Individual Accountability Regimes: A Comparative Report

Prepared for the State Secretariat for International Finance

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Contents

1 Executive summary

The Swiss Government is undertaking a review of its 'too big to fail' banking regulations following the Credit Suisse crisis and state intervention. As part of this wider piece of work, consideration is being given to whether a Swiss Individual Accountability Regime should be developed and implemented. PA Consulting were commissioned to provide a comparative report into various global regimes, and to provide insight and opinions into the effectiveness of various approaches.

The regimes (or lack thereof) of six jurisdictions have been considered within this report. Focus has been given throughout the report to the design and experiences of the UK market. This is due to its geographical proximity, comprehensiveness of regime, and length in which it has been in operation.

Our scope

UK	Ireland	European Union	United States	Hong Kong	Singapore
Senior Managers and Certification Regime	Individual Accountability Framework	*No dedicated regime*	*No dedicated regime*	Banking Ordinance and Manager in Charge Regime	Individual Accountability and Conduct Guidelines

Our approach

In preparing this report we undertook detailed desk-based analysis of publicly available information on the regimes in scope. We considered reports and public commentary on effectiveness. We also conducted a series of interviews with senior executives at a variety of firms impacted by the regimes.

Our report

Provides a brief overview of the context, core components and forward plans for accountability regimes in each jurisdiction. It then compares the experiences and effectiveness of rules across several thematic areas, such as scope of firms, individuals captured, and enforcement. We conclude with summarising our findings and setting out several recommendations for consideration.

Summary findings

We found that, as expected, there is a high degree of similarity in the design of regimes that have adopted dedicated individual accountability regimes. Most regimes have been implemented as a result of the 2008 banking crisis, and subsequent national scandals which increased public pressure on authorities to hold individuals to account. We also found that where the scope of regimes was initially limited to banks, this has been steadily increased over time to capture most financial services firms. Most regimes apply the rules to a consistent set of senior managers, in particular Board, Executives and their direct reports. Some regimes go further and extend rules to much larger sets of populations. Across jurisdictions, including those without dedicated regimes, the existence of effective and broad enforcement powers enables authorities to hold individuals to account and acts as an effective deterrent to poor behaviour.

There are several choices and decisions which can be made about how to implement an accountability regime that is fit for purpose for the Swiss market. There is an advantage in adopting rules now, with the benefit of understanding a variety of approaches and insight into what has worked well and what has not had the intended outcome.

At a high level, there are four key thematic considerations:

1. A clear and shared understanding of the outcome that is being sought is essential to establishing sound principles for design of any regime. This will inform all other design decisions.
2. An effective, and proportionate regime is one that is targeted at the most senior individuals in the most materially risky firms.
3. Any Swiss accountability regime must be tailored to the needs and culture of the Swiss market. Different jurisdictions have achieved the same outcome with very different approaches, often through leveraging existing tools and rules.
4. A new Swiss regime will be additive to a landscape of many existing regimes, creating complexity for international firms. Consideration should be given to where existing requirements can be leveraged or replicated to avoid creating new, unique expectations.

2 Global approaches

To set the scene for our more detailed comparison of experiences (section 3), the following section provides a brief overview of the individual accountability regimes in each jurisdiction. It covers:

a. The context for the establishment of individual accountability rules or guidelines, and the objectives it seeks to achieve.

b. The core components of the regime.

c. Any forward plans in place or under consideration.

Jurisdiction	Dedicated regime	Rule type	Date of implementation	Scope of firms	Scope of individuals	Direct enforcement action available under regime*
United Kingdom[1,2,3,4]	✓	Legislation & regulation	2016	All FS firms	**Senior Managers Regime & Senior Manager Conduct Rules**: Senior managers (those who hold a senior management function) **Certification Regime:** Material risk takers **Conduct Rules:** All employees	✓
Ireland[5]	✓	Legislation & regulation	2023	Banks, Insurers, Investment Firms	**Senior Executive Accountability Regime & Additional Conduct Standards:** Board members, Senior Executives (those in Pre-Approval Controlled Function roles today) **Enhanced Fitness & Propriety Regime & Common Conduct Standards:** Material risk takers ('Controlled Functions')	✓
European Union	✗	-	-	-	-	✗
United States	✗	-	-	-	-	✓
Hong Kong[6,7,8]	✓	Legislation & regulation	1986 and 2017	Banks and firms engaged in securities business	**MIC Regime:** Senior Executives responsible for the 8 defined core functions **Banking Ordinance:** Chief Executives, executive officers, and directors	✓
Singapore[9]	✓	Guidelines	2021	All FS firms over 50 employees	**Senior Managers:** individuals who are principally responsible for the day-to-day management of the financial institution **Material Risk Personnel:** 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	✗[10]

2.1
United Kingdom

Context

The 2008 financial crisis in the UK was characterised by significant conduct failings across the banking sector, such as the LIBOR scandal. Further mis-selling scandals, such as PPI, added fuel to the belief that individual executives were not being adequately held to account for actions that led to harm to customers and the wider UK economy. The UK government was compelled to establish the Parliamentary Committee for Banking Standards to review options for improving standards. A key recommendation from this report was for the UK to establish a new framework for individual accountability, to stop bankers from "*dodging accountability for failures on their watch by claiming ignorance or hiding behind collective decision making.*"[11] The UK Senior Managers and Certification Regime (SMCR) was established (replacing the previous Approved Persons Regime) initially applying to Banks and quickly extended to all authorised financial services firms.

The objective of the SMCR is to: "*reduce harm to consumers and strengthen market integrity by making individuals more accountable for their conduct and competence.*"[12]

In terms of regulatory supervision, compliance with the SMCR for in-scope firms is mandatory. Non-compliance can lead to enforcement action. Preventing appointment to a role, bans from working in industry, and monetary fines are possible enforcement actions.[13 14]

Core components of the regime

The SMCR is divided into three key components, which combined extend the scope of the regime to cover all employees. These are:

- **Senior Managers Regime** – Specific senior managers are designated by firms and approved by the regulator (FCA / PRA). These senior managers must have a documented Statement of Responsibilities in line with their prescribed responsibilities (PRs). Senior managers are those individuals who perform one of the senior management functions designated by the FCA / PRA. These are individuals who are the most senior firm members who are most able to cause harm or impact market integrity.

- **Certification Regime** - Firms must regularly assess the fitness and propriety of additional employees (who although are not senior managers) can also materially influence the firm.

- **Conduct Rules** – Two sets of conduct rules cover senior managers as well as all employees. The Senior Manager Conduct Rules are applicable to senior managers. These individuals have a regulatory obligation to ensure that they have taken 'reasonable steps' with respect to their areas of responsibility and the application of these conduct rules. The second set of rules, the Conduct Rules, apply to all employees. These rules set out specific behavioural expectations and are designed to promote integrity, accountability, and responsible conduct.

The rules apply to all authorised firms but contain an element of proportionality based on firm size and complexity. These three categories of firms are referred to as limited scope, core, and enhanced. The result is that most firms are subject to the core requirements of the regime, with the largest and most complex firms subject to additional requirements, and small firms (primarily sole traders) are subject to reduced requirements. Firms are responsible for determining which category they belong to, given a set of published thresholds. The business size thresholds for becoming an 'enhanced' firm are[15]:

- Assets under management of £50bn or more on 3 year rolling average
- Intermediary regulated business revenue of £35m or more on 3 year rolling average
- Consumer credit lending of £100m or more on a 3 year rolling average
- Mortgage lender with 10,000 or more regulated mortgages outstanding

Where firms have legal entities with different classifications, the ability for a legal entity to 'opt-up' in classification exists for firms seeking a group approach to SMCR compliance.

Forward plans

In 2019 and 2020, the FCA and PRA undertook separate reviews of SMCR's efficacy.[16] [17] These reviews supported the idea that SMCR had been successfully adopted by a wide range of firms. In the PRA's review, 94% of SMFs who responded believed that SMCR had resulted in positive meaningful changes to industry behaviours. Additionally, 83% of respondents believed that it had also resulted in positive change in their roles and those of their colleagues.[18]

Notwithstanding these findings, the UK Government is currently considering changes to the SMCR. This is being considered as part of the "Edinburgh Reforms", which are a set of changes proposed by the UK Government impacting the financial services regulatory landscape. Through these reforms, the government has committed to improving the competitive landscape of financial services and identified reviewing the SMCR as one of 31 priorities. A call for evidence was issued in March 2023 by HM Treasury[19], seeking input on the overall effectiveness of the regime, the appropriateness of its scope, and its impact on competitiveness.

As part of this call for evidence, HM Treasury noted: "*Overall, the government understands there is broad support for the principles and objectives underpinning the regime. The government also recognises that high standards of regulation and individual conduct are at the heart of the UK's long-standing success as a global financial hub. However, firms operating within the regime have raised some concerns on certain aspects of the regime with government. Topics that they have raised include areas such as the compliance requirements for authorising the appointment of new Senior Managers, the differing levels of scrutiny applied to different firms, and the interaction of the SM&CR with other regulatory regimes*."

Outcomes from the consultation period have not yet been published. In addition to this review, the regime is expected to be extended to capture financial market infrastructure firms in due course.[20]

2.2
Ireland

Context

The Irish Individual Accountability Framework (IAF) is also a response to the failures of the 2008 financial crisis but was driven by the findings from a 2018 report by the Central Bank of Ireland (CBI) into behaviour and culture within financial services. This report concluded that individual accountability was central to improving firm's culture.[21] The regime was signed into Irish legislation in 2023.

The stated objective of the regime is to encourage greater individual accountability of senior managers, improve corporate culture, and well as improve risk management practices within the financial services industry. In terms of regulatory supervision, compliance with the IAF is mandatory. Non-compliance can lead to enforcement action. Similar to the SMCR, the Irish regulator can prevent appointment to a role, implement bans on working in industry, as well as monetary fines at both the firm and individual level.

Core components of the regime

There are 4 components to the IAF:

- **Senior Executive Accountability Regime (SEAR)** – Allocates prescribed responsibilities against senior executives (including Non-Executive Directors and Independent Non-Executive Directors). Senior executives correspond with Pre-approved Control Functions ('PCFs') under the existing Irish Fitness and Probity (F&P) Regime. Statements providing clarity on the roles and responsibilities are required by the regulator. SEAR focuses on evidencing ongoing conduct and suitability once senior managers (Senior Executive Functions - SEFs) have been appointed to their roles. These individuals also have a 'duty of responsibility' to ensure that the correct decisions are being made within their areas of responsibility (similar to the 'reasonable steps criterion' under SMCR). Firms have until July 2024 to comply with SEAR requirements.
- **Conduct Standards** – Outlines "Common" & "Additional" standards of conduct. The Common Standards are applicable to all employees of in-scope firms. The Additional Standards are applicable to individuals with Pre-approved Controlled Function (PCF) roles as well as those in Controlled Function (CF) roles. In-scope firms have until December 2023 to comply with these Conduct Standards.
- **Enhancements to the Fitness & Probity Regime** – Adds additional senior certified individuals (those in Controlled Functions) as well as stricter requirements to the current F&P regime. Individuals in Controlled Function roles do not require regulatory approval prior to their designation compared to PCFs. As a result, the enhanced F&P Regime will focus on the fitness and propriety of a wider range of senior individuals during their appointment process.
- **Enhancements to the Administrative Sanctions Procedure** – Allows for greater enforcement ability by the Central Bank of Ireland against individual failings. These enhancements include additional procedural amendments and processes necessary to evaluate the additional individuals which are scheduled to come under the purview of the Administrative Sanctions Procedure via the IAF.

As with the UK regime, the conduct standards extend the scope of the regime to all employees, while the other components apply to senior managers. The regime applies to all authorised financial services firms, but the initial application of the SEAR is limited to banks, insurers, and investment firms (expected population of 150 firms).[22]

Forward plans

Implementation of the initial phase of compliance is still underway, and as such there are no forward plans for reform of the rules. The CBI has indicated that it will roll out the SEAR regulation to additional firms and sectors, using the lessons learnt from its initial rollout to the 150 firms. It also intends to publish a report on the effectiveness of this framework after three years of implementation.[23]

2.3
European Union

Context

There is no single dedicated individual accountability regime within the EU. Following the financial crisis of 2008, the EU took steps to improve its ability to hold individuals to account by folding requirements into wider legislative reforms. To date, the EU has not indicated that it is likely to adopt an SMCR style regime.

Core components of the regime

Individual accountability requirements primarily focus on assessing whether individuals are 'fit and proper' to serve in their roles. Expectations have been built primarily into the following EU rules:

- **Capital Requirements Directive (CRD)** – Setting requirements for governance arrangements and the management body, further elaborated on via EBA and ESMA guidelines on assessment of suitability of the management body.[24] In recent years the European Union has consulted on adding individual accountability elements to the revisions to CRD, in particular responsibility maps and individual statements of responsibility. [25] However, these changes have not yet been adopted.

- **Shareholder Rights Directive II (SRD II)** - Establishes responsibilities of company directors and senior managers, includes requirements for remuneration and board composition, and considers fitness for roles.

- **Markets in Financial Instruments Directive II (MiFID II) / Markets in Financial Instruments Regulation (MiFIR)** - Individual accountability provisions include ensuring that senior managers clearly understand their roles and responsibilities, firms needing to have sufficient governance in place, and ensuring managers have the correct qualifications and competencies. Additionally, the need for firms to ensure the fitness and propriety of senior managers on an ongoing basis (and maintaining records of this), as well as mandatory reporting on governance / managerial responsibilities to the regulators, when requested.

- **The Single Supervisory Mechanism** – Sets out guidance for conducting fitness and propriety tests for individuals.[26] [27] The SSM grants the European Central Bank a supervisory role over Eurozone banks. Through this, the ECB is empowered to conduct fit and proper assessments. These are taken on when a credit institution gains authorisation as well as when appointments / changes to management bodies are made. A credit institution will first nominate a designated individual for a management body role. Working together, the ECB and the national regulator assess the nominee, leading to a joint proposal on the overall fitness and propriety of that individual for the role.

When looking at regulatory implementation of European Union legislation, regulations, and directives, this falls to the national competent authorities (NCAs) of each member state, as well as the relevant EU-level supervisory bodies (e.g., EBA, ESMA, EIOPA). EU legislation needs to be adopted through national legislation by EU member states. However, EU directives can be more flexibly adopted so long as the desired outcomes are achieved.

It is important to note that EU frameworks are complemented by national frameworks individually adopted within EU member states. Where EU and national requirements overlap, firms must make sure to comply with all requirements. Where requirements may seem absent at the national level, this may be because they are already considered at the EU level.

In an official opinion issued by the ECB in September 2022 (and requested by Irish Minister for Finance), the Irish IAF was positively welcomed. The ECB referenced their opinion that it would help address previous cultural failings and weaknesses in risk culture.[28] The ECB believed that the IAF would support with robust suitability assessments in line with existing F&P assessments performed by the ECB. However, it noted that for significant credit institutions, the approval of appointments at the PCF level already fell under the exclusive authority of the ECB. It was recommended that the draft law (of the IAF) was amended to ensure that the IAF requirements were not seen to override the existing ECB F&P assessments for in-scope Irish banks. Where CBI regulatory processes would be added, these would complement, but not replace the ECB F&P requirements.[29]

In Germany, whilst there is no dedicated individual accountability regime, there are several pieces of legislation which allow the regulator (BaFin) to take action against firms and individuals. These pieces of legislation include the German Banking Act (*Kreditwesengesetz*)[30], the German Stock Corporation Act (for listed companies) (*Aktiengesetz*)[31], and the Act on Limited Liability Companies (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*)[32]. Within these pieces of legislation, neither approvals of senior individuals nor ongoing F&P checks are required by BaFin. Despite the absence of these processes, the largest German banks are still subject to the ECB F&P assessments, given Germany's status as a Eurozone member.

Forward plans

The EU has proposed to explicitly include elements of individual accountability within the CRD as part of the wider Basel reforms, however these changes have not yet been made in the current in force regulation.[33] This would include requirements for firms to produce statements of responsibility and mapping of duties across their executive team but would not introduce any direct enforcement powers.

2.4
United States of America

Context

There is no dedicated individual accountability regime or framework in the United States. As with many other countries, following the 2008 financial crisis, there was criticism from the public on the failure to hold individuals to account for the major failings at financial services firms. However, the existing US framework already had components that enabled regulators to pursue individuals for a wide variety of misconduct and is characterised by a strong litigation culture. This background contributed to a perception that a dedicated regime was not necessary.

Core components of the regime

US regulatory bodies which have individual accountability provisions within their instruments range from federal bodies such as the Securities and Exchange Commission (SEC), the Office of the Comptroller of Currency (OCC) and the Federal Reserve Board (FRB), as well as state level regulatory agencies across the 50 US states. The Department of Justice can also bring criminal charges against banking executives.

Despite there being no dedicated regime, these agencies have a wide-ranging power to conduct inspections and lead investigations where there are allegations of misconduct. Authorities can act against essentially any employee of a firm who[34] [35]:

- Violates a law or regulation
- Engages in unsafe of unsound practices
- Breaches their fiduciary duty

Forward plans

There are no indications that the US plans to introduce an individual accountability regime. Rather, it is likely to continue to set precedent and expectations through increased use of their powers at individual level. This is evident through recent material actions against banking executives (see our case study at the end of the report) as well as published memorandum, such as the Yates Memo, which shift the direction of the Department of Justice’s enforcement by strongly encouraging prosecuting robustly for individual accountability.

2.5 Hong Kong

Context

Hong Kong has two individual accountability instruments. One is incorporated into law that has been in place since 1986 (The Banking Ordinance) and is overseen by the Hong Kong Monetary Authority (HKMA) whilst the other was implemented as regulation by the Securities and Futures Commission (SFC) in 2017 (the Manager-In-Charge regime). The BO requirements apply to banks, whilst the MIC applies to securities firms. The Manager-In-Charge regime was designed to achieve greater individual accountability in licensed corporations within financial services following the global financial crisis in 2008. In doing so, the SFC looked to other regimes for best practice, modelling several provisions in the MIC regime after the SMCR.

In terms of regulatory supervision and oversight, compliance with the MIC regime and Banking Ordinance are mandatory for in-scope firms. Both the SFC and HKMA oversee firm compliance. Non-compliance can lead to enforcement action. Public censure, temporary and permanent bans on working in industry and monetary fines are possible at both the individual and firm levels.

Core components of the regime

While they are not a unified regime, the BO and MIC expectations broadly cover similar components:

- Requirements to regularly review organisational structure and identify 'managers-in charge'– within the context of the individuals responsible for the eight core functions (e.g., risk management, information technology, and finance / accounting) (MIC Regime).
- Mandated notification to the HKMA of managerial appointments as per a list of defined functions in the BO. These are commonly known as "Section 72B managers" (Banking Ordinance).
- At least one individual per defined function is expected to be listed, in addition to the individual tasked with the overall management of the Registered Institution. A designated individual can cover more than one defined function. Organisation charts including where each MIC sits need to be submitted to the regulator. A broad array of other detailed documentation may also be requested from the regulator, such as Board approval documentation for MIC appointments, and MIC acknowledgements confirming their responsibility for their core function (MIC Regime).
- Neither NEDs (non-executive directors) nor INEDs (independent non-executive directors) are considered 'managers-in-charge' nor 'Section 72B managers', as they are not responsible for day-to-day management decisions (MIC Regime and Banking Ordinance).

Forward plans

In May 2018, the first update on the MIC regime's effectiveness was provided by the SFC. It positively noted that by 31 March 2018, approximately 10,600 employees from in-scope firms had been designated as Managers-In-Charge (MICs) and that all active licensed corporations had made initial submissions on their MICs to the SFC.[36] It also noted improvements that it had seen firms take since the regime went into effect (e.g., the introduction of additional training for MICs and improved governance structures). No anticipated upcoming changes were found. Similarly, no plans to amend the provisions contained within the Banking Ordinance have been identified.

2.6 Singapore

Context

In 2020, the Singaporean financial services regulator, the Monetary Authority of Singapore issued the Guidelines on Individual Accountability and Conduct (IAC Guidelines). Effective from 2021, these guidelines were also modelled upon the SMCR. MAS indicated the goal of these guidelines was to promote more responsible behaviour and individual accountability in the Singaporean financial services industry.

When looking at supervision, the MAS does not directly supervise a firm's compliance with respect to these guidelines. Rather, MAS strongly encourages firms to meet the guidelines on their own.[37] This is in stark contrast to any acts, subsidiary legislation, directives, or codes, where have stricter oversight standards and allocated enforcement powers by MAS.

Core components of the regime

The IAC Guidelines promote two specific outcomes, which are[38]:

- Ethical business practices that safeguard customers' interests and ensure fair treatment.
- Prudent risk-taking behaviour and robust risk management that support FIs (financial institutions) safety and soundness.

The IAC Guidelines take a principles-based approach and emphasises proportionality. Firms with fewer than fifty employees are not expected to implement the IAC Guidelines but are still encouraged to seek ways to ensure the five accountability and conduct outcomes are met. However, implementation is recommended as a firm's regulatory risk profile may be adversely impacted if the regulator determines that these guidelines have not adequately been considered.

The five accountability and conduct outcomes are[39]:

- **Outcome 1**: Senior managers responsible for managing and conducting the FI's core functions are clearly identified (by the firm).
- **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. Guidelines on Individual Accountability and Conduct.
- **Outcome 5**: The FI has a framework that promotes and sustains among all employees the desired conduct.

The scope of the regime is broad, capturing all financial services firms over fifty employees and covering senior executives as well as material risk takers. Senior managers are individuals with primary day-to-day responsibility of a core function. They also generally are identifiable by their reporting line to the CEO and / or Board.[40] Material risk personnel are defined as individuals "*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*".[41]

Forward plans

With the IAC Guidelines having only gone into effect in September 2021 and overseen since September 2022, no provisions have been amended.

3
Comparison of experiences

Despite the similarity in approaches within dedicated accountability regimes, there are notable differences across the jurisdictions that have resulted in different experiences and impacts for each jurisdiction.

This section compares the approaches, and resulting effectiveness of different regimes across six themes:

1. **Scope of firms captured**. Examining the types of firms captured by the requirements within a market, whether any proportionality is applied based on firm size, and the extra-territorial reach.
2. **Scope of roles captured**. Assessing the breadth of individuals subject to the regime, and approach to defining responsibilities.
3. **Implementation approach**. Summarising the approaches to initial implementation of the rules.
4. **Ongoing compliance**. Examining how firms are expected or required to demonstrate ongoing compliance with the rules, focusing on mandatory processes and artefacts. This includes firm responsibilities to oversee elements of regimes without direct oversight by the regulator(s).
5. **Supervisory oversight and enforcement**. Assessing the elements of regimes which require supervisory effort, such as approvals, as well as the effectiveness of enforcement powers.
6. **Enabling rule sets**. Describing the additional rule sets in place, and the extent to which they contribute to effective individual accountability regimes.

Two case studies have been included to illustrate the effectiveness of different regimes (the UK and US) in holding individual executives to account.

Comparisons will focus primarily on areas of material divergence between the rules, with greater focus on the UK SMCR experience given its prominence and availability of evidence into effectiveness (as a result of the length of time it has been in place). Where relevant, we have included quotes and observations from interviews conducted with senior individuals at impacted firms.

The qualitative observations from this analysis have informed our conclusions on recommendations for the Swiss financial services market.

3.1
Scope of firms captured

The types of firms captured within an individual accountability regime is a key determining factor in the overall reach of the regime and its impact on a country's financial services market.

Decisions on proportionality, and whether to apply variations to the rules based on firm size and complexity will also have a material impact on the compliance burden placed upon firms. For jurisdictions with dedicated individual accountability regimes, the scope of firms is summarised below:

Jurisdiction	UK[42]	Ireland[43]	Hong Kong[44 45 46]	Singapore[47]
In scope	All authorised financial services firms – including: Banks, Building Societies, Credit Unions Insurers (including insurers and reinsurers, ISPVs, the Society of Lloyd's, managing agents and UK branches of foreign insurers) UK branches of foreign banks Benchmark administrators	Credit institutions Insurance undertakings Investment firms which underwrite on a firm commitment basis and/or deal on own account and/or are permitted to hold client assets Branches of non-EEA firms in Ireland Outgoing branches of Irish firms	Banks and deposit taking firms Securities Firms and Funds	All authorised financial services firms
Out of scope	Payment services firms Financial Market Infrastructure	Credit unions Reinsurance undertakings, captive (re) insurance undertakings and Insurance Special Purpose Vehicles Incoming EEA branches (e.g., branches of EEA member state firms in Ireland)*		Financial institutions regulated by MAS with **fewer** than 50 employees
Extraterritorial Reach	✓	✓	✓	✓
Proportionality Lever	✓	✓	✗	✓

**Common and Additional Conduct Standards still apply to incoming EEA branches despite SEAR not being applicable.*

The scope of firms subject to the rules typically goes far beyond systemically important banks. None of the regimes were initially designed to only address systemically important banks, despite most being initiated as a response to the 2008 'too big to fail' crisis. The UK regime initially applied only to Banks but was rapidly expanded following the UK Parliament's change to legislation in 2016.[48] In the following years, SMCR was extended to all regulated insurance firms, as well as asset managers, investment firms, consumer credit firms, as well as benchmark administrators that do not undertake any other regulatory activities.[49] The reason cited for this extension of firm applicability was: "*The application of the SM&CR to the whole financial services industry also brings in a stronger, comprehensive regime across banking and other financial services. It enables the effective and efficient regulation of groups with a variety of financial services firms within them. It supports a level playing field for competition. It removes opportunities for regulatory arbitrage; for instance, by ensuring that the same high standards apply in both the banking and the so-called 'shadow banking' sectors*."[50]

It was noted in interviews that the willingness to adapt regulations as you learn was important: "*Being open to adjustment is key, you are unlikely to get the scope right the first time*."[51]

Firm size and complexity play some role in determining application of the rules. Most regimes have some element of the rules which are adjusted to be proportionate to the size and complexity of the firm. These proportionality levers (such as the UK's designation of firms into three categories which drive the level of rules that apply – limited scope firms, core firms, enhanced firms) are intended to ensure that smaller firms do not face undue burden, and that regulatory focus is directed at the firms which present greatest risk to the financial system and customers. In practice, this intended outcome is not always achieved. Individuals interviewed observed that for the UK regime: "*A lot of requirements have been stripped back for the smallest firms, to the extent that it brings into question the value of applying the rules at all to these types of firms*."[52]

The ability to apply rules on an extra-territorial basis is common. Most regimes have some element of extra-territorial reach. The UK is focused on ensuring that individuals who may perform senior management roles for UK firms but are based outside the country can still be held to account. In Singapore, the rules are similarly aimed at ensuring that senior executives based outside of the country, but working for a Singapore headquartered firm, can be held to account for actions which might affect the domestic Group. In Hong Kong, MICs can be based in or outside of Hong Kong.

Clarity from the start on the extra-territorial reach of rules is important: "*Initially, there were a lot of questions about how the UK rules applied outside of the country, and it wasn't clear how to treat senior managers with responsibility for UK business, but based outside of the UK*."[53] These questions are especially critical for large international banks, who are likely to have complex legal entity structures, and senior managers who are based in a variety of jurisdictions.

Where regimes have extra-territorial rules, allegations of misconduct by senior managers in foreign jurisdictions are investigated similarly to investigations against domestic senior managers. Domestic regulators can act against senior management based outside of the country but responsible for key decisions within that country. Enforcement action can be applied against the domestic firm and senior manager designations which require approval by the home regulator may be threatened. As these designations are mandatory regulatory obligations, this ensures that firms with extra-territorial reach are incentivised to comply with these regimes.

3.2
Scope of roles captured

The scope of senior executive roles captured within each regime is broadly consistent, but certain regimes go much further in extending the scope of rules to individuals far beneath the executive level.

Role Covered	UK[42]	Ireland[43]	Hong Kong	Singapore[47]
Non-Executive Directors	Partially – only if Chair of a Board Committee[54]	✓ (Including independent non-executive directors)[55]	✗[56 57]	✗[58]
CEO	✓[59]	✓[60]	✓[61 62]	✓[63]
CFO	✓[64]	✓[65]	✓[66 67]	✓[68]
CRO	✓[69]	✓[70]	✓[71 72]	✓[73]
Other Executives, typically with reporting lines to the CEO / Board (for example Chief Compliance Officer, CIO)	✓[74]	✓[75]	✓[76 77]	✓[78]
Specific certification rules for wider individuals in decision making roles in functions where harm may occur	✓[79]	✓[80]	✗	✗
Specific rules for Material Risk Takers	✓[81]	✓[82]	✗	✓[83]
Specific rules for all employees	✓[84] (Conduct rules apply)	✓[85] (Conduct rules apply)	✗	✗

The regimes take materially different approaches to the application of rules to Non-Executive Directors (NEDs). NEDs are not captured by the Hong Kong or Singapore regimes. However, all NEDs (including INEDs) are captured by the Irish regime, whilst in the UK they are only captured if they chair a Board level Committee. This inconsistency was noted as a negative aspect of the SMCR regime by an interviewee: "*Why does a NED who is chair of committee require approval, but otherwise does not? It particularly does not make sense when a NED has already been in that role for several years, and then needs to go through the entire approval process just to take up the committee chair.*"[86] It was also noted that strong requirements, fiduciary duties and consequences already exist via corporate governance rules for individuals at this level. Examples of corporate governance rules are referenced within the Enabling Rule Sets sub-section.

The scope of executive roles captured by regimes is broadly consistent, although different regimes use varying terminology for these roles. All regimes specifically capture the CEO, CFO and CRO roles as part of their accountability arrangements for senior individuals. They also capture a variety of other executive roles such as Chief Operations Function, Head of Internal Audit, or require the Firm to define the executives using a generic term (e.g., 'Other Overall Responsibility Function' in the UK). Regulators recognise that the functions and titles do not always align to how a Firm has defined its roles and have not necessarily kept pace with changes in executive structures (for example, the UK does not have a Chief Information Officer role). In these scenarios, firms are expected to set out how their roles / titles align to the regulatory expectations, with oversight performed by the regulator(s). Individuals captured by these regimes often require pre-approval by the regulator to be designated to their roles and are also subject to additional conduct rules which reflect the senior nature of their roles.

It was suggested that: "*A principle-based approach to role definition, with greater flexibility for firms to tailor job titles and responsibilities to their specific needs, would go a long way*."[87]

The application of rules to a wider pool of individuals in 'certified roles' and 'material risk takers' substantially increases the population of individuals in scope. The UK Certification Regime requires firms to consider what individuals perform roles which can cause significant harm to the firm, customers, or market, and to designate these individuals as certified function role holders. Certified individuals do not need to be approved by the FCA. Instead, the burden rests on firms to ensure that these individuals are 'fit and proper' for their roles, both when appointed, and then again on at least an annual basis. Regulators can request to review this documentation to confirm F&P assessments have been and are being undertaken, particularly if a breach has been reported or a regulatory investigation is needed. Examples of such individuals are Heads of Business Functions who are not already in-scope of the Senior Managers Regime. A similar structure is seen in Ireland for those in CF roles as part of the IAF Framework. At large international firms this can expand the population from tens of individuals to multiple thousands.

Benefits of reaching down to this level must be weighed against the burden of ongoing compliance for the firm. This is due to the increased responsibilities the firm must manage in overseeing the application of these regime provisions. This is a key point of contrast between the oversight of executives, as this burden does not rest with the regulator but rather, firms. Individuals interviewed observed that:

"*There are onerous tasks that we as a firm must complete for material risk takers. This includes F&P assessments, which are very frequent, as well as annual certification across the board. There are benefits, but the rigidity of it can result in an extensive paper exercise. This can lead to a slightly false assurance that things are fine*."[88]

"*The certified function element of the UK regime is bureaucratic and expensive to administrate for little value. We have other, better ways of driving good outcomes at this level of the organisation*."[89]

"*There is value in capturing the direct reports of senior managers as those individuals often play influential role, but less value in capturing individuals only because their role is customer facing*."[90]

As a result of the application of regime rules to a wider scope of individuals, there are additional responsibilities of the firm to directly oversee the application of the regime within their own firm. This sits along the expected responsibilities of the regulators which concern primarily executive roles.

Broad rules which apply to all employees set minimum expectations for good conduct, but do not particularly contribute to improved ability to hold individuals to account. Both the UK and Irish regimes define general conduct rules within the regimes, which apply to all employees. These include broad rules such as: "you must act with integrity" and "you must act in the interests of customers." Firms are expected to monitor compliance and act where individuals fail to meet these standards. In practice these rules are so general as to make it difficult for firms to know where a conduct rule has been breached. Additionally, the expectations are seen as so fundamental to minimum expected behaviours that they do not meaningfully contribute to enhanced accountability. It was noted by an interviewee that: "*The conduct rules are really difficult to make decisions against in practice, they are so judgement based, and would benefit from greater regulatory guidance on what is expected*."[91]

3.3 Implementation approach

The experiences within different jurisdictions of implementation varies depending on the existence of earlier regimes which covered individual accountability, as well as the supervisory approach to implementation.

Jurisdiction	Pre-existing regime?	Details of prior regime	Staggered implementation of new regime?
UK	✓	Approved Person Regime[92]	✓[93]
Ireland	✓	Fitness & Probity Regime[94]	✓[95]
Hong Kong	✓	Banking Ordinance[96]	✗
Singapore	✗	✗	✓[97]

Regimes which built on pre-existing individual approvals carry a greater risk of 'bad apples' failing to be routed out. Both the UK and Irish regimes replaced previous, lighter touch approval regimes. In the UK this was the Approved Persons Regime, and in Ireland the Pre-Approval Controlled Functions tests. To ease implementation, individuals under both regimes were 'grandfathered' across, continuing the risk that individuals who hold these roles are not fully investigated but appear as if they have been under the new regimes. This was noted to have "*presented real market reputational risk for the UK, as some of the individuals likely would not have passed the higher SMCR tests.*"[98]

In the United Kingdom, the SMCR is an improvement on the APR, due to a stricter designation process for senior individuals. It also includes a wider range of in-scope individuals. For example, key individuals associated with the LIBOR scandal would not have been designated under the Approved Persons Regime.

Staggered roll outs support both Firms and Supervisors to manage effort of compliance and learn from feedback.

The SMCR initially applied only to Banks. In 2018, it was extended to all regulated insurance firms. The regime was extended again in 2019 to include asset managers, investment firms, and consumer credit firms. This change brought an additional 47,000 firms into scope. In 2020, the SMCR was extended once again to the benchmark administrators that do not undertake any other regulatory activities.

The Irish SEAR requirements will initially apply to a limited scope of 150 firms, with extension to other firms planned to follow.[99] These staggered approaches contrast the Hong Kong Manager in Charge regime, which came into force for all relevant firms at the same time (although we note the scope of firms in this regime is narrower to begin with).

Where a regime intends to cover a range of firms, there is merit in adopting a staggered approach that enables supervisors to learn lessons, adjust and dedicate sufficient time to providing firms with guidance.

3.4
Demonstrating ongoing compliance

Where jurisdictions have dedicated individual accountability regimes, most have set minimum expectations for the processes which must be executed by firms and the documents to be maintained as evidence of compliance.

These expectations are set in rules in the UK, Ireland, and Hong Kong, and as guidelines in Singapore. This legislative difference impacts the level of compliance burden, as firms tend to be more flexible in implanting guidelines.

Component	UK	Ireland[100]	Hong Kong	Singapore
Prescribed responsibilities	✓[101]	✓	✗	✗
Individual statements of responsibility	✓[102]	✓	✓[103]	✓[104]
Responsibility maps (or similar documentation)	✓[105]	✓	✓[106]	✓[107]
Handover procedures	✓[108]	✓	✗	✓[109]
Fit and proper checks	✓*[110]	✓*	✓[111] [112]	✓[113]
Regulatory references	✓[114]	✓	✓[115]	✗
Criminal record check	✓[116]	✓	✓[117]	✓[118]

* In the UK and Ireland, fit and proper assessments must be undertaken at both point of appointment and on an annual basis.

Clarity on the responsibilities that are owned by each senior manager is a major benefit of accountability regimes and has been achieved through different approaches. A critical component of each regime is the requirement for a full suite of responsibilities to be covered by senior managers, and for firms to have absolute clarity on how these responsibilities are mapped across their executive teams.

To support this, SMCR and IAF mandates that firms have in place an updated management responsibilities map. In Hong Kong, whilst management responsibilities maps are not referenced, the MIC regime requires firms to maintain formal and updated documentation on the management structure of the firm, reporting lines and responsibilities. In Singapore, MAS recommends firms to document senior manager responsibilities and reporting lines through the lens of improved governance arrangements.

Understanding where responsibilities lie (both through individual statements of responsibilities as well as collective responsibility maps) facilitates the ability for the regulator to attribute culpability for misconduct or breaches of law.

One interviewee noted, "*Getting new Senior Managers comfortable with the responsibilities of their role and what could happen to them can be a long process. There are different ways to document this, such as through individual statements of responsibilities. Because of the criminal penalties associated, people who would have ordinarily put their hand up for something, are sometimes hesitant.*"[119]

Several interviewees also concurred that the SMCR had resulted in more conservative decision making, as in-scope senior managers felt more risk adverse when making decisions. Demonstrating the 'reasonable steps criterion', and being able to evidence this, is seen as weighing heavily on the minds of senior managers.

Additionally, while the UK and Ireland have defined a mandatory list of prescribed responsibilities[120] [121] which must be allocated, other jurisdictions have more simply provided guidance on the types of responsibilities that they expect certain executives to perform. The latter approach enables greater flexibility in tailoring responsibilities to the specific nature of a firm.

The responsibility component of the SMCR is one of the primary positive benefits of the regime for firms. It has meaningfully contributed to improved clarity within firms on who is responsible for what, and aided in identifying gaps where there was insufficient executive ownership. All firms that we spoke to emphasised that this was the most impactful and beneficial elements of the regime:

"*It has given us real clarity of roles and responsibilities, and where there are gaps, the SMCR gives us a framework to force decision making.*"[122]

"*The regime has been successful in defining roles, making it clear who owns what, and stops finger pointing.*"[123]

"*Being able to assign accountability has helped us to drive decisions forward. It encourages senior managers to demand more visibility and gives greater consideration to risks and issues.*"[124]

Regulatory references have not proven to be effective in addressing the 'rolling bad apples' challenge. Regulatory references were intended to help the industry to address the challenge of 'rolling bad apples,' where individuals subject to disciplinary procedures or those found to have not upheld good standards of conduct, move from firm to firm avoiding disclosure of this information. Three individuals we interviewed observed that:

"*On paper regulatory references were a good idea, but they have turned out not to be effective.*"[125]

"*From what we have seen regulatory references may not be fit for purpose, we do not get many qualified references. It is possible that they have not been taken as seriously by the industry, and we have seen instances of individuals with sub-par references being hired elsewhere in industry.*"[126]

"*Regulatory references do have power at the lower levels. However, at the Senior Manager and Board levels, it is unpowerful as these individuals have more optionality in terms of next roles.*"[127]

In aggregate, maintaining the required suite of documents and executing recurring F&P tests places an administrative burden on firms regardless of their size and complexity. For firms in the UK, maintaining a full suite of mandatory documents as well as additional evidence is needed to confidently demonstrate ongoing compliance with the SMCR. In practice this means that documentation must go beyond a simple Statement of Responsibility, to include detailed organisational mapping, role specifications, regularly updated handover procedures and individual competency assessments and learning plans. This places a heavy burden on firms who must oversee the implementation of these processes, versus the regulators who then are responsible for oversight.

Most jurisdictions, including those without individual accountability regimes, have some level of fitness and propriety checks, but there is variance in how these checks operate. The United Kingdom requires all Senior Managers and Certified Function role holders to undergo F&P check prior to appointment, and on an annual basis thereafter. Despite not having an accountability regime, the European Union also considers fitness for roles as part of the Fit and Proper assessments within the SSM.

The United States does not require ongoing F&P tests but requires individuals to disclose sanctions to new employers prior to taking up a role. These often take the form of 'Cease and Desist' letters and are typically publicly available.

F&P tests, when required on an annual basis and extended to a wide population (as they are with SMCR), are resource intensive. These tests require a firm to assess an individual against a variety of criteria. It includes assessing whether any disciplinary action or concerns have been raised; ongoing competency and suitability for the role; and financial soundness.

Across our interviews, individuals reflected on the need to dedicate and invest in a sufficient number of resources to ensure that they remained compliant with all regimes and frameworks. This undue burden was felt by both large firms, who may have thousands of individuals in scope at the SMF and CF levels, as well as smaller firms who have less ability to absorb this effort into existing teams. Individuals observed that:

"*The administration burden for firms of F&P tests, and vetting procedures is high and difficult to execute, and this is particularly true for material risk taker population.*"[128]

There is additional complexity for international firms, who may have executives who are subject to multiple regimes based on their roles (for example the UK and Irish regimes). This is likely to lead to duplication of effort for firms, who have observed that: "*We now need to duplicate similar, but slightly different, training programmes for individuals subject to the UK and Irish conduct rules, and also to do F&P checks twice.*"[129]

This regulatory burden is not necessarily a given however and is mitigated by actions such as: detailed guidance on 'what good looks like' from supervisors, limiting or not requiring firms to submit documents to supervisors and focusing F&P checks on smaller population of individuals. Individuals that we interviewed suggested that: "*More non-binding supporting documents and supervisory guidance would be helpful, as without this, we had to invest a lot in external advisors and creating processes that likely go beyond what is needed. Once these standards are in place, it is difficult to go back.*"[130]

The responsibilities for oversight of regime compliance rightly sit with the firms, and they have heavier obligations for ongoing administration than the regulators.

Typical responsibilities of firms when implementing individual accountability regimes include the initial and on-going administration of all requirements of Senior Managers, which must be submitted to the regulator, as well as the ongoing maintenance of document sets (such as statements of responsibility, responsibility maps, skills assessments, handover documentation). Firms must also maintain artefacts and materials related to the often-large pool of 'certified roles' and 'material risk takers', which are not necessarily submitted to the regulator but must be available. For some firms in the UK this has led to a view that the firm is self-enforcing elements of the regime:

"*Firms now need to take internal enforcement action for breaches of SMCR rules. We need to understand root causes of issues, investigate and apply censure to individuals. The regulator has, to some extent outsourced this oversight and enforcement work to firms.*"[131]

Some processes and responsibilities that may have sat with the regulator pre-SMCR (e.g., investigations into individuals) now sit with firms in the first instance, particularly with respect the timely reporting of breaches, internal investigations, and post-incident internal enforcement action. While this has resulted in an increased administrative and workforce burden to firms, the approach is generally in line with typical regulatory approaches – whereby a regulator sets standards and expects firms to undertake the work required to ensure compliance with those standards. In deciding on the balance of firm responsibility versus regulatory responsibility it is also critical to consider regulatory capacity, and this is discussed further in Section 3.5.

3.5 Supervisory oversight and enforcement

All regulatory rule sets place a resource burden not only on firms, but also on supervisors who must oversee the regime. As with the requirements on firms, there are decisions which impact the level of burden on supervisors. Important considerations include:

- **The approval process for senior managers**. Most jurisdictions, including UK, Ireland, EU and Hong Kong require pre-approval of individuals for roles. The wider the scope of rules, and more detailed the evidence required is, the more difficult it becomes for supervisors to execute this responsibility. In the UK for example, panel-based interviews are required for new appointments as well as extensive documentation review. This has historically created backlogs in approvals, and the FCA for example has not met its statutory objective for timeliness (to review applications within three months) for the last three years.[132]

- **The existence of public registers**. The UK maintains a public register of senior managers and certified function role holders. This register contains basic information of the individuals' details, associated firm, and designated role. The maintenance of the register system places a burden on the regulator and can be seen as providing an illusory level of confidence in individuals.

- **Documentation requested and notifications of breaches**. Certain regulators (such as in the UK) require documentation to be submitted and for regular notification of breaches of conduct rules to be provided. Others, such as in Singapore, do not require firms provide them with documentation on individual accountability. When documents are received by the regulators, there is an expectation and burden for review and assessment, and this effort must be appropriately planned for.

The level of readiness for supervisors to manage the regime is critical to its success, and failing to get this right can cause issues for firms. Firms we spoke to reflected that at the beginning of the SMCR: "*The regulators ambition was too big, and they established themselves as the gatekeepers for approvals, but did not have the capacity to execute at pace.*"[133]

It was also noted that public registers may create a higher risk than benefit: "*The UK register covers tens of thousands of individuals, and there is a real risk that it creates a false sense of security. A consumer who does not understand the rules may see a mortgage advisor on the register and believe that the regulator has assessed their competency for a role.*"[134]

All jurisdictions, including those without dedicated regimes but excluding Singapore, have some level of enforcement power provided to them through their individual accountability regimes. This enables them to hold individuals to account for misconduct or failure to perform responsibilities appropriately.

Supervisory Power / Enforcement Action	UK[135]	Ireland[136]	Hong Kong[137,138]	Singapore***	USA[139,140]	EU (SSM)[141,142]
Preventing appointment to a role	✓	✓	✓	✗	✗	✓
Banning individuals from the industry	✓	✓	✓	✗	✓	✗**
Public Censure (of the individual and firm – usually through the regulator's communication channels)	✓	✓	✓	✗	✓	✗**
Direct issuance of a monetary penalty (to a individual)	✓	✓	✓	✗	✓	✗**
Criminal prosecution (either by the regulator or a government body)	✓*	✓*	✓*	✗	✓ (through government regulatory bodies)	✓ (through national authorities)

** Unlike other jurisdictions' regulators, the UK supervisory authorities (FCA and PRA) also have the ability to bring criminal prosecutions forward themselves (without involvement of the government prosecution service). This is in contrast to the Irish and Hong Kong regulators who can refer cases and report findings, but do not initiate criminal prosecutions themselves.*

*** While the EU SSM does not directly give powers to ban, censure or fine individuals – these powers are available to other authorities for requirements relating to accountability within other regimes (e.g., CRD IV). Additionally, the ECB may issue periodic penalty payments against firms during a maximum period of 6 months.*

****While the Monetary Authority of Singapore is empowered with many of these supervisory powers and enforcement actions in general, these are not available through the IAC Guidelines. However, how well a firm meets these guidelines may impact their overall risk assessment by MAS.*[143]

The threat of enforcement is an important deterrent against individual misconduct and focuses individuals on their responsibilities. One interviewee (a former UK regulator), noted that the threat of enforcement appeared to have been a decisive factor in promoting good corporate culture within the United Kingdom, rather than the level of enforcement itself. This was due to firms and senior individuals fearful of the consequences associated with non-compliance of SMCR. This interviewee noted that, senior managers believed that there would be a significant negative reputational impact with being found as having not met the individual accountability provisions of SMCR.

Additionally, the former United States Deputy Attorney General, Sally Yates noted in 2016 that the threat of litigation at individual level increased impact on individual accountability. She articulated the value of deterrence in achieving a positive outcome for US government regulatory bodies. She remarked,

"*But now, the focus of our civil enforcement efforts has broadened... It's also about deterrence, about stopping fraud from happening in the first place and about redressing misconduct of those responsible. There is a real deterrent value in the prospect of being named in a civil suit or having a civil judgment.*"[144]

Enforcement powers can be difficult to execute, with the level of action appearing outwardly low in some jurisdictions. Across several regimes, including the UK and Hong Kong, only a small number of enforcement actions have taken place. Penalties have also been small in relation to the length of license suspensions and the overall compensation package of impacted individuals.

In the UK, the FCA disclosed that from 2016 to 2022:

- 120 enforcement investigation cases into SM&CR individuals had been opened.
- Of 57 closed cases, 52 had resulted in no further action.
- Only 2 cases had resulted in financial penalties or public censure.

In Hong Kong there has also been low levels of enforcement. In 2021, three cases resulted in actions against individuals under F&P rules of the Banking Ordinance.[145] In addition, two cases have been resolved under the Manager in Charge Regime, each resulting in relatively short bans from the industry.[146] [147]

This interviewee also acknowledged the relatively small number of successfully adjudicated investigations which had resulted in fines so far. He believed this was due to the high burden of proof the regulator had to demonstrate. His belief was that the overall threat of enforcement was a significant driver in the positive change SMCR has brought to corporate culture within financial services firms.

In the UK, the challenges in bringing enforcement action successfully are seen to stem in part from the burden of proof. The original draft rules for the SMCR proposed a 'reverse burden of proof,' whereby an individual would be required to provide evidence that they had acted appropriately, in line with the reasonable steps criterion and regarding the conduct outcomes. This was intended to make it easier for the regulator to bring action against individuals in a timely manner. However, this proposal was dropped, with the burden of proof now sitting with the regulator to prove that an individual has acted inappropriately in cases of non-compliance. A similar burden exists for the Irish regulator with respect to the 'duty of responsibility' criterion required of senior executives.

A dedicated individual accountability regime is not required to enable enforcement and create a culture of individual accountability. It is clear when examining the UK and US experience that the existence of a dedicated accountability regime is not a pre-requisite for effective enforcement. So long as robust mechanisms, instruments, and processes exist whereby individual accountability can be sought, similar outcomes are possible. This can include utilising legal frameworks and institutions already designed to enforce rules and regulations. This finding is illustrated in detail through our example case studies which compare the enforcement action against executives in the US and UK.

It is important to recognise that the US has a longstanding culture of robust individual enforcement and litigation, with supervisors possessing broad powers to investigate individuals for a wide swathe of violations. This is supported by recent developments to further empower and encourage supervisors to focus on civil enforcement for individual accountability, such as the Yates Memo, without introducing additional legislation. This is having a tangible impact: "*companies are not only continuing to cooperate, but they are also making real and tangible efforts to adhere to our requirement that they identify facts about individual conduct.*"[148]

3.6
Enabling rule sets

It is important to recognise that accountability regimes do not exist in isolation. In most jurisdictions, this is enabled by a broader set of regulations that address remuneration and corporate governance.

The combination of accountability, governance and remunerations rule improves the effectiveness of accountability regimes by building on standards for governance and creating financial incentives for good conduct.

Corporate Governance: There are numerous rules and guidelines at the global and national levels for corporate governance. These include:

- Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders (EU)
- CRDIV New rules on Corporate Governance (EU)
- EBA Final Guidelines on Internal Governance 2017 (EU)
- Corporate Governance Requirements for Credit Institutions 2015 (Ireland)
- FCA SYSC (Systems and Controls Sourcebook) 2014 (United Kingdom)
- UK Companies Act 2016 – Directors Duties (United Kingdom)
- UK Corporate Governance Code 2018 (United Kingdom)
- Sarbanes-Oxley Act (SOX) (USA)
- Code of Corporate Governance (Singapore)
- Hong Kong Corporate Governance Code (Hong Kong)
- Code on Corporate Governance Practices (Hong Kong)

Corporate governance regulations look at the framework of rules, principles, and practices that govern how a company is managed. Typical topics covered are Board composition and structure, remuneration, shareholder rights, and director independence. As a result, there are individual accountability provisions built into many corporate governance regulations, usually directed at Board members and a firm's management body (e.g., CEO, CFO). This is an important distinction to make, as this delineates Board and executive employees from other senior managers, who whilst are key decision makers, are not part of the firm's management body.

As a board of directors is the highest governing authority within a firm's management structure, these individuals have a particular duty to act and promote accountability. These individuals are accountable for an organisation's culture, as the tone they set influences the behaviour of all staff members. Individual accountability regimes frequently include cross reference provisions on the accountability of Board members and set out additional expectations for the roles and responsibilities of the Board and executives.

One interviewee noted the need to make sure individual accountability regimes do not compete with existing corporate governance rule sets. "*You need to make sure these regimes are not additive to other competing agendas. When looking at the UK landscape, you have the FRC (Financial Reporting Council)obligations, various directors' obligations, and other regulations. These are too additive in terms of the SMCR. There is not enough of a singular view and all obligations of stakeholders. For inexperienced board members, it can become paralysing. In Hong Kong and Singapore, there was more work done in terms of not layering on top of existing obligations.*"[149]

Remuneration Requirements. The global regulatory response to the 2008 financial crisis was characterised in part by the prioritisation of much stronger remuneration requirements. These rules are critical to the effectiveness of the accountability regime and ensure that individuals face financial consequences beyond regulatory enforcement.

It was also noted during an interview that, "*With SMCR, there were lots of headlines around the potential criminal liability of senior managers, however the real motivation for senior managers is around clawback and remuneration. CEOs care deeply about this year's bonus. They care less if they can't work in the United Kingdom anymore.*"[150]

The regimes below all rely on remuneration rules set outside of the individual accountability regimes, either as requirements or recommendations.

Remuneration Rules	UK	Ireland[151]	Hong Kong	Singapore	USA	EU (SSM)
% of Variable Remuneration (VR) deferred	40-60%[152]	40-60%	40-60%[153]	40%[154]	-	40-60%[155]
Period of VR deferral	4-7 years[156]	4-5 years	3 years[157]	3 years[158]	-	4-5 years[159]
Malus provisions Malus refers to withholding payment of unvested instruments.	✓[160]	✓	✓[161]	✓[162]	-	✓[163]
Claw back provisions Clawback refers to the return of remuneration already transferred to beneficiaries.	✓[164]	✓	✓[165]	✓[166]	-	✓[167]

Case study

A UK CIO's failure to execute responsibilities, leading to customer detriment

Context

In 2018 TSB was undergoing a major IT transformation, moving from legacy systems to a new banking platform. Carlos Abarca was the Chief Information Officer (CIO) at TSB in the period of the IT transition. He was the designated SMF18 (Other Overall Responsibility), responsible for TSB's information technology and IT business continuity. His responsibilities required that he "take reasonable steps in relation to the identification and mitigation of risks relating to the readiness of TSB's contractors and subcontractors." In April 2018, TSB's system migration encountered serious issues resulting in millions of customers being locked out of accounts, having incorrect balance information, and payments failing for a sustained period of weeks. TSB incurred a corporate fine of £48m as a result of the incident, and the PRA pursued individual action against Carlos Abarca.

Violation

Carlos Abarca was found to have failed to comply with Senior Manager Conduct Rule 2, which entailed taking reasonable steps to ensure the business complied with relevant requirements and standards. This stemmed from his lack of assurance that TSB's primary third-party supplier had the ability and capacity to undertake the IT migration of TSB customers. The appropriate checks and verification that this outsourcing relationship was robust enough to manage the demands of a large-scale IT migration had not taken place.

Enforcement action taken

In 2023 the PRA imposed a financial penalty of £116,600, which was reduced under the PRA's settlement policy to £81,620. This amount is equal to 15% of total income for the period, which was £777,356.

Conclusions

This case demonstrates the regulator's willingness to launch an investigation and apply enforcement action upon senior managers conduct rule violations specific to their senior role. It is also an example of enforcement taking place in a scenario where there is no allegation of deliberate or reckless behaviour, nor of dishonesty.

This case took a substantial time to reach conclusion, 5 years from the incident, despite the severity and publicity of the incident, and the pre-existing awareness of supervisory teams regarding the migration.

Case study

US Executives held to account for systemic misconduct and obstruction

Context

Between 2002 and 2016, Wells Fargo was found to have been operating a volume-based sales model, which did not consider actual customer needs. Employees at the Bank were placed under substantial pressure to achieve unrealistic sales goals, which led to routine use of illegal practices (including fraud, identity theft and falsification of records) across the Bank. Senior managers were aware of the illegal and unethical practices from as early as 2002 but failed to act and minimised the extent of the problem to the Board. Wells Fargo agreed to pay $3bn to settle civil and criminal penalties at a corporate level, and US federal agencies have in recent years been pursuing a number of actions to hold individual executives accountable for these failings.

Violation

In addition to the corporate penalties, the Office for the Comptroller of Currency; Securities and Exchange Commission and the US Department of Justice have all pursued civil and criminal penalties against key executives at the Bank. The executives were found to have created and perpetuated a culture in which employees were pressured through unrealistic sales goals to provide accounts and products to customers under false pretences or without consent.

Individuals were found to have been "significantly responsible" for the widespread culture of misconduct, and failure of the Bank to take sufficient action. Some executives were also found to have obstructed the regulatory investigation.

Enforcement action taken

Enforcement action has been pursued by federal authorities against a number of executives. These actions include:

Individual	Role Held	Fine(s) Issued / Proposed	Prohibition Order	Criminal Penalty
John Stumpf	Chief Executive Officer	$17.5m (OCC) $2.5m (SEC)	✓	
Carrie Tolstedt	Head of Community Bank	$17m (OCC) $3m (SEC)	✓	✓ 16 months prison**
Claudia Russ Anderson	Community Bank Chief Risk Officer	$10m (OCC)*	✓	
James Strother	General Counsel	$3.5m (OCC)	✗	
David Julian	Chief Auditor	$7m (OCC)*	✓	
Paul McLinko	Executive Audit Director	$1.5m (OCC)*	✗	

**Indicates that the fine and prohibition order has not yet been settled. **The sentence has not yet been confirmed.*

In addition to the executives listed above, fines, prohibition orders and cease and desist orders were also issued to executives at lower levels of the organisation. This included the Community Bank Finance Officer, Head of Community Bank Deposit Products and Head of Community Bank HR.

Conclusions

Despite the absence of a dedicated individual accountability regime, this case study provides an example of how US authorities can hold executives at multiple levels to account for misconduct within financial services. Individuals face material financial consequences, in the form of civil penalties. And material personal consequences, in the form of public censure, prohibitions or limits on employment in financial services, and prison sentences.

4 Recommendations

Using our analysis from the detailed comparative review of regimes, as well observations on experiences from firms, we have set out recommendations for Switzerland to consider when deciding on how to design, implement and enforce any accountability regime.

We have focused our recommendations on how a regime could be applied in the Swiss market to achieve effective individual accountability, while considering the principle-based approach to regulation in Switzerland.

Overarching design considerations

The below set of findings have been derived from thematic observations across our analysis. They are considerations that should inform the definition of overall design principles for any eventual regime, which should be determined and agreed before detailed design decisions are made.

Finding	PA view of considerations for the Swiss market
1 When designing an accountability regime, regulators should start with absolute clarity on the problem to be addressed	• Most accountability regimes have been designed in response to an industry or national crisis but have evolved to attempt to address wider sets of challenges. • Whether you are seeking to resolve an issue of financial stability, market confidence, or conduct and consumer protection will impact the detailed design of your regime, in particular the scope of firms and individuals captured. • You should be clear at the outset on the overall objective of the regime and ensure that your detailed design choices are targeted specifically at that outcome.
2 The most effective accountability regimes are proportionately targeted at the most senior individuals within the most materially risky organisations	• The law of diminishing returns applies to individual accountability regimes, with the greatest benefit achieved through the rules which target the most influential decision makers at firms which present the greatest risk to markets or customers. • There are likely to be components of existing regimes which are not necessary or proportional for Switzerland to adopt, although this will depend on the outcome sought per recommendation 1.
3 There is no perfect approach to accountability, and similar outcomes can be achieved through a variety of levers	• The comparison of US and UK effectiveness in enforcement demonstrates that the outcome of holding individuals to account can be achieved through very different mechanisms. • The US approach however is successful in large part due to the deeply ingrained culture of litigation and enforcement. And will not necessarily be successful in markets without this precedent. • You must pick the levers that work for your market and culture and avoid significant departures from your usual approaches.
4 With numerous accountability regimes already in place globally, care should be taken to avoid tailoring new rules in such a way that creates additional burdens on firms	• Many jurisdictions have already implemented individual accountability regimes, or defined expectations for individuals. • For large international firms, each new regime presents additional complexity in implementation, to understand the overlaps and underlaps of requirements. • You should consider the extent to which you can leverage or replicate requirements already in place, to avoid duplicative effort for firms.

Specific scope, components, implementation, supervisory and enforcement recommendations

Finding	PA view of considerations for the Swiss market
Scope	
5 The scope of firms subject to the rules typically goes far beyond systemically important banks	• Limiting any Swiss regime to systemically important banks would apply a lower standard than other regimes, but this is not necessarily a drawback. • The extension of regimes to the smallest types of authorised firms (e.g., sole traders) does not result in benefits that are consistently commensurate with the effort involved by both firms and supervisors. • The scope of any Swiss regime should be determined based on the outcomes you are seeking to achieve.
6 Firm size and complexity play some role in determining application of the rules	• It is possible to establish regimes with varying levels of requirements for firms based on their size and complexity, but this results in more complicated rule books. • It is preferrable to consider whether any rules are required for smaller, less complex, less risky firms.
7 The ability to apply rules on an extra-territorial basis is common	• Most jurisdictions have some ability to hold individuals to account regardless of their location. • In the Swiss market there are likely to be two types of senior managers: those based outside of Switzerland but who hold senior roles at Swiss headquartered firms; individuals based in Switzerland working for firms headquartered elsewhere. • In designing extra-territorial reach of rules, you can more hold senior managers not based in Switzerland accountable for actions which impact Swiss firms
8 The regimes take materially different approaches to the application of rules to Non-Executive Directors (NEDs).	• Depending on the corporate governance standards already in place, capturing NEDs within an accountability regime may be unnecessary. • If NEDs are captured, it should be on a consistent basis and not a sub-set of the group.
9 The regimes take materially different approaches to the application of rules to Non-Executive Directors (NEDs).	• An effective accountability regime captures the executive team, and a slightly wider set of senior individuals (such as the direct reports of the executives). • You should aim to provide clarity on the scope of responsibilities that you expect to be covered, while providing firms with flexibility in how they define role titles and the specifics of the responsibilities.
10 The application of rules to a wider pool of individuals in 'certified roles' and 'material risk takers' substantially increases the population of individuals in scope	• Applying accountability rules to individuals below Executives and their reports substantially increases the regulatory burden on firms. • Priority should be given in any new regime to individuals with the greatest influence. As such, it may be beneficial to limit the initial scope to senior managers to reduce the oversight burden required by firms.

Finding	PA view of considerations for the Swiss market
Scope	
11 Broad rules which apply to all employees set minimum expectations for good conduct, but do not particularly contribute to improved ability to hold individuals to account	• Conduct rules for all employees, while they may be valuable to set expectations, can be considered ancillary to achieving the outcome of individual accountability. • In most cases, rules are enforced by the firm through disciplinary procedures. There are likely to be other existing mechanisms that may enable you to achieve improved employee conduct outcomes. And in other regimes these rules increasingly blur with other regulatory requirements.
Implementation	
12 Regimes which built on pre-existing individual approvals carry a greater risk of 'bad apples' failing to be routed out	• As Switzerland has no pre-existing regime, there is no risk of the same experience.
13 Staggered roll outs support both Firms and Supervisors to manage effort of compliance and learn from feedback	• Other regulators have struggled to keep pace with the administration of accountability regimes. • A staggered approach to implementation, for example focusing on a small subset of firms for initial rollout, is beneficial both to supervisors and firms.
Components of compliance	
14 Clarity on the responsibilities that are owned by each senior manager is a major benefit of accountability regimes, and has been achieved through different approaches	• The requirement for firms to identify senior managers, assign responsibilities and to obtain a view on how all responsibilities map across the organisation is essential to achieve a good outcome. • This element has been called out as genuinely useful for firms and should form part of any Swiss regime. • Flexibility in the definition of roles and providing firms with the ability to tailor responsibilities will enable a simpler adoption of the regime.
15 Regulatory references have not proven to be effective in addressing the 'rolling bad apples' challenge.	• Depending on the priority of this issue for the Swiss market, there are lessons to learn from the adoption of regulatory references and their effectiveness. • This could include defining more robust requirements for references to attempt to improve their effectiveness; or removing the requirement on the basis that it creates an administrative burden for minimal benefit.

Finding	PA view of considerations for the Swiss market
Components of compliance	
16 In aggregate, maintaining the required suite of documents and executing recurring F&P tests places an administrative burden on firms regardless of their size and complexity	• Compliance with existing regimes in jurisdictions like the UK and Ireland entails the creation and adherence to detailed processes, as well as maintenance of multiple documents and evidence. • This complexity increases as the scope of individuals subject to the rules increases. • A lack of supervisory guidance and clarification on expectations can drive firms to gold plate requirements. • When adopting a principle-based regime, you should ensure this is appropriately supported by supervisory guidance and engagement.
17 The responsibilities for oversight of regime compliance rightly sit with the firms, and they have heavier obligations for ongoing administration than the regulators	• Standard responsibilities of the firm include administration and implementation of the regime for Senior Managers, which are directly overseen by the regulator. • However, firms must also maintain artefacts and materials related compliance for senior managers and the often-large pool of 'certified roles' and 'material risk takers'. These are not typically directly overseen by the regulator. • Firms need to also report breaches, conduct internal investigations, and lead root-cause analysis of misconduct for these groups. • The burden of overseeing and evidencing compliance should sit with firms, who should be encouraged to 'self enforce'. However the burden of document maintenance could be reduced, for example by giving firms more flexibility in how they evidence compliance.
Supervisory oversight and enforcement	
18 The level of readiness for supervisors to manage the regime is critical to its success, and failing to get this right can cause issues for firms	• If your regime design places requirements on the regulator, to provide approvals or any other 'gate keeping' roles, they must be appropriately resourced to deliver these functions. • Where possible, avoiding creating these requirements will result in a more sustainable regime.
19 The threat of enforcement is an important deterrent against individual misconduct, and focuses individuals on their responsibilities	• An enforcement element is critical to the effectiveness of the regime. • You should consider what the most appropriate enforcement actions are and recognise that most regimes give regulators broad power to take a variety of enforcement actions.
20 Enforcement powers can be difficult to execute, with the level of action appearing outwardly low in some jurisdictions	• The threat of enforcement action is sustained as a deterrent if the market sees it used in practice. This can take time to happen. • When deciding on the preferred enforcement actions for any regime, you should pay regard to the ease with which you are currently able to execute enforcement powers.

	Finding	PA view of considerations for the Swiss market
	Supervisory oversight and enforcement	
21	A dedicated individual accountability regime is not required to enable enforcement and create a culture of individual accountability	• You do not necessarily need to define a dedicated regime to enable you to hold individuals to account. However, given the lack of individual enforcement to date within the Swiss market, the US approach is unlikely to be a useful model.
	Enabling rule sets	
22	The combination of accountability, governance and remunerations rule improves the effectiveness of accountability regimes by building on standards for governance, and creating financial incentives for good conduct	• Any individual accountability requirements should be designed to fill in the gaps between existing governance and remuneration requirements. • You should avoid creating overlap between any such requirements, leveraging existing rules wherever possible.

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Annex

Individuals Interviewed

As part of preparing this report we spoke to senior individuals at a variety of financial services firms, to understand their practical experiences of implementing and complying with these regimes. We agreed to anonymise these inputs so that individuals could feel able to speak freely. We would like to thank them for their insights and contribution.

Referred in report as:	Role	Firm
SIFI Bank Executive A	Head of Regulatory Affairs and Conduct	Systemically Important Global Bank with presence in UK, Europe, USA, Hong Kong
SIFI Bank Executive B	Company Secretariat responsible for Individual Accountability	Systemically Important Global Bank with presence in UK, Europe, USA, Hong Kong
SIFI Bank Executive C	Chief Administrative Officer (CAO)	Systemically Important Global Bank with presence in UK and USA
SIFI Bank Executive D	SMCR Compliance Lead	Systemically Important Global Bank with presence in UK and USA
Large UK Domestic Bank Executive	Head of Risk and Conduct, SMF Role Holder	Large UK Domestic Bank
UK Domestic Bank Executive	Chief Risk Officer, multiple SMF role holder	Small/Medium UK Domestic Bank
Large UK Banking Group Executive	Compliance Director, SMCR expert	Large UK Banking Group
Former UK Regulator	UK Regulator involved in development of SMCR regime	UK Regulator

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