

New rules for senior executives in insurers, investment firms, asset managers, brokers and consumer credit firms

On 7 March 2016, the new Senior Managers and Certification Regimes (Accountability Regime) that governs large parts of the banking sector came into effect. Insurance firms subject to Solvency II are required to comply with a similar regime. The Government proposes to extend the Accountability Regime to all sectors of the financial services industry during 2018, bringing around 60,000 additional firms into scope.

Key features of the Accountability Regime

Key features of the expanded Regime are expected to include:

- Regulatory pre-approval for senior managers
- Statements of responsibility for senior managers
- Personal accountability for Senior Managers
- Firm certification of individuals with the potential to pose significant harm to the firm or customers
- A requirement to obtain regulatory references
- New Conduct Rules for Senior Managers and certified individuals
- New notification, training and record-keeping obligations
- Possibly new whistleblowing requirements

Key issues

- Key features of the Accountability Regime
- What happens next?
- What is proposed?
- Is my firm affected?
- Who will be a senior manager?
- Who will be a certified person?
- Who will be covered by the conduct rules?
- How will insurance firms be affected?

What happens next?

What?

- Government policy paper published
- Senior Managers and Certification Regimes came into effect for banking sector
- The Bank of England and Financial Services Act received Royal Assent
- FCA/PRA Consultation on extended SM & CR rules
- Extended Senior Managers and Certification Regimes will come into operation

When?

- 14 October 2015
- 7 March 2016
- 4 May 2016
- 2016-2018
- 2018

The extended Accountability Regime will come into effect in 2018. Although the regulators are expected to consult on the proposed rules in 2016 lessons can be learned from the implementation of the regime in the banking sector. In our experience the extended Accountability Regime is likely to require substantial changes to training, employment documents and compliance policies and procedures and senior individuals will need to understand the possible impact on them personally.

Firms will need to consider:

- what processes they will adopt for agreeing statements of responsibility with senior managers
- who should be on the implementation team
- how Certification staff can be identified and certified annually
- how to ensure uncertified staff are not inadvertently performing certified functions
- which staff will be covered by the Conduct Rules
- how training should be updated and delivered
- whether changes to employment documents and processes will be required.
- if changes to reference procedure and personal data retention are necessary
- what changes to settlement agreements and termination processes should be implemented
- the potential impact on remuneration arrangements
- whether firms will offer to pay senior manager's legal expenses and/or to provide any indemnities
- which individuals will be covered in other group entities
- the practical implementation of the regime in relation to in-scope employees based overseas
- does the regime present an opportunity to review governance structures and arrangements

What is proposed?

On 7 March 2016, the new Senior Managers (SM) and Certification Regime (CR) applicable to many banks and insurers in the UK (The Accountability Regime) came into force. Its purpose is to ensure that individuals who run, or perform important functions in, banks and insurers have clear lines of responsibility, and are accountable to the regulator for their actions. HM Treasury now proposes to extend this regime to all sectors of the financial services industry by 2018.

Is my firm affected?

Yes if your firm is regulated by the Financial Services and Markets Act 2000 and meets the definition of an 'Authorised Person'. About 60,000 firms will be affected including banks, insurers, investment firms, asset managers, mortgage brokers and consumer credit firms.

What are the key elements of the Extended Accountability Regime?

The Extended Accountability Regime will replace the current Approved Persons Regime for affected firms. The final rules are subject to consultation, but key elements are likely to be:

- The most senior managers in firms will be subject to pre-approval and supervision by the FCA or PRA. Certain responsibilities prescribed by the FCA or PRA will be allocated to the senior managers and their individual responsibilities will need to be set out in a "statement of responsibilities" which must be submitted to the regulator with the senior manager's approval application.
- Firms will have to prepare and maintain a governance or responsibilities map showing the key roles within the firm, the people responsible for them, their responsibilities and lines of accountability.
- Senior managers will be accountable to the regulator if they breach conduct rules prescribed by the FCA or PRA, are knowingly concerned in a breach by a firm of a regulatory requirement, or fail to take reasonable steps to prevent such a breach by a firm in their area of responsibility, as set out in their statement of responsibilities and the responsibilities map.
- Senior managers will have a statutory duty of responsibility to take reasonable steps to avoid the firm breaching a regulatory requirement in the senior manager's area of responsibility.
- Firms must ensure that senior managers and other staff who could cause significant harm to the firm or its customers are at all times fit and proper, and must certify them as such at least annually.
- Firms must also ensure that employees comply with certain Conduct Rules, in respect of which firms will have notification, training and record keeping obligations.
- The criminal offence applied to banks and other relevant authorised persons under the Banking Accountability Regime of recklessly causing a financial institution to fail will not be applied under the Extended Accountability Regime.

Who will be a Senior Manager, who will be a Certified Person and who will be covered by the new Conduct Rules?

The Senior Managers Regime is intended to cover the top levels of decision maker within an institution. This could cover individuals who are based outside the UK and some Non Executive Directors.

Experience demonstrates the importance of involving senior managers in the Governance Map and Statement of Responsibilities process at an early stage. Equally important is the provision of advice and assistance to SM's for example by producing a Senior Managers' Handbook.

Most current approved persons below senior management level are expected to become Certified Persons. In addition

some roles that are currently not subject to approval may require certification.

Conduct Rules will apply to Senior Managers, Certified Persons, directors and other employees. For institutions regulated by the FCA the staff population subject to the Conduct Rules may be extensive (under the banking regime only ancillary staff such as security, catering and cleaning staff are exempt).

How will insurance firms caught by the Senior Insurance Managers Regime be impacted?

As many features of SIMR and the banking Accountability Regime are similar it is anticipated that there won't be significant changes for insurers however the extended regime is likely to give rise to more administration; for example, formal certification of fitness and propriety will be required in contrast to the SIMR regime.

When will the Extended Accountability Regime be implemented and is there anything I could be doing now to prepare?

The Extended Accountability Regime will come into effect in 2018 and the regulators are expected to consult on the proposed rules later this year.

Clifford Chance has a team of about 30 lawyers from our employment, litigation and regulatory practices who have been supporting banks and insurers to implement the Banking and Insurance Accountability Regimes. We would be happy to speak to your firm about the lessons learned from the implementation of the Banking and Insurance Accountability Regimes. The Extended Accountability Regime is likely to require substantial changes to key documents and processes; senior individuals will want to know what impact it will have on them personally, and firms will need to consider what process they will adopt for agreeing statements of responsibilities with senior managers, how certification staff be identified and certified, which staff will be covered by the Conduct Rules, how should training be delivered, and what changes to employment documents and processes will be required.

Contacts

Chris Goodwill
Partner
E: chris.goodwill
@cliffordchance.com

Imogen Clark
Partner
E: imogen.clark
@cliffordchance.com

Mike Crossan
Partner
E: mike.crossan
@cliffordchance.com

Dorian Drew
Partner
E: dorian.drew
@cliffordchance.com

Kelwin Nicholls
Partner
E: kelwin.nicholls
@cliffordchance.com

Alistair Woodland
Partner
E: alistair.woodland
@cliffordchance.com

Ashley Prebble
Partner
E: ashley.prebble
@cliffordchance.com

Katherine Coates
Partner
E: katherine.coates
@cliffordchance.com

Tania Stevenson
Senior PSL
E: tania.stevenson
@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

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