More senior manager-type regimes could be introduced in Asia, say industry officials

Apr 06 2017 Patricia Lee, Regulatory Intelligence

The launch of the manager-in-charge (MIC) regime in Hong Kong in two weeks has sparked concerns about whether similar rules will also be introduced in other Asian jurisdictions.

The MIC regime further demonstrates that senior management accountability ranks high on regulators' agenda. It seeks to raise senior managers' awareness about their regulatory obligations and that they will be held accountable for misconduct that falls within their area of responsibility.

In addition to the roles of directors and responsible officers, the SFC identified eight core functions instrumental to licensed corporations and each of these functions will have a manager in charge. The roles of the eight senior managers will cover overall management oversight, key business line, operational control and oversight, risk management, finance and accounting, IT, compliance and anti-money laundering.

Holding decision-makers responsible

"Essentially, the MIC regime seeks to make the task of tracking individual senior manager's responsibility easier for the SFC. The SFC wants to go after the real decision-makers [at financial institutions]," said Lapman Lee, managing director, compliance and regulatory consulting at Duff & Phelps in Hong Kong.

Sources said the SFC was targeting mainland Chinese banks and securities firms as past cases involving such financial institutions had proved challenging to the SFC in conducting cross-border investigations, particularly in tracking decision-makers based in China. This may imply the SFC has a specific agenda for introducing the MIC regime, sources said.

One industry participant consulted by the SFC and who declined be named, said the SFC was keen on "pushing the MIC through", an initiative spearheaded by Julia Leung, executive director at the SFC with responsibility for the intermediaries division which comprises the intermediaries supervision and licensing departments.

"The argument the SFC used was that it [MIC regime] is actually not a new regulation, but a regulation under the current law and ordinance. The SFC just said: 'we are emphasizing existing law and regulation'," the industry participant said.

The fact that the SFC is one of the members of the International Organization of Securities Commissions, and with Ashley Alder, its chief executive at the helm of IOSCO, could also have had an influence on the SFC's decision to introduce the MIC regime in Hong Kong, Lee said.

Singapore

All eyes are now on Singapore, often seen as a competing financial centre to Hong Kong, as to whether it will follow suit. The Monetary Authority of Singapore (MAS) has yet to make any announcements, but lawyers and consultants in the city-state took the view that MAS is unlikely to adopt a similar regime.

While it is generally considered a good practice to raise awareness about senior management's responsibility, the approach needs to be fair and equitable, said Gary Chia, head of financial services regulatory and compliance at KPMG in Singapore.

"I think we need to be realistic with our expectations. Can you imagine holding the chief executive of a global bank personally accountable and liable for the asset management, commercial banking, private banking and retail banking businesses? I don't think anyone would want to become the chief executive of a bank if the onus lies [solely] on one person," he said.

Strengthening culture and conduct should be priority

Chia believed a "softer" approach toward the issue on senior management's accountability would work, given that it is largely driven by culture and conduct. Strengthening culture and conduct within an organisation should be the priority, rather than putting the focus on holding senior managers personally liable, he said.

"There should be a focus to get culture and conduct right, rather than putting the responsibilities on a few people. Ultimately, senior managers have to set the right tone. If the people in the bank are doing the right thing, you don't have to worry about breaching regulations. I believe MAS' perspective is to have the right culture and conduct, and risk controls in place," Chia said.

MAS has less reasons to implement similar regime

Unlike the Hong Kong regulators who are implementing the MIC regime with the intent to go after top decision-makers, MAS has less of a reason to implement a similar regime with requirements such as those which the SFC is imposing on licensed corporations in Hong Kong, Lee said.

"The decision-makers at financial institutions operating in Singapore are probably less difficult to track unlike the challenges faced by Hong Kong regulators, so there is less of a reason for Singapore to copy what the SFC is doing. There might be a lighter version which is fit for purpose for Singapore though," Lee said.

Australia

Australia has also started to look at implementing a similar regime that will hold senior managers responsible.

The Australian government, in its first report on the reviews of the four major banks carried out in November 2016, included proposals that will hold executives accountable for breaches.

In the report, David Coleman, chair of the House of Representatives Standing Committee on Economics, talked about the need to change the culture of Australia's financial sector, particularly the behaviour of senior leaders.

"… While significant changes have been announced that will better protect consumers, not enough has been done to force banks' senior leaders to change their behaviour. When consumers are continually let down, senior executives should go," Coleman said in the report.

The report listed a number of past regulatory breaches by the four major banks in which no senior executives lost their jobs. The committee said it disagreed with the various assessments and they demonstrated the "accountability deficit" that existed within those organisations.

"The major banks seem to believe that it is appropriate that no senior executive has been terminated for these failings and that a reduction in responsible executives' remuneration will be sufficient to improve consumer outcomes," the report said.

Naming and shaming

Chapter three of the report titled "Making Executives Accountable", proposed the Australian Securities and Investments Commission (ASIC) require Australian financial services license holders to publicly report any significant breaches of their licence obligations within five business days of reporting the incident to ASIC or of ASIC or any other regulatory body identifying the breach.

The committee proposed that the report include a description of the breach and how it occurred; the steps that will be taken to ensure that it does not occur again; the names of the senior executives responsible for the team (s) where the breach occurred; and the consequences for those senior executives and, if the relevant senior executives were not terminated, why termination was not pursued.

"This proposal seeks to put the names of senior executives responsible for a breach to shame," Lee said.

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