="list-style-type: none"> <li>– A specified percentage of remuneration for CEOs and senior executives must be deferred over a period of up to four years.</li> <li>– 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.</li> </ul>	<ul style="list-style-type: none"> <li>– FAR entities will be required to defer 40 per cent of the variable remuneration for all of their accountable persons for a minimum of four years, but only if the amount that would be deferred is greater than AUD50,000.</li> <li>– If an accountable person breaches their FAR obligations, the entity must have remuneration policies that allow for a reduction in variable remuneration.</li> </ul>
<b>Whistleblowing requirements</b>	Yes, a formalised whistleblowing channel should be set up	<u>MIC</u> Not addressed <u>MAI</u> The existing requirements will continue to apply	<ul style="list-style-type: none"> <li>– Certain specified firms must appoint a Whistleblowers' Champion.</li> <li>– Additional requirements for dual-regulated firms relating to training that must be provided to employees about whistleblowing (both internally, and to the FCA and the PRA).</li> <li>– Firms must also report certain information about their whistleblowing programmes and disclosures received to the FCA and the PRA.</li> </ul>	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.	Not addressed in the FAR 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.
<b>In force date</b>	10 September 2021	<u>MIC</u> Came into force as from 18 April 2017 with staggered roll-out of obligations <u>MAI</u> 16 March 2018	<ul style="list-style-type: none"> <li>– Banks (including branches), building societies, credit unions and investment firms authorised by the PRA, as well as insurers, from 7 March 2016.</li> <li>– Extended to apply to all other financial institutions operating in the UK from December 2019.</li> <li>– To be extended to apply to benchmark administrators from 9 December 2020.</li> </ul>	<ul style="list-style-type: none"> <li>– For large ADIs: 1 July 2018</li> <li>– For small to medium ADIs: 1 July 2019</li> </ul>	– No timeline has been proposed for implementation as yet.

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