

Financial Stability Institute

FSI Insights on policy implementation No 48

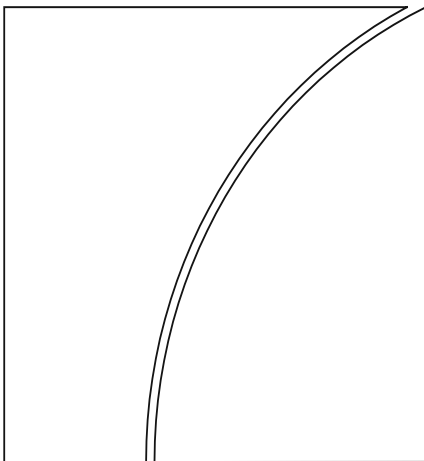
When the music stops – holding bank executives accountable for misconduct

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February 2023

JEL classification: G21, G28

Keywords: bank governance, bank boards,
directors, conduct standards, fit and proper,
accountability, individual accountability,
misconduct, responsibility mapping, senior
executives, senior management



BANK FOR INTERNATIONAL SETTLEMENTS

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Authorised by the Chair of the FSI, Fernando Restoy.

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ISSN 2522-249X (online)

ISBN 978-92-9259-634-7 (online)

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When the music stops – holding bank executives accountable for misconduct¹

Executive summary

Two lasting imprints of the Great Financial Crisis (GFC) were widespread failures in corporate governance and systemic breakdowns in corporate accountability and ethics. The result was a toxic mix of bank failures or near failures that triggered financial instability and a global recession, causing widespread job losses and public bailouts of large financial firms. Amid the economic downturn, a cascade of misconduct scandals emerged, eroding public confidence in banks and fuelling societal anger.

As misconduct cases proliferated, supervisory authorities encountered obstacles in determining the culpability of senior executives, particularly in large banks. The dispersion of responsibility of senior executives in large firms, where decisions are taken at various levels of the firm, made it difficult to determine accountability where the wrongdoing may have occurred “under their watch”. In addition, many prudential authorities viewed the board of directors and senior management as collective bodies and senior executives could take cover under collective decision-making.

Following the GFC, international bodies began work to strengthen the accountability of senior executives. In 2015, the Basel Committee on Banking Supervision (BCBS) updated its corporate governance guidelines for banks (BCBS (2015)), which included a provision for supervisors to issue guidance on the clear allocation of responsibilities, accountability and transparency of a bank’s senior executives. Subsequently, the Financial Stability Board (FSB) published a toolkit to enhance oversight of misconduct risk, including the advent of bespoke regimes that tackle individual accountability (FSB (2018)).

This paper outlines the contours of regulatory frameworks that govern the oversight of individual accountability in six jurisdictions and explores their implementation challenges. Aside from one jurisdiction, the findings draw from an FSI survey combined with follow-up interviews. This was supplemented by a review of relevant publications in all six jurisdictions. To date, only three authorities have introduced specific, standalone frameworks that tackle individual accountability in banks. Most authorities use general prudential frameworks to address personal accountability, with one authority using a hybrid approach that combines aspects of both standalone and prudential frameworks. For analytical purposes, we identify two broad approaches: the introduction of free-standing, consolidated “individual accountability regimes” (referred to as “IAR jurisdictions”) and reliance on broader regulatory frameworks, including hybrid approaches, to hold individuals to account (“other approaches to accountability”).

The three IAR jurisdictions share core features that distinguish them from other approaches to accountability, providing a solid foundation for supervisory review. First, IARs focus on senior executives (“covered individuals”). Second, firms are required to define and allocate certain responsibilities to covered individuals, produce “accountability statements” for each of them and develop firm-wide “responsibility maps”. Third, covered individuals can be held accountable for failings in their areas of responsibility unless they have taken “reasonable steps” to prevent breach(es) from occurring. These provisions heighten the focus on individual accountability at the highest levels of a bank, while enabling supervisors to promptly identify the senior executive(s) responsible when a supervisory concern arises and, if warranted, to hold them accountable for actions taken by their subordinates.

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The authors are grateful to the supervisory authorities covered in this paper, to Rodrigo Coelho and Glenn Tasky for helpful comments, and to Esther Künzi and Theodora Mapfumo for administrative support.

Despite the similarities, differences exist among the three IARs. While all three regimes cover senior roles, the treatment of non-executive directors (NEDs) varies. These range from including NEDs (Australia), excluding NEDs (Singapore) or including a subset of NEDs (United Kingdom (UK)) within the scope of application. The latter is the only jurisdiction that imposes heightened conduct standards on senior executives relative to other staff and prescribes certain responsibilities that must be allocated to a senior executive(s). Finally, both Singapore and the UK extend their IARs beyond senior executives to include staff whose activities may cause material harm to the bank or consumers.

Regulatory approaches also vary among the jurisdictions without a specific IAR. The Single Supervisory Mechanism (SSM) of the European Central Bank considers individual accountability mainly during fit and proper (FAP) assessments, which applies to some senior roles. Hong Kong SAR and the United States assess individual accountability during ongoing supervision, using common law definitions of “duty of care”, “duty of loyalty” and broader prudential guidance, under which senior executives can be held accountable for misconduct. Of the three jurisdictions without a specific IAR for banks, Hong Kong SAR comes closest, as its framework contains several elements that we identify as characterising IARs. Of all six authorities, the US casts the broadest net, extending the reach of accountability to encompass banks’ senior executives, their staff and bank-affiliated parties such as significant shareholders.

All sampled jurisdictions have adopted, to varying degrees, a broad range of complementary regulatory mechanisms to support individual accountability. These mechanisms include baseline conduct rules for all staff; whistleblower policies to protect employees who speak up against misconduct; remuneration guidance to help deter misconduct and discourage excessive risk-taking; constraints on the use of directors’ and officers’ liability insurance to offset financial penalties imposed on executives; and measures to prevent the recruitment of unfit individuals.

Most sampled authorities have similar enforcement tools against individuals, with some notable differences. All authorities have some combination of preventative (warning letters) and more severe powers (removal of executives). However, some authorities do not have powers to require prior regulatory approval for appointments or reappointments of senior executives, or can only impose such requirements after a bank is in a troubled condition. In addition, three of the six authorities do not have powers to directly impose fines on individuals, although fines can serve as a deterrent against misconduct.

Regardless of variations in accountability frameworks and sanctioning powers, their effectiveness hinges on robust supervision and enforcement. For IAR jurisdictions, the main challenge involves determining what constitutes reasonable steps and the level of culpability of senior executives if they were not directly responsible for the identified failing. In jurisdictions that follow other approaches to accountability, supervisory challenges may be compounded in the absence of detailed statements of responsibility of senior executives and the lack of an analogous reasonable steps hook to hold senior executives accountable for failures under their watch. In all jurisdictions, the institutional will to act against senior bank executives is fundamental in enforcing individual accountability rules.

To facilitate implementation, authorities provide guidance on the oversight of individual accountability. All three IAR jurisdictions, with varying degrees of specificity, provide examples of reasonable steps to help implementation and have in-house experts to support supervisory reviews of accountability. In other jurisdictions, the US provides a definition of “actionable misconduct” which forms the basis for supervisory actions, while Hong Kong SAR outlines expectations about banks’ oversight of individual accountability to aid supervisory reviews. The SSM provides guidance on supervisory findings viewed as “recent, relevant and severe” which are the individual accountability triggers that help inform FAP assessments of some senior roles.

A multi-faceted approach to individual accountability is needed to get in “all the cracks” that drive senior executive behaviour. This approach, which we label as the “accountability stack”, incorporates a broad range of seemingly disparate regulatory requirements that target various dimensions of accountability. The regulatory regime needs to be underpinned by a suite of direct enforcement powers against individuals, practical supervisory guidance that help decision-making and, above all, the will to act.

Section 1 – Introduction

1. **The Great Financial Crisis (GFC) and its aftermath were marked by systemic breakdowns in the corporate governance of banks, triggering bank failures and misconduct scandals across multiple jurisdictions.** Poor oversight by bank boards and senior management, combined with inadequate risk management and ill-conceived compensation programmes, led to excessive risk-taking, resulting in numerous bank insolvencies and government bailouts of systemically important banks.² In other cases, corporate governance shortcomings manifested in misconduct scandals – sometimes overlapping with bank failures – that harmed consumers, undermined the integrity of financial markets and damaged banks’ own reputation. In aggregate, these failures eroded public confidence in the banking system, which in turn negatively impacted the long-term functioning of the broader financial system.

2. **Prudential authorities often responded to widespread failures in corporate governance by imposing financial penalties on banks, due, in part, to difficulties in holding individuals at the board and senior management levels accountable.** Historically, banking authorities viewed bank boards and senior management as collective bodies and individuals could avoid being blamed for a particular (in)action by claiming ignorance or hiding behind the cover of collective decision-making. Fines became a simpler tool to punish banks for egregious breaches of prudential or conduct rules, in the hope that the scale of the fines could prevent future violations. For banking executives, it was much easier to consent to fines paid by bank shareholders when they were not held personally responsible for the alleged infractions. It is, therefore, not surprising that the largest financial institutions worldwide paid around \$394 billion in fines between 2009 and 2020, due to breaches of prudential standards or employee misconduct.³

3. **Amid ongoing banking scandals, global standard setters launched reforms to strengthen individual accountability in banks.** In 2015, the Basel Committee on Banking Supervision (BCBS) issued its revised guidelines on corporate governance principles for banks (BCBS (2015)). One of the principles requires supervisors to issue guidance on the clear allocation of responsibilities, accountability and transparency among individual board members and senior management of the bank. Two years later, the Financial Stability Board (FSB) published a stocktake of governance frameworks to reduce misconduct risk (FSB (2017)). This was followed by the publication of a toolkit to further improve such frameworks, including the use of individual accountability rules to address misconduct risk (FSB (2018)). In particular, the FSB noted that one consequence of the growth in fines and settlements incurred by firms was a heightened interest in addressing misconduct by holding individuals accountable for their actions.

4. **Some national authorities introduced individual accountability regimes (IARs) to strengthen supervisors’ ability to hold firms’ key decision-makers accountable for failures in their areas of responsibility.** While the details, scope of application and level of prescriptiveness varies across jurisdictions, a key feature of all IARs is the requirement for firms to clarify, formalise and document responsibilities allocated to senior officials. In theory, this means that if banking supervisors identify shortcomings in corporate governance, they can review firms’ allocation of responsibilities to identify the person(s) responsible and take remedial actions at an early stage.

5. **Most jurisdictions, however, continue to use their existing supervisory frameworks as the primary means to promote greater individual accountability at banks.** In the European Union, in countries that are part of the Single Supervisory Mechanism (SSM),⁴ individual accountability for certain senior bank officials is considered during fit and proper assessments. In addition to initial appointments

² For example, in the US alone, 465 banks failed during the period 2008–12, causing losses totalling \$86.6 billion to the Deposit Insurance Fund (see OIG (2014) for more information).

³ See Boston Consulting Group (2021) for more details.

⁴ The SSM is the legislative and institutional framework for the supervision of significant banks in member states of the European banking union. Under the SSM, the European Central Bank (ECB) has a leading supervisory role over those banks, in cooperation with national competent authorities (NCAs) – the national supervisors of the member state where the bank is established.

and reappointments, these can be triggered based on adverse supervisory findings. In the United States and Hong Kong SAR,⁵ banking supervisors have powers under their supervisory frameworks to take various enforcement actions against individuals, as circumstances warrant.

6. **This paper takes stock of prudential approaches used to hold individual bank executives accountable for prudential or misconduct failures and discusses related implementation challenges.**

The findings are based on a survey of bank supervisory authorities in Australia, Hong Kong SAR, Singapore, the SSM and the United Kingdom (UK) along with a review of relevant publications. Survey responses were supplemented with interviews of all five responding authorities. The US is also included in the sample and the analysis is based solely on public information. The jurisdictions were selected because they either have recently introduced IARs or have supervisory frameworks that deal with individual accountability in some manner.

7. **The rest of the paper is structured as follows.** Section 2 highlights the particular importance of corporate accountability in banks and outlines the evolving approaches used to oversee individual accountability in the selected jurisdictions. Section 3 takes a deep dive into the main design features of jurisdictions that have implemented IARs. Section 4 covers other jurisdictional approaches to assessing individual accountability. Section 5 explores a range of complementary regulatory mechanisms that help reinforce individual accountability supervision, such as remuneration frameworks and conduct rules. Section 6 outlines how accountability is supervised and enforced, including the main challenges faced by front-line supervisors, while Section 7 introduces the concept of the “accountability stack” and explains its constituent parts. Section 8 concludes.

Section 2 – Corporate accountability, banks and evolving prudential frameworks

Corporate accountability of banks

8. **For most companies, corporate accountability is under the purview of firms’ own boards or their shareholders.** Senior management and other employees of a company are accountable to its board. The boards of directors are, in turn, accountable to its shareholders. In both cases, unless the company itself is directly (and often financially) affected, there are limited incentives for firms to focus efforts on holding specific individuals to account, particularly in situations that may go beyond the firm and involve the public interest (Hickman (2022)). Moreover, unless there is evidence of criminal wrongdoing, governmental bodies or the judiciary are unlikely to get involved.

9. **An overreliance on self-governance mechanisms to foster individual accountability may be problematic due to the potential for conflicts of interest.** Firms might have disincentives to investigating specific individuals and “coming clean” on scandals that harm consumers or raise questions about their financial health or ethics, for fear of causing widespread damage to their reputation. In addition, boards and senior management are often collegial bodies, which may constrain their members’ willingness to hold senior-level colleagues accountable for their actions.

10. **Banks, however, are also accountable to the public because they safeguard depositor funds and their viability hinges on continued public trust.** In practice, banking authorities, which act on behalf of the broader public, are responsible for holding banks and their executives to account. To foster confidence in the banking system and to encourage firms and their leaders to behave prudently, authorities prescribe regulatory standards and supervisory expectations on a range of topics, including

⁵ In Hong Kong SAR, the individual accountability framework applicable to banks combines a mix of IAR-like provisions with other approaches to accountability.

corporate governance and risk management. When breaches of prudential standards are identified, banking authorities have powers to hold firms or individuals to account.

11. **The GFC, combined with the wave of banking scandals, eroded public confidence amid societal frustration at the difficulties in holding senior executives to account.** Despite their vast powers, several banking authorities – when confronted with significant safety and soundness or conduct failures – opted to impose fines on firms rather than hold the individuals responsible to account. This may have been due to one or more of the following factors: obstacles to attributing responsibility to specific senior officials at a time when the board or senior management were viewed as collective bodies (“when everyone is responsible, no one is responsible”); the burden of proof required to pursue enforcement actions against individuals; and the significant resources required to investigate individual cases.

12. **To help restore public trust, some jurisdictions introduced free-standing IARs to place a greater spotlight on executive accountability, while others enhanced existing frameworks.** IARs combine, in a consolidated framework, aspects of existing (governance-related) requirements that may have been scattered across various prudential standards and guidance with a number of new provisions. Of the new requirements, one of the most consequential is an overarching principle that is common to all IARs: while senior executives can delegate tasks to staff, they must retain responsibility for the outcomes. In other jurisdictions, authorities made incremental changes within their prudential regimes to sharpen their focus on individual accountability. The contours of these frameworks and how they feed into day-to-day supervision and enforcement are discussed below.

Overview of individual accountability frameworks

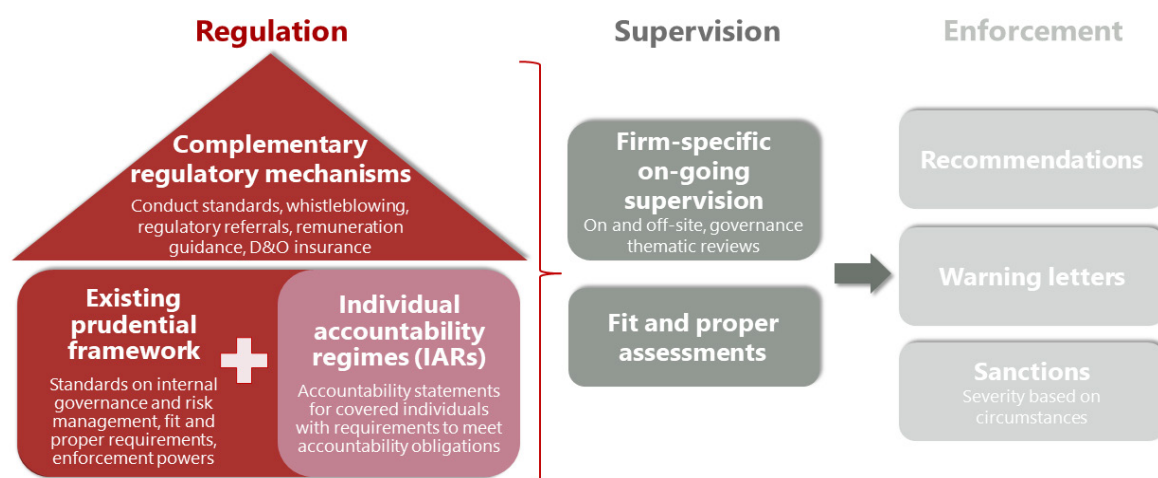
13. **Following the GFC, the regulatory toolkit used to support the supervision of individual accountability in banks has evolved.** Graph 1 provides a stylised illustration of the policy instruments that are used, to varying degrees, by the jurisdictions covered in this study. There is a growing recognition that multiple policy levers are needed to get into “all the cracks” that can influence management behaviour, which, in turn, can help to foster greater accountability among firm executives.

14. **Many prudential authorities focused on enhancing aspects of their existing regulatory framework to promote greater accountability.** These enhancements encompassed a range of relevant areas such as strengthening requirements on corporate governance and risk management (HKMA (2017b, e)); outlining supervisory expectations on board effectiveness (FRB⁶ (2021)); or enhancing supervisory guidance on fit and proper assessments of senior executives (ECB (2021)). These updated standards and guidance are used in turn as a hook to hold executives to account in conjunction with the authorities’ use of pre-existing enforcement powers against individuals.

15. **A few prudential authorities have developed standalone IARs as more targeted tools alongside their existing prudential frameworks.** The Australian and UK authorities introduced IARs through new legislation, while the Singapore authority sets its rules in the form of guidelines, but all require firms to define and allocate certain roles and responsibilities to covered individuals who can be held accountable for any safety and soundness or conduct breaches in their areas of responsibility.⁷ For the two countries that introduced standalone, statute-based IARs, a common thread is that they suffered a tsunami of misconduct, or safety and soundness scandals and thus had widespread public support for legislative change to expand the scope of accountability for senior executives.

⁶ FRB refers to the Board of Governors of the Federal Reserve System.

⁷ The Australian and UK IARs entailed new legislation, supported by supervisory statements or guidance, while the Singapore IAR takes the form of guidance issued by the Monetary Authority of Singapore (MAS), to supplement the existing regulatory framework.



16. **Regardless of whether IARs or existing frameworks are used, all sampled jurisdictions have introduced variations of complementary regulatory mechanisms to encourage senior-level accountability in banks.** These mechanisms include general standards of conduct applicable to specified staff, and in at least one case heightened requirements for senior-level executives; remuneration systems to help deter misconduct and discourage excessive risk-taking; constraints on the use of directors' and officers' (D&O) liability insurance to offset regulatory fines or remuneration penalties applied to senior executives; initiatives, such as regulatory reference checks, that are aimed at preventing the recruitment of unfit individuals or "rolling bad apples";⁸ and requirements for firms to establish effective whistleblowing programmes to protect employees who speak up against misconduct by their colleagues or superiors.

17. **The expanded regulatory toolkit for individual accountability is ultimately considered and assessed as part of ongoing supervision.** The supervisory review of individual accountability is a judgment-based process that is informed by the specific facts and circumstances of each case. Prudential guidance helps support, but cannot replace, the qualitative judgment demanded of supervisory teams that are involved in accountability assessments.

18. **If supervisors identify corporate misconduct that can be attributed to senior-level individuals, they are equipped with a broad range of enforcement tools.** These tools range from remedial measures such as recommendations or warning letters to more punitive actions, including formal actions to 'cease and desist' certain practices and the imposition of fines on individuals or their removal from office in more serious cases.

⁸ "Rolling bad apples" refers to individuals who engage in misconduct moving ("rolling") between financial institutions without their misconduct being disclosed to their new employer.

Section 3 – Standalone individual accountability regimes: design features

Core features and differences

19. **The existing standalone IARs share core features that distinguish them from other approaches to individual accountability.** To date, free-standing IARs have been put in place, in chronological order, by the UK, Australia and Singapore (see the annex for a brief overview of these IARs).⁹ The first common feature relates to scope. Each regime covers senior executives in all domestic banks¹⁰ and, for some functions, senior executives based in foreign subsidiaries of domestic banks. Second, each regime requires covered firms to identify the specific business areas and functions for which those senior executives are responsible and can be held accountable if breaches, failings or misconduct occur under their watch. Each IAR therefore aims to hold covered individuals accountable for those that work beneath them unless they have taken “reasonable” or “adequate” steps to prevent material breaches or failings from happening or continuing once detected. Table 1 summarises how those core features are implemented by the existing IARs, and each is discussed in more detail in the rest of this section.

20. **Despite these similarities, the three standalone IARs differ in the range of covered individuals and the integration of conduct rules into the IAR.** Each IAR covers senior executives responsible for core functions, but the specification of those functions differs, as does the extent to which non-executive directors fall within the scope of the regime. The degree of supervisory scrutiny of the appointment of covered individuals also varies. The Singapore and UK frameworks require prior regulatory approval for all or a subset¹¹ of those persons to take up their roles, while in Australia covered individuals are only required to register with the supervisor before starting their roles.¹² The Australian and UK IARs incorporate obligations for how covered individuals perform their responsibilities, while the Singapore framework sets out expectations for covered individuals in guidelines. Finally, the UK IAR is coupled with a certification regime for “significant risk-takers” other than senior managers or certain non-executive directors. Certified individuals must be assessed as “fit and proper” by their firm, listed in a public register and are subject to some, but not all, of the enhanced conduct rules that apply to senior executives within the IAR. Singapore imposes analogous “fit and proper” requirements for “material risk personnel” but does not have a specific conduct regime for that category.

21. **The IARs also differ in the degree of prescriptiveness with which they articulate the requirements or expectations for firms and covered individuals.** The Australian and UK regimes are based in primary legislation, supplemented by supervisory statements, rules and guidance, while the Singapore IAR takes the form of guidelines and accompanying Frequently Asked Questions (FAQs) issued by the Monetary Authority of Singapore (MAS) that overlie pre-existing regulation relating to conduct and culture. The Australian and UK regimes are more prescriptive in specifying how the requirements and expectations should be met. This difference manifests, for example, in the extent to which the regime prescribes the functions and roles that must be performed by covered individuals and the scope and frequency of related reporting requirements for firms. The regimes also differ in the way that the

⁹ Hong Kong SAR has a mixed approach that combines certain features of IARs with other approaches to accountability. An IAR-type regime is applied to senior executives that have oversight of the securities and funds management business of banks, while all other banking activities are covered by prudential requirements that contain some IAR-like elements (which are not consolidated in a specific IAR framework).

¹⁰ The institutional scope of the Singapore and UK regimes goes beyond banks to cover other regulated financial institutions. The proposals to replace the current Australian IAR would extend its framework in a similar way.

¹¹ The Singapore framework requires prior regulatory approval for certain covered individuals, such as the chief executive officer, to take up their roles.

¹² While APRA does not approve covered individuals in advance, the fit and proper prudential standard requires the boards of APRA-regulated institutions to ensure the fitness and propriety of “Responsible Persons”. There is significant overlap between Accountable Persons under the BEAR and Responsible Persons covered by the fit and proper regime.

responsibility of covered individuals for material breaches or failings is enacted and the level of supervisory guidance provided to support firms' implementation of the regime (see further details below).

Individual accountability regimes			
	United Kingdom	Australia *	Singapore
Year of first implementation	2016	2018	2021
Main responsible authorities	FCA and PRA	APRA	MAS
Institutions in scope	All firms providing financial services in the UK	All Authorised Deposit Taking Institutions (ADIs) in Australia	All Financial Institutions (FIs) supervised by the MAS with a few exceptions
Individuals in scope	Senior Management Function (SMF) holders	Accountable Persons (APs)	Senior Managers
Extra-territorial application	●	●	●
Identification of roles and responsibilities assigned to covered individuals	●	●	●
Additional conduct rules for covered individuals	●	-	-
Obligations in IAR for covered individuals	●	●	●
Guidance on reasonable steps in performing responsibilities	●	●	●
Supervisory pre-approval required for senior roles	●	-	●
Ongoing checks of other staff	●	-	●
<p>* This table reflects the IAR currently in force in Australia - the Banking Executive Accountability Regime (BEAR). A new 'Financial Accountability Regime' (FAR) is currently in development and will replace the BEAR if adopted. The FAR would extend an IAR to all entities regulated by APRA, including superannuation and insurance firms, and would include a new set of conduct-focused accountability obligations for covered individuals. Accordingly, it would be supervised jointly by APRA and the conduct regulator.</p> <p>Sources: FSI survey; MAS (2020a,b); PRA (2014).</p>			

Scope of application

Roles covered

22. **All three IARs focus on individuals with decision-making authority and oversight responsibility for their firm's operations.** As a result, they cover a similar set of senior managerial roles, such as the chief executive officer (CEO) and other chief executives, executive members of the board of directors (BoD), heads of internal control functions and managers of key support functions (eg the heads of human resources or information technology). See Table 2 for a comparison of the roles covered by each IAR, and the subsection below on definition and mapping of responsibilities for more detail on the identification of senior management roles.

23. **The main difference between the IARs relates to non-executive directors (NEDs).** Australia covers all NEDs, but the nature of their accountability is different, reflecting the expectation that NEDs are

not involved in daily executive management of the bank. Only NEDs who are the board chair, the senior independent director or the chair of a committee are covered by the UK IAR and their IAR accountabilities are limited to the activities related to that role.¹³ Singapore excludes all NEDs from its IAR irrespective of their roles, the rationale being that the regime aims to focus on senior individuals responsible for daily management. Requirements and expectations for NEDs are set out in other MAS documents.

Covered individuals			
Role	United Kingdom	Australia	Singapore
CEO	●	●	●
Other chief executives	●	●	●
Executive BoD members	●	●	●
Non-executive chair of BoD	●	●	-
Non-executive chairs of board committees	●	●	-
NEDs (who are not chair of the BoD or a board committee)	-	●	-
Other senior executives	●	●	●
Specific rules for other material risk-takers	●	-	●

Sources: FSI survey; MAS (2020a,b); PRA (2014).

24. **The Singapore and UK regimes extend beyond senior management to other staff whose activities entail material risk for the bank.** The provisions for those staff focus on fit and proper controls and, to different degrees, on conduct.

- Singapore’s regime sets the expectation that all Material Risk Personnel (MRP) are fit and proper for their roles and indicates that it is appropriate for firms to subject those employees to higher conduct standards and more stringent oversight than other staff. MRPs include individuals who have the authority to make decisions or conduct activities that can have a significant impact on the firm’s safety and soundness, or cause significant harm to customers.
- Similarly, the UK Certification Regime applies to staff, other than senior managers or certain NEDs, whose functions give rise to a risk of significant harm to the firm or its customers. Those functions are specified by the PRA or the FCA. The PRA has specified such functions by reference to the concept of a material risk-taker. An individual may only carry out such a function if he or she has a valid certificate issued by the firm following a fit and proper assessment, which must be renewed every 12 months. Employees performing certification functions are also subject to specific individual conduct rules that require those persons to act with integrity, due skill, care and diligence, and to be open and cooperative with regulators (see Section 5 for further details).

Territorial scope

25. **All three IARs extend to certain individuals located in another jurisdiction.** Although the primary institutional scope of each IAR is domestic – that is, covered financial institutions that are locally incorporated – each regime aims to secure accountability for all material aspects of those institutions’ operations. Accordingly, individuals located in foreign subsidiaries or branches who have defined roles or responsibilities with a significant impact in relation to the domestic entity are within the scope of the regime. However, the nature of the extra-territorial scope varies.

¹³ Other NEDs are subject to the certain elements associated with the IAR, namely the conduct rules and the requirements for regulatory references (see Section 5).

- **Australia:** The regime covers individuals who have actual or effective senior executive responsibility for the management or control of a substantial part of the group of an ADI. Where an ADI has a significant subsidiary in another jurisdiction (for example, the four largest Australian banks also operate in New Zealand), the senior executives responsible for those subsidiaries are expected to be covered individuals irrespective of their location.
- **Singapore:** The regime extends to the CEO or equivalent senior officer responsible for significant subsidiaries or overseas branches of Singapore-incorporated banks. Those entities are considered to be a “material business function” that could have an impact on the group’s safety and soundness. Apart from their application to the senior person responsible, Singapore’s regime does not otherwise apply to significant downstream entities that operate outside Singapore.
- **UK:** The regime only applies to the UK activities of a covered firm. However, individuals based overseas may perform a Senior Management Function (SMF) within the scope of the regime if it relates to activities in the UK. A specific SMF – “Group Entity Senior Manager” – is aimed at individuals based in parent or group entities who exercise significant influence over the management or conduct of a covered firm’s UK activities. In addition, foreign branches of UK firms must, as a minimum, appoint a senior manager approved to carry on the SMF “Head of Overseas Branch”.

Definition and mapping of responsibilities

26. **The three IARs require covered firms to identify the most senior individuals responsible for functions that are core to the management and soundness of the firm.** To this end, all IARs specify responsibilities or management functions that are covered by the regime and require that each is assigned to identified individuals.¹⁴ For example, the UK PRA has specified executive and oversight SMFs. The executive SMFs comprise the most senior individuals responsible for the areas of a firm considered relevant to safety and soundness, such as its overall business, financial resources, risk management, internal controls or a key business area. Executive SMFs are typically responsible for reporting and putting matters to the board for decisions in respect of those areas.¹⁵ Table 3 provides an overview of approaches to identifying covered persons and their responsibilities.

27. **The UK IAR goes further by prescribing a set of additional responsibilities that must be allocated to individuals who perform SMFs.** Those prescribed responsibilities (PRs) are specified by PRA and FCA rules and are designed to ensure that an identified Senior Manager is accountable for all key prudential and conduct risks at a firm.¹⁶ PRs are additional to the responsibilities that are inherent in the SMFs. Not every Senior Manager will necessarily have additional PRs, but every individual holding a PR should be an approved Senior Manager.

¹⁴ In Australia, the responsibilities that must be allocated to “Accountable Persons” are set out in statute and may be supplemented by APRA by legislative instrument. Singapore sets out a non-exhaustive list of “core management functions” but puts the onus on firms to identify all such functions that are relevant to their business. In the UK, “Senior Management Functions” for the purposes of the IAR are specified by the FCA and the PRA in regulation.

¹⁵ See PRA (2021b), Section 2 for further details.

¹⁶ The prescribed responsibilities include responsibility for: the firm’s performance of its obligations under the IAR; policies and procedures for countering the risk of financial crime; developing, implementing and monitoring policies and procedures for the professional development of management body members, SMFs and key function holders; ensuring the independence and proper functioning of the compliance, risk and audit functions; and acting as the firms’ whistleblowing champion.

Approaches to defining responsibilities			Table 3
	United Kingdom	Australia	Singapore
Minimum specified functions	●	●	●
Prescribed responsibilities for covered individuals	●	-	-
Individual statements of responsibility	●	●	●
Responsibility mapping	●	●	●
Documents required to be submitted to regulator	●	●	Upon request

Sources: FSI survey; MAS (2020a,b); PRA (2014).

28. **To facilitate accountability, each IAR requires clarity about the areas of responsibility of covered individuals.** Australia and the UK require, respectively, a formal “accountability statement” or “statement of responsibilities” for each covered individual, which comprehensively set out the areas of the firm’s business that person is responsible for. The UK regime requires that a senior manager’s statement of responsibilities clearly shows all the responsibilities, including the PRs, that will be performed as part of his or her SMF. Both IARs provide a template for the statement, which must be signed by the person concerned and submitted to the supervisor before the person assumes his or her functions.¹⁷ The statements must also be updated whenever there are significant changes in a covered individual’s responsibilities.¹⁸ Singapore’s regime requires firms to ensure accurate identification of senior managers’ actual oversight responsibilities and decision-making authority. While there is no requirement that the relevant documentation be submitted to the supervisor in advance of a senior manager starting his or her role, in practice the MAS receives that information as part of its supervisory processes.

29. **Statements of responsibility are supplemented by accountability mapping to provide a composite overview of the responsibilities of covered individuals.** The Australian and UK IARs require firms to maintain a reference document that aggregates information on senior manager responsibilities. Those “accountability maps” or “management responsibilities maps” have a similar purpose, namely to clarify the firm’s organisational structure, governance arrangements and reporting lines of covered individuals, and show how their responsibilities, taken together, cover all relevant aspects of the firm’s activities. Those documents are provided to the supervisor and must be updated.¹⁹ In Singapore, there is no requirement for a mapping document to be submitted regularly, but the MAS expects to receive details of banks’ reporting structures and responsibilities for decision-making as part of supervision.

Performance of responsibilities by covered individuals

30. **All IARs contain obligations or expectations about how covered individuals should conduct their functions and responsibilities.** In Australia and the UK, the IARs include statutory provisions that specify an obligation for covered individuals to take reasonable steps to prevent or correct failings in the

¹⁷ In Australia, individuals must be registered with APRA before starting duties as an Accountable Person and the accountability statement must be submitted as part of the registration application. In the UK, individuals must be approved in advance by the PRA or FCA (depending on whether the function is a PRA- or FCA-designated SMF) to perform a role covered by the senior managers regime, and the Statement of Responsibilities forms part of the approval application.

¹⁸ In the UK, the Senior Managers Regime requires annual confirmation of individual responsibility statements. In Australia, any material changes must be reported to APRA within 14 days – but this notification time frame has been temporarily extended to 30 days.

¹⁹ The UK IAR requires any material changes to responsibility maps to be reported immediately to the supervisor. In Australia, any material changes to accountability maps must be reported to APRA within 14 days – but this notification time frame has been temporarily extended to 30 days. APRA has issued supervisory warning letters to firms for failures to report changes to accountability maps or accountability statements within that limit.

areas for which they are responsible. The Australian IAR enacts statutory “accountability obligations” that specify how covered individuals should conduct their responsibilities and interact with the authorities. One is a requirement to take reasonable steps in conducting their responsibilities to prevent matters from arising that would adversely affect the bank’s prudential standing or prudential reputation.²⁰ The UK IAR contains a statutory “duty of responsibility” which specifies that a Senior Manager is guilty of misconduct if the bank has breached a regulatory requirement relating to the activities for which (s)he was responsible at the time of the breach, and the Senior Manager did not take such steps as a person in his or her position could reasonably be expected to take to prevent it from occurring or continuing.²¹ This is referred to by the PRA as the “reasonable steps criterion” for the purposes of assessing that person’s conduct.

31. **The Singapore IAR includes similar considerations for assessing the accountability of covered individuals, although not as a statutory duty.** Instead, Singapore’s guidelines specify that senior managers should be held responsible for the actions of their employees and the conduct of the business under their purview. In determining senior managers’ accountability for misconduct committed by employees under their purview, Singapore’s regime considers “factors such as the senior manager’s consent or level of knowledge of or participation in the misconduct, or whether the senior manager could reasonably be expected to have been aware or to have taken adequate steps to address the issue, should be taken into consideration”.²²

32. **Guidance on the meaning of “reasonable steps” is provided in all three IARs, with varying levels of specificity.** The concept of reasonable steps allows the circumstances of the case to be taken into account when assessing whether an individual has fallen short in carrying out his or her responsibilities and should therefore be held accountable. This facilitates appropriately nuanced assessments, but also requires supervisory judgment that may not be straightforward. It also entails a risk that the expected standards are not transparent to covered individuals. All three IARs provide non-exhaustive lists of what constitutes reasonable steps, although the level of detail is different.

33. **In Australia, examples of what constitutes taking reasonable steps are set out in statute.** This provides that reasonable steps to prevent matters from arising that could adversely affect the bank’s prudential standing or reputation include: having appropriate governance, control and risk management in relation to that matter; putting safeguards in place against inappropriate delegations of responsibility; and having appropriate procedures for identifying and remediating problems that arise. APRA has not published policies or supervisory guidance on this concept. However, an APRA information paper contains best practices observed at the largest ADIs that APRA believes may benefit all firms.²³

34. **The UK PRA provides detailed guidance in a supervisory statement.**²⁴ The guidance explains how the PRA would assess compliance with the duty of responsibility. That assessment is specific to the circumstances of the individual case. A Senior Manager will not be found guilty of misconduct if he or she had taken such steps as a person in their position could reasonably be expected to take to avoid the breach in question from occurring (or continuing to occur) at the relevant time, in the specific individual’s position, with the individual’s role and responsibilities, and considering all the circumstances.

35. **The UK PRA’s supervisory statement contains a non-exhaustive list of steps that might be considered as reasonable, depending on the circumstances.** These include taking pre-emptive actions to prevent a breach from occurring, including reviews of the business area when a person takes up a SMF

²⁰ The additional accountability obligations are that a covered individual must conduct the responsibilities of his or her position by acting with honesty and integrity, and with due skill, care and diligence; and by dealing with APRA in an open, constructive and cooperative way (Banking Act 1959, section 37CA)

²¹ Financial Services and Markets Act 2000, section 66A(5).

²² MAS (2020(b)), Section III, answer to question 14.

²³ APRA (2020).

²⁴ PRA (2021b). See paragraphs 2.59–2.78 for more details.

role; implementing, policing and reviewing appropriate policies and procedures; and displaying awareness of the relevant requirements and standards of the regulatory system. The circumstances considered by the authorities include the size, scale and complexity of the firm, what the individual actually knew, the length of time in role, his or her expertise and competence, what steps were taken considering the alternative actions available at the time, and whether the individual delegated any functions and made the necessary arrangements for that delegation to be properly monitored.

36. **Singapore provides high-level examples of reasonable steps in the form of a circular.** Under existing MAS-administered laws and regulations, where a financial institution commits a breach under an MAS-administered Act, the financial institution's officers may be held liable in certain circumstances, such as where (s)he failed to take all reasonable steps to secure compliance with a provision in the Act. The circular sets out non-exhaustive examples of the reasonable steps that an officer, including a senior manager, is expected to take. These may vary from case to case, depending on the nature, scale and complexity of a financial institution's business.

Section 4 – Other approaches to individual accountability

37. **This section covers how selected jurisdictions that have not adopted free-standing IARs address individual accountability in banks.** Among those jurisdictions, Hong Kong SAR comes closest to having an IAR, with a hybrid approach that combines a specific IAR covering senior executives with responsibility for the securities and funds management activities of banks with some accountability requirements in the banking regulatory framework covering senior executives' oversight of other banking activities. As regards banking, the approaches in Hong Kong SAR and the US are somewhat similar since they both assess individual accountability as part of ongoing supervision. They do so by using common law definitions of "duty of care" and "duty of loyalty",²⁵ and a range of published standards, where senior executives can be held personally accountable for regulatory breaches. Despite these similarities, areas of emphasis and levels of prescription differ. The US has established definitions of what constitutes actionable misconduct and casts the net broadly as regards individuals who can be held accountable. In Hong Kong SAR, authorities expect firms to prepare some documentation mapping senior individuals' roles and responsibilities, and require prior regulatory approval for certain senior roles. The SSM mainly considers individual accountability during fit and proper (FAP) supervision²⁶ and extends the concept of individual accountability to encompass identified failures in the *collective* responsibilities of certain senior executives. Details of each jurisdiction's approach to individual accountability are provided below.

Hong Kong SAR

38. **Hong Kong SAR has a form of IAR for securities activities, including when conducted by banks.** In 2016, the Securities and Futures Commission, which regulates non-bank licensed corporations that engage in the securities and funds management business, introduced some features of an IAR for those firms through the Manager-in-Charge (MIC) regime. The MIC identifies a set of "core functions" under the Securities and Futures Ordinance (SFO) and requires firms to appoint a "manager in charge" for each. In 2017, the Hong Kong Monetary Authority (HKMA), the regulator of banks in Hong Kong SAR, issued a circular that set out its expectations about management accountability for banks engaged in regulated activities under the SFO to ensure that the same standards apply to intermediaries for securities

²⁵ Both Hong Kong SAR and the US impose a duty of care and duty of loyalty on bank directors and other senior executives. These obligations require that a person act honestly, in good faith and in a prudent manner for the benefit of the company.

²⁶ In the absence of a planned FAP assessment, the SSM may consider initiating a reassessment or other supervisory follow-up action if deemed necessary.

business.²⁷ Like the MIC, the 2017 Management Accountability Initiative (MAI) requires those banks to identify at least one individual primarily responsible for: (i) the overall management of the whole business; and (ii) specified business lines and middle or back office functions listed under the Banking Ordinance (BO). The individuals identified under the MAI should be chief executives (CEs), alternate chief executives (ACEs), directors approved by the HKMA or managers responsible for specified businesses or functions (eg corporate banking, retail banking, private banking and compliance).

39. **For banking activities, individual accountability is pursued through several long-standing provisions of the BO and accompanying guidance.** Those provisions are referred to collectively as its Management Accountability Framework (MAF) and comprise all relevant governance rules under the BO and the supervisory policy manuals²⁸ that complement them. Furthermore, the 2017 Bank Culture Reform²⁹ was introduced to promote a sound culture that supports prudent risk management and incentivises proper staff behaviour to drive better customer outcomes. They reflect a number of the provisions that characterise formal IARs.³⁰

40. **A key aspect of the MAF is the obligation for all authorised institutions (AIs) to undertake some form of responsibility mapping of senior executives and board directors.** The BO requires an AI's board to adopt a formal document setting out the roles, responsibilities, accountability and reporting lines of senior management, and to maintain a similar document for its own organisation and responsibilities, supported by up-to-date job descriptions, organisation charts and levels of authority. The guidance is principles-based, allowing firms to determine the format. The HKMA considers such information in its assessment of the AIs' corporate governance. The framework also requires prior regulatory approval for certain senior roles, such as chief executives, directors and executive officers.³¹ AIs must also notify the HKMA of the appointment of managers who are principally responsible for the conduct of a business or activity specified in the BO,³² and are expected to inform the HKMA, as soon as practicable, when managers are removed from their positions because of fraud, dishonesty or malpractice.

41. **The HKMA also has powers to hold senior executives accountable for regulatory breaches by an AI.** Those breaches potentially include significant weaknesses in its systems of control for the appointment of managers. Senior executives who can be held personally accountable for contraventions of the BO include CEs, ACEs, all directors and all managers as defined in the BO. In addition, if supervisory findings pertain to shortcomings in the appointment of managers, they may cast doubt on the continued fitness and propriety of individual directors or the CE of the bank (HKMA (2002), Section 5.2) and, based on the circumstances, the HKMA may consider formal supervisory action against the individual(s) concerned.

SSM

42. **The SSM tackles individual accountability mainly as part of FAP supervision, with findings from ongoing supervision helping to inform FAP decisions.** In determining the fitness and propriety

²⁷ See HKMA (2017, c, d).

²⁸ See HKMA (2002), (2017b,e,f), (2021), (2022a).

²⁹ HKMA (2017a).

³⁰ For example, the framework provides for responsibility mapping, but does not require formal individual statements of responsibility for senior executives.

³¹ In addition to prior approval, AIs must ensure the ongoing fitness and propriety of directors and senior executives as a continuing requirement for authorisation, and must have adequate systems to ensure that each person who is a manager is fit and proper. Banks that conduct regulated activities under the SFO are subject to similar obligations.

³² The business lines include retail banking, private banking, corporate banking, international banking, institutional banking, treasury and any other material business; and the middle or back office functions include finance, risk management, anti-money laundering, information technology, internal audit and compliance (see the Fourteenth Schedule to the BO).

of a subset of senior executives whose (re)appointments are subject to regulatory approval, the authorities consider, among other issues, whether a direct link exists between the applicant's roles and the severity of recent supervisory findings in their areas of responsibility. Should the severity of the findings justify it, the authorities have powers to remove unsuitable members of the management body at any time.³³

43. **In December 2021, individual accountability was explicitly incorporated into the FAP process, targeting certain senior roles that may have indirect responsibilities in areas where material supervisory concerns are identified.** In particular, revisions were made to provisions of the *Guide to FAP assessments* (ECB (2021)) that centre on the assessment of individual accountability of certain senior roles, such as the CEO and chair or executive member of the management body, as a contributing element to the assessment of the pre-existing FAP criteria on reputation, experience and independence of mind. The revised *Guide to FAP assessments* requires supervisors to determine whether an appointee can be held *individually* accountable for breaches of *collective* responsibility. The rationale is to ensure that members of a management body who do not have a specific role or responsibility for a given area cannot evade responsibility for actively participating in board decisions. Supervisory findings that are deemed "recent, relevant and severe" may cast doubt on their continued suitability for the position.³⁴

44. **Existing supervisory requirements for banks to have transparent organisational structures and reporting lines are necessary, but may not be fully sufficient, to support FAP assessments on individual accountability.** The existing rules³⁵ and guidelines³⁶ partially cover individual accountability by setting an expectation that institutions have a written document, usually in the form of an organisational chart that is approved by the management body, describing the roles and responsibilities of its members, and distinguishing between the management and supervisory (board) functions.³⁷ However, it is up to each bank to determine the level of specificity of its organisational charts. Such documents may contribute to FAP assessments by helping supervisors determine the responsibilities that an individual should hold and whether there are any gaps in the allocation of responsibilities. Nevertheless, they are less onerous than the responsibility reporting and mapping requirements under IARs.

45. **A proposal by the European Commission would introduce certain components of an IAR to the SSM to strengthen oversight of individual accountability.** This proposal would require institutions to prepare, maintain and update individual statements setting out the roles and duties of each member of the management body, senior management and key function holders, including a mapping of duties with detailed reporting lines.³⁸ These statements of responsibilities and a mapping of duties would be used by supervisors in assessing the suitability of members of the management body and key function holders, and would also support a supervisory review of the governance arrangements of institutions.

³³ Article 16(2)(m) of Council Regulation (EU) no 1024/2013 of 15 October 2013 which assigned this power to the ECB.

³⁴ See ECB (2021), Section 3.6 for further details.

³⁵ For example, Article 74 of Capital Requirements Regulation (European Union (2013a)) requires robust governance arrangements to be in place, including a clear organisational structure with well defined, transparent and consistent lines of responsibility.

³⁶ See EBA (2021a,b), and EBA and ESMA (2021).

³⁷ In addition to organisational charts, the ECB may seek additional information from the bank or relevant supervisory authorities to support an assessment of individual accountability. It will also generally conduct a specific "fit and proper" interview with the individual.

³⁸ See European Commission (2021).

United States

46. **The US banking agencies³⁹ address individual accountability through on-site examinations using the existing regulatory framework.** They generally become aware of potential misconduct through their supervisory work or, in some cases, the alleged misconduct may be brought to their attention by bank management or lower-level staff, or through other sources. After learning of potential misconduct, supervisors conduct a review of the alleged activities to determine if there is justification for an enforcement action and, if so, obtain the necessary evidence to support their supervisory actions.

47. **A notable feature of the US framework is the wide scope of individuals who can be held accountable for their actions or inaction.** That scope is based on the concept of institution-affiliated parties (IAPs). IAPs include a bank's executive and non-executive directors, officers, employees, controlling shareholders or agents; any shareholder, consultant, joint venture partner and any other person who participates in the bank's affairs (as determined by US banking agencies); and any independent contractor (including an attorney or accountant) who knowingly or recklessly participates in violations, breaches of fiduciary duty, or unsafe or unsound practices, which caused or are likely to cause more than a minimal financial loss to, or a significant adverse effect on, the bank.

48. **IAPs can be held accountable for misconduct if the individual has violated a law or regulation, engaged in "unsafe and unsound" practices or breached their fiduciary duties.**⁴⁰ These three provisions are sufficiently broad to cover misconduct that is both prudential (eg safety and soundness failures) and non-prudential in nature (eg misconduct related to personal dishonesty or fraud, or those that harm consumers). The US banking agencies have broad discretion in determining the appropriate enforcement actions to address misconduct perpetrated by IAPs.

49. **Of the three provisions, the "unsafe and unsound practices" clause provides supervisors with extensive scope to hold individuals to account for misconduct.** While the term "unsafe and unsound" practice has not been defined in statute, examples have been established through administrative proceedings to help supervisors determine which practices may be deemed "unsafe and unsound".⁴¹ These practices include, but are not limited to, engaging in hazardous lending practices; operating the bank without adequate capital, liquidity or internal controls; or broader failures in adequately supervising a bank's officers or failures in implementing an adequate compliance management system. In addition, US banking agencies have issued a broad range of guidance setting out their expectations on board and senior management oversight, including the management of material banking risks to help supervisors assess whether unsafe and unsound practices have transpired.

50. **There may be constraints on asserting that an IAP has engaged in an "unsafe and unsound" practice if it did not result in a material financial consequence for the bank.** While supervisors benefit from examples of "unsafe and unsound" practices in published manuals, US courts have previously opined that "unsafe and unsound" practices need to be limited to "practices with a reasonably direct effect on an association's financial soundness".⁴² The court's interpretation may be construed by some to mean that

³⁹ US banking agencies include three Federal regulatory authorities that share in the prudential oversight of the US banking system. These are the Board of Governors of the Federal Reserve System (FRB) that has oversight responsibility for state-chartered banks that are members of the Federal Reserve System and bank holding companies; the Federal Deposit Insurance Corporation (FDIC) that oversees state-chartered banks that are not members of the Federal Reserve System; and the Office of the Controller of the Currency (OCC) that supervises nationally chartered banks, federal branches and agencies of foreign institutions, and federal chartered savings associations and their subsidiaries.

⁴⁰ A fiduciary duty is the obligation of bank directors, officers and certain employees to act in the best interests of their financial institution. This obligation includes the duties of loyalty and care. Loyalty requires the individual to administer the affairs of the bank with candour, personal honesty and integrity. Care requires the individual to act prudently and diligently in conducting the affairs of the bank.

⁴¹ See FDIC (2022), Parts 3-1 and 3-2.

⁴² See OIG (2014), page 21 for further details.

only those practices that threaten a bank's viability rise to the level of unsafe and unsound practices. Such a standard would not necessarily include practices that threaten significant loss or damage to an institution if they do not also threaten its viability (OIG (2014)).

Section 5 – Complementary regulatory mechanisms

51. **Irrespective of whether there is a free-standing IAR, sampled jurisdictions have various regulatory initiatives that we collectively classify as “complementary mechanisms” that support the supervision of individual accountability.** Those mechanisms are conduct rules, remuneration policies, restrictions on insurance cover for financial penalties, whistleblower regimes and measures to prevent the recruitment of unfit individuals. This section outlines how the sampled jurisdictions use these mechanisms.

Conduct rules

52. **In all jurisdictions sampled, the authorities have set regulatory expectations about banks' internal conduct rules.** Broadly, banks are expected to require their staff to act with honesty, integrity, due care and diligence in the pursuit of their activities. In most cases, conduct rules or other relevant codes also cover minimum standards for the fair treatment of customers, documenting and managing conflicts of interest, how to conduct proper risk management and compliance with the relevant law. All sampled jurisdictions require that someone in the organisation is appointed to ensure staff are made aware of the code of conduct and meet the minimum conduct standards. This role is usually required to be assigned to senior management and/or the board of directors and its committees.

53. **Conduct rules apply to bank staff in all sampled jurisdictions, irrespective of whether there is an IAR, but the UK imposes additional rules for senior executives covered by their IARs.** The UK has a two-tiered set of conduct rules that is part of the IAR. Individual conduct rules⁴³ apply to persons performing a senior management function under the IAR, executive directors and “significant risk-takers” covered by the Certification Regime. SMF holders are subject to four additional Senior Manager conduct rules which specify standards by which Senior Managers should perform their senior management functions.⁴⁴ These rules complement the statutory duty of responsibility by specifying certain ways in which a senior executive must take reasonable steps to control, oversee and delegate properly in the functions for which (s)he is responsible.

Remuneration guidance

54. **It is widely recognised that remuneration arrangements for bank employees may create financial incentives that result in an excessive short-term focus at the cost of the long-term viability of the firm.**⁴⁵ To address this risk, all jurisdictions sampled have adopted remuneration guidance (Table 4 sets out the core features). While that guidance varies in the level of prescriptiveness, all focus on

⁴³ “Rule 1: You must act with integrity. Rule 2: You must act with due skill, care and diligence. Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators. Rule 4: You must pay due regard to the interests of customers and treat them fairly. Rule 5: You must observe proper standards of market conduct.”

⁴⁴ These require senior managers to take reasonable steps to ensure that: the business of the firm for which they are responsible is controlled effectively and complies with the relevant regulatory requirements and standards; that any delegation of their responsibilities is to an appropriate person and overseen effectively; and to disclose information appropriately to the FCA and PRA.

⁴⁵ In 2009, the Financial Stability Forum (the predecessor to the FSB) adopted *Principles for sound compensation practices*, aimed at financial institutions, as part of the policy response to the GFC: see Financial Stability Forum (2009). See also Chaly et al (2017).

the variable component of remuneration with a view to aligning compensation with prudent risk-taking. The rules in the sampled jurisdictions are broadly similar, except in the US.⁴⁶ All specify a minimum required or recommended percentage of variable remuneration (VR) – usually around 40% – that should be deferred for a minimum period of between three and seven years, and all require or recommend firms to include malus and clawback clauses which allow them to withhold or recover VR already paid in the event of poor firm performance or misconduct.⁴⁷ In Hong Kong SAR,⁴⁸ the SSM and the UK, there is an additional requirement or expectation that 50% of VR is paid out in non-cash instruments (eg in shares or equivalent ownership instruments) to better align employees’ interests with the long-term viability of the firm.

Remuneration guidance*							Table 4
	Australia	EU-SSM	Hong Kong SAR	Singapore	United Kingdom	United States	
Remuneration rules set within IAR	●	-	-	-	-	-	
Remuneration rules set in another document (outside IAR)	●	●	●	●	●	●	
Automatic VR reductions for misconduct under IAR	●	-	-	-	-	-	
Minimum VR % deferred for specified period	10–60%	40–60%	40–60%	40%	40–60%	-	
Minimum period for deferral	4–6 years	4–5 years	3 years	3 years	4–7 years	-	
Minimum VR % paid in non-cash instruments	-	50%	50%	**	50%	-	
Malus and clawback clauses	●	●	●	●	●	-	

* The requirements or recommendations in this table may distinguish between top managerial roles, other material risk-takers, heads of internal control functions and other staff groups. A cell is marked with a dot if the remuneration of at least the most senior staff is expected to be subject to the arrangements listed. All requirements or recommendations specify arrangements that firms must implement in their remuneration policies. Where a range is indicated, the amount typically varies by size of institution, or by the role in question.

** In Singapore, VR must be awarded in a mix of instruments that create incentives aligned with the institution’s long-term value creation and time horizon of risks, but the MAS GL do not set a minimum percentage for VR amounts to be paid in cash.

Sources: APRA (2021a,b); PRA (2017); EBA (2021b); FSI survey; HKMA (2021); MAS (2021).

55. **For jurisdictions with a free-standing IAR, the strictest remuneration requirements generally apply to individuals covered by that regime.** In Singapore and the UK, remuneration rules are separate from and predate the IARs, but there is an overlap in scope, since both are targeted at individuals whose functions entail significant involvement in decision-making processes. In Australia, the

⁴⁶ In the US there is some guidance on excessive compensation that firms are recommended to adopt, but this is not a requirement and there are no quantitative thresholds (eg minimum percentages of remuneration) to be met. Part 364 of the Federal Deposit Insurance Act prohibits excessive compensation when this is considered to lead to unsafe and unsound practices or a material financial loss for the firm, but this is not further defined in the publicly available documentation. In practice, US authorities have acted in some cases where they have observed poor compensation design at individual banks.

⁴⁷ Malus clauses allow a senior executive's contractually expected bonus or share award in a company to be reduced or cancelled before it is paid out. Clawback provisions allow the employer to require the return of money already paid if unfavourable events subsequently occur.

⁴⁸ In Hong Kong SAR, the key elements of a sound remuneration system are set out in guidance, and AIs can adopt alternative control measures provided they are equally effective in ensuring that the AI's remuneration systems do not provide incentives to take inappropriate or excessive risk.

remuneration rules are set out in a dedicated prudential standard (APRA (2021a))⁴⁹ and directly in the IAR. The latter requires that VR of covered individuals is deferred for up to four years, with minimum percentages for deferrals depending on the size of the firm. Moreover, if a covered individual fails to comply with the “accountability obligations” (which include the duty to take reasonable steps), that person’s VR can be reduced by an amount proportionate to the failure. In the UK, at least 40% of variable remuneration awarded to “material risk-takers”⁵⁰ should be deferred for at least four years. This increases to 60% for executive directors of significant firms, and the deferral period can increase to seven years depending on the seniority and total remuneration of the individual.

Directors’ and officers’ liability (D&O) insurance

56. **D&O insurance has the potential to undermine aspects of accountability arrangements.** It is used widely to insure firms and their management against claims arising from their decisions and actions. Firms can purchase such insurance to cover legal fees incurred by board members, managers and other employees in defending themselves against claims made by shareholders or third parties for alleged wrongdoing. D&O insurance may also cover monetary damages and settlements resulting from such claims, thus protecting the individual’s personal assets and breaking the link between their actions and direct financial consequences, which undermines individual accountability. When firms are allowed to indemnify individuals directly for such costs, D&O insurance can reimburse the firms.

57. **Four of the six sampled jurisdictions address that risk by restricting or discouraging the use of indemnity payments or D&O insurance that undermine the accountability of senior managers.** In Australia, the IAR prohibits firms from indemnifying covered individuals against the financial consequences of breaches of accountability obligations or from paying for such coverage through D&O insurance. In Singapore, both are explicitly discouraged (but not prohibited) under its IAR guidelines.⁵¹ The US prohibits an insured depository institution purchasing D&O insurance that would be used to pay or reimburse an institution-affiliated party for the cost of any civil money penalty imposed on that person in an administrative proceeding or civil action brought by any US banking agency. Under the SSM, authorities assess indemnity payments and D&O insurance arrangements on a case-by-case basis, based on prudential governance and remuneration rules, but firms are not prohibited from indemnifying directors financially against judgments or fines. However, the SSM framework prohibits any personal hedging by individuals against risks to their variable remuneration, effectively prohibiting D&O insurance from compensating remuneration reductions due to misconduct or poor performance. A comprehensive approach would be to prohibit D&O insurance from offsetting both regulatory fines and any form of compensation reductions imposed on individuals due to misconduct.

Whistleblower protection regimes

58. **Whistleblower protection helps to support accountability and reinforce conduct standards by creating a safe environment and escalation procedures for reporting misconduct.** All sampled jurisdictions require firms to have whistleblower (WB) policies in place that are subject to board oversight.

⁴⁹ The variable remuneration deferral obligations in the IAR set minimum standards across all ADIs. The IAR is complemented by a new prudential standard, that came into force on 1 January 2023, which is intentionally more stringent for the largest and most complex institutions (“significant financial institutions” (SFIs)). Senior executives of SFIs are subject to longer deferral periods. It also captures a broader range of individuals, including highly paid material risk-takers of SFIs and foreign ADIs.

⁵⁰ The class of “material risk-takers” includes but is broader than the senior managers covered by the IAR. It also broadly overlaps, for example, with persons who are “significant risk-takers” for the purposes of the certification regime and includes NEDs.

⁵¹ Singapore’s IAR FAQs state that firms should avoid arrangements that undermine the accountability of senior managers, including insurance or other agreements that have the effect of indemnifying senior managers or other employees against financial penalties for misconduct or other offences.

To overcome “cultures of fear” within the firms, most jurisdictions require the WB system to ensure the anonymity of individuals that report misconduct.⁵² In each jurisdiction, the firm’s management body is expected to take ownership of the WB system and ensure legitimate issues are escalated and investigated in a timely manner. The UK IAR embeds the WB framework into the Senior Managers regime by requiring firms to nominate one SMF holder to be responsible for the oversight of the WB policies (as a prescribed responsibility). That person is also responsible for providing the board with an annual report on the effectiveness of the WB systems and controls.

59. **In some jurisdictions, reporting misconduct is encouraged by rewards for legitimate reports or penalties for a failure to report.** For example, some banks in Hong Kong SAR have adopted measures at their own initiative whereby staff may be subject to penalties for failure to report misconduct or may be eligible for rewards for doing so.⁵³ In the US, under the Financial Institutions Anti-Fraud Enforcement Act, whistleblowers may be eligible for rewards of up to 30% of the amounts recovered in successful procedures following their reports.

Tackling rolling bad apples

60. **The term “rolling bad apples” refers to individuals who have engaged in misconduct but can obtain employment elsewhere without disclosing that misconduct to the new employer.**⁵⁴ This phenomenon can be addressed by ensuring misconduct is disclosed to future employers, either through mandatory reference checks, centralised registers or the public disclosure of sanctions. In a reference check, recruiting firms are required to obtain references from the applicant’s current and former employers using a standard template with conduct information. Current and former employers must respond to the request and are required to have internal controls, policies and procedures to ensure the information needed is available. Centralised registers take the form of databases managed by regulators or industry bodies that contain conduct-related information, ranging from customer complaints to legal proceedings.

61. **Most sampled jurisdictions have a mechanism for tackling rolling bad apples in the banking sector.** These are, variously, created by the regulators, the banking industry or a combination of both. Australia, Hong Kong SAR and the UK have mandatory background or reference checks for specified categories of bank employees, requiring information to be provided for periods ranging from five to seven years (see Table 5). The UK was the first to implement a template for regulatory references in 2016, as part of the IAR. In the other jurisdictions, a similar initiative was driven either by the industry (Australia) or as a joint effort between the regulator and industry (Hong Kong SAR). While in Hong Kong SAR and the UK a reference check is a precondition for the employment of senior managers, in Australia the scope of individuals covered is narrower⁵⁵ and a candidate can consent to the check, without precluding their employment if they do not. Singapore currently expects securities and futures firms and financial advisors to carry out pre-employment reference checks, and there are plans to mandate this for representatives and certain employees of financial institutions.

⁵² In a recent UK case, the former Barclays CEO, Jes Staley, was subject to sanctions under their IAR when he sought to identify a whistleblower. This was considered to be in breach of the individual conduct rules. In addition to a financial penalty and censure of the CEO, the PRA imposed requirements on Barclays in respect of its handling and reporting of whistleblowers. Similarly, in a recent US case, Wells Fargo was fined \$22 million for firing a senior manager after the person reported concerns about falsified customer information, price fixing and interest rate collusion.

⁵³ See Chapter 4.2 of HKMA (2020) for more details. That report aimed to provide a range of practices for reference by the banking industry.

⁵⁴ See FSB (2018). The term originates in the expression that “one bad apple can spoil the barrel” and describes the impact that an individual’s misconduct can have on the successive firms by which he or she is employed.

⁵⁵ In Australia, the requirement only applies to recruitment of financial advisors and mortgage brokers. See Table 5 for information on the employees covered in Hong Kong SAR and the UK.

Approaches to tackling rolling bad apples in the banking sector				Table 5
	Australia	Hong Kong SAR	United Kingdom	
Employees covered	Financial advisors and mortgage brokers	Directors and senior managers for in-scope positions *	SMF, notified NEDs, certification functions	
Regulatory references template	●	●	●	
Template developed by	Industry first; then regulator	Industry with regulator	Regulator	
Deadline for firms to send out template	Not specified	Not specified	1 month before closing application period	
Period for former employer to return template	10 business days	1 month	6 weeks	
Years of previous employment covered	5 years	7 years	6 years	
Overseas employers to be contacted *	●	-	●	
Consent of individual to check	Yes and check is not mandatory	Yes. If not, they cannot be hired	Yes. If not, they cannot be hired	
Information can block employment	Decided case by case	Decided case by case	Decided case by case	
<p>* The positions currently covered include directors, CEs, ACEs and managers as defined under the BO, and executive officers and responsible officers for regulated activities relating to securities and insurance.</p> <p>** Where this requirement is in place, it applies on a best-efforts basis.</p> <p>Sources: ABA (2020) superseded by ASIC (2021); ASIFMA (2021); HKMA (2022).</p>				

62. **A different approach is taken under the SSM, where suitability for recruitment is dealt with through FAP assessments, and in the US which relies on mandatory disclosures.** (For this reason, these jurisdictions are not featured in Table 5.) In detail:

- In the SSM, the ECB and national authorities work closely to confirm the information provided by individuals in their FAP questionnaires. Further details can be obtained from other authorities if needed (eg information on breaches identified by market conduct authorities). In some cases, previous employers can be contacted. A few Member States have additional requirements for reference letters to be provided at the start of a FAP assessment. To deter individuals from misreporting, the provision of false information or the omission of relevant issues in the FAP documentation can lead to a negative decision, blocking the individual from taking up his or her role.
- In the US, an applicant is required to communicate all past sanctions to a new employer as part of the hiring process. The fact that most individual sanctions issued in the US are publicly disclosed facilitates this.

63. **While other approaches go some way towards checking repeated hirings of individuals who have engaged in misconduct, formal requirements encompassing a broad range of senior executives and material risk-takers can be beneficial.** In particular, regulatory requirements for reference checks with minimum expectations for all banks can help to promote consistent practices across the industry. This could be reinforced by providing that shortcomings in the appointment of managers may have consequences for the senior executives that were responsible for the hiring. In Hong Kong SAR, for example, where persistent shortcomings may cast doubt on the continued fitness and propriety of

individual directors or the chief executive, depending on the circumstances, HKMA may consider formal supervisory action against the individual concerned.⁵⁶

Section 6 – Supervision and enforcement

64. **Regardless of whether individual accountability is tackled through IARs or broader regulatory frameworks, both approaches are premised on effective supervision.** For jurisdictions that have not adopted IARs, the lack of detailed accountability statements and responsibility maps may hinder the ability of supervisors to pinpoint senior executives' areas of responsibility, while the absence of a "reasonable steps" requirement could make it more difficult for supervisors to hold senior executives accountable for breaches or misconduct under their watch. Even so, in jurisdictions that have implemented IARs, one of the biggest supervisory challenges involves determining what constitutes "reasonable" or "adequate" steps and the level of culpability of senior executives, particularly if they were not directly responsible for the prudential or misconduct breach.

65. **Complementary regulatory mechanisms, which can help to reinforce individual accountability, also entail supervisory judgment.** Those mechanisms⁵⁷ feature in all sampled jurisdictions and are generally not prescriptive. Their application may require supervisors to weigh the facts and circumstances in each case. For example, while all sampled jurisdictions impose baseline conduct rules for bank staff, front-line supervisors must determine whether individuals have breached such rules and, if so, what to do about it. Similarly, while a well-conceived whistleblower policy provides employees with a mechanism for holding firms or senior executives accountable for wrongdoing, its effectiveness – including how front-line supervisors address situations when senior management retaliate against a whistleblower, necessitates judgment.

66. **The type of sanctioning powers available to supervisors – and the mere threat of sanctions – can help to deter wrongdoing.** Table 6 provides a snapshot of the enforcement actions that can be taken against individuals in the sampled jurisdictions. All authorities have some combination of preventative (warning letters) and more severe powers (removal of executives). While the UK has the broadest array of preventative and ex post powers among the sampled jurisdictions, US banking agencies have the most sweeping set of powers once misconduct has been established. Civil money penalties (CMPs) may be particularly effective as a punitive deterrent against misconduct. However, only half of the authorities explored in this paper have the power to directly impose CMPs on individuals.⁵⁸

⁵⁶ See HKMA (2002), Section 5.2.

⁵⁷ Complementary regulatory mechanisms identified in this paper include guidance to banks on conduct rules, whistleblower policies, and constraints on remuneration and the use of D&O insurance.

⁵⁸ In some cases, CMPs are not directly available to the prudential supervisor, but may be imposed in some circumstances by another authority. For example, in Australia, APRA cannot impose CMPs on individuals, but the conduct regulator, the Australian Securities and Investments Commission can do so. In the SSM, national supervisory authorities may be able to impose CMPs at the request of the ECB if the sanction is available under the national framework, but the ECB cannot issue CMPs directly.

Enforcement actions directly available to prudential authorities against individuals							Table 6
Nature	Type of action	Australia	SSM	Hong Kong SAR	Singapore	United Kingdom	United States
Preventative nature	Prior regulatory approval required for (re)appointments for senior roles	-	●	●	●	●	-
	Supervisory warning letter	●	●	●	●	●	●
Ex post measures (once issue has materialised)	Removal of individual from bank	●	●	●	●	●	●
	Ban from banking industry or from conducting specific activities (temporary or permanent)	●	●	●	●	●	●
	Imposition of CMPs	●	●	-	●*	●	●
	Reference for criminal prosecution	●**	●	●	●	●	●
	Public disclosure of breach (public censure)	●	●	●	●	●	●
	Cease and desist orders ***	-	●	●	-	-	●

● Sanction is available to authority under the regulatory framework.
● Sanction is indirectly available (eg another authority may exercise it on the request of the prudential supervisor).

* The MAS is required to seek the consent of the public prosecutor to commence a civil penalty action. MAS can also issue compositions, which are essentially financial penalties of fixed amounts with reference to the fines prescribed for the offences. Compositions are offered in lieu of prosecution in cases where the misconduct is of low or moderate offences.

** Some criminal sanctions against individuals are available to APRA under the Banking Act, but primarily relate to offences arising out of an individual's interaction with an APRA appointed investigator such as the offence of concealing or destroying records. Otherwise, misconduct by an Accountable Person may amount to an offence under financial services law, often administered by ASIC, not APRA.

*** A cease and desist order is an order that requires specified practices to stop.

Sources: APRA (2019a); PRA (2021a); FSI survey; MAS (2018, 2022); FDIC (2022); OIG (2014); FRB (2018, 2020).

Implementation considerations and challenges

67. **This subsection focuses primarily on authorities' experience with the implementation of specific IARs, including supervisory challenges.** These observations are based almost exclusively on the experience of the UK and Australia, the earliest adopters of IARs globally. Implementation of Singapore's regime, which became effective in late 2021, is not considered, given the limited period since its adoption.

68. **The UK PRA is the only sampled authority that requires firms to appoint a senior executive to oversee IAR implementation.** The statement of responsibilities of the senior manager appointed for this purpose should reflect this duty so that (s)he can be held accountable. This provides an additional lever for the PRA to embed regulatory requirements under the IAR in regulated firms.

69. **To date, perhaps the greatest benefit of IARs has been to ensure that senior executives have clarity about the areas of responsibility for which they can be held to account.** Supervisory guidance and feedback on the individual statement of responsibilities and responsibility maps have helped firms to rationalise their allocation of senior executive responsibilities, including how individual

responsibilities are synthesised at the firm-wide level. These tools are used in day-to-day supervision in creative ways. For example, when the PRA identifies material concerns during ongoing supervision, rather than simply require the firm (or the board) to address the key risks, supervisors increasingly demand that the firm identify a senior executive to be responsible for remedying the identified deficiencies (PRA (2020)).

70. **Authorities also note that IAR implementation has had a positive impact on the behaviour of senior executives, including a better discharge of their areas of responsibility.** Both APRA and the UK PRA have observed a deeper understanding of the business by senior executives, greater questioning by boards and senior executives of relevant staff members, more openness of firm executives when dealing with supervisors and better documentation of decision-making. The statutory duty requiring senior executives to take reasonable steps in overseeing their lines of authority, and to be open and cooperative when dealing with regulators – and the threat of enforcement actions for non-compliance – may have accelerated desired behavioural changes.

71. **Nevertheless, implementation challenges remain, the most consequential being the supervisory assessment of the “reasonable steps” requirement and its proportionate application across a range of banks.** Both the Australian and UK IARs include the concept of “reasonable steps” in formulating how covered individuals should perform their responsibilities, and it forms the basis for supervisory intervention and, if warranted, enforcement actions against individuals. Like all difficult decisions in supervision, a determination of whether a senior executive took “reasonable steps” to fulfil their obligations is based on variable facts and circumstances – including the size, complexity and risk profile of a bank – that requires the use of expert judgment. To help support implementation, the UK PRA published guidance on its approach to the duty of responsibility. The guidance includes a discussion of factors that it may consider in determining whether a senior manager took “reasonable steps” to avoid or rectify a regulatory breach by the firm.⁵⁹ It also includes examples of steps that might be considered reasonable actions and the evidence that could help inform the judgments of banks and supervisors.

72. **There is, however, limited published guidance on how proportionality affects the assessment of whether reasonable steps were taken.** Beyond specifying that the “size, scale and complexity of the firm” are considered in evaluating the reasonable steps criterion, the PRA guidance contains no further discussion on how supervisory expectations may differ across firms. APRA’s approach to date has focused on IAR implementation at large banks and sharing sound practices with the industry based on those observations. Further guidance and examples of how banks and supervisors might meaningfully differentiate expectations about what constitutes “reasonable steps” for large, complex banks and smaller institutions may help to support implementation.

73. **Authorities use benchmarking and internal governance experts to support proportionate application of the IAR across regulated entities.** APRA uses benchmarking to compare entities of similar size, complexity and risk profile as part of its general supervisory activities, and this includes the application of the IAR. APRA also has a small team of supervisory experts that specialise in governance, risk culture, remuneration and accountability who provide advice to front-line supervisors to help facilitate consistent outcomes. The PRA has a governance network, comprising generalist supervisors with a particular interest or expertise in governance issues, including accountability. This network monitors IAR compliance across supervised entities and is the first point of contact for front-line supervisors seeking advice on IAR implementation. These mechanisms are supported by a dedicated policy team responsible for both the IAR rules and related supervisory guidance. They engage with supervisory teams and the governance network, as needed, to help support implementation.

74. **There is limited evidence to suggest that the adoption of IARs has led to greater enforcement actions against individuals.** Both APRA and the PRA emphasise that the main purpose of IARs is to clarify the responsibilities of senior executives so that they know who to engage with at an early

⁵⁹ PRA (2021b).

stage before identified deficiencies become more serious, rather than facilitating enforcement actions against individuals. By compelling senior executives to address supervisory concerns in a timely manner – in part through the threat of enforcement actions – authorities believe they are holding individuals to account through ongoing supervision, and achieving the accountability objectives in terms of improved standards of conduct and governance.

75. **The extent to which authorities exercise their enforcement powers remains a powerful lever for rectifying misconduct and limiting future transgressions.** There will always be cases where enforcement actions against responsible individuals may be warranted. Examples include prudential concerns that cannot be rectified during the normal course of supervision; material or recurring breaches of key prudential or conduct norms; or a sudden discovery of fraud. The lack of an increase in enforcement actions following IAR implementation could be due to several factors such as: (i) a diminished need for enforcement actions because identified supervisory concerns are promptly addressed by firms and relevant individuals during routine supervision; (ii) the challenges of exercising judgment in assessing whether senior executives took reasonable steps to fulfil their obligations; (iii) resources required to build a case on breaches of IAR provisions that need to be tested in the courts; and (iv) perceived reputational risks involved in losing court cases against individuals. Identifying and resolving potential roadblocks to supervisors' ability and will to take enforcement actions may help to further bolster IAR implementation.

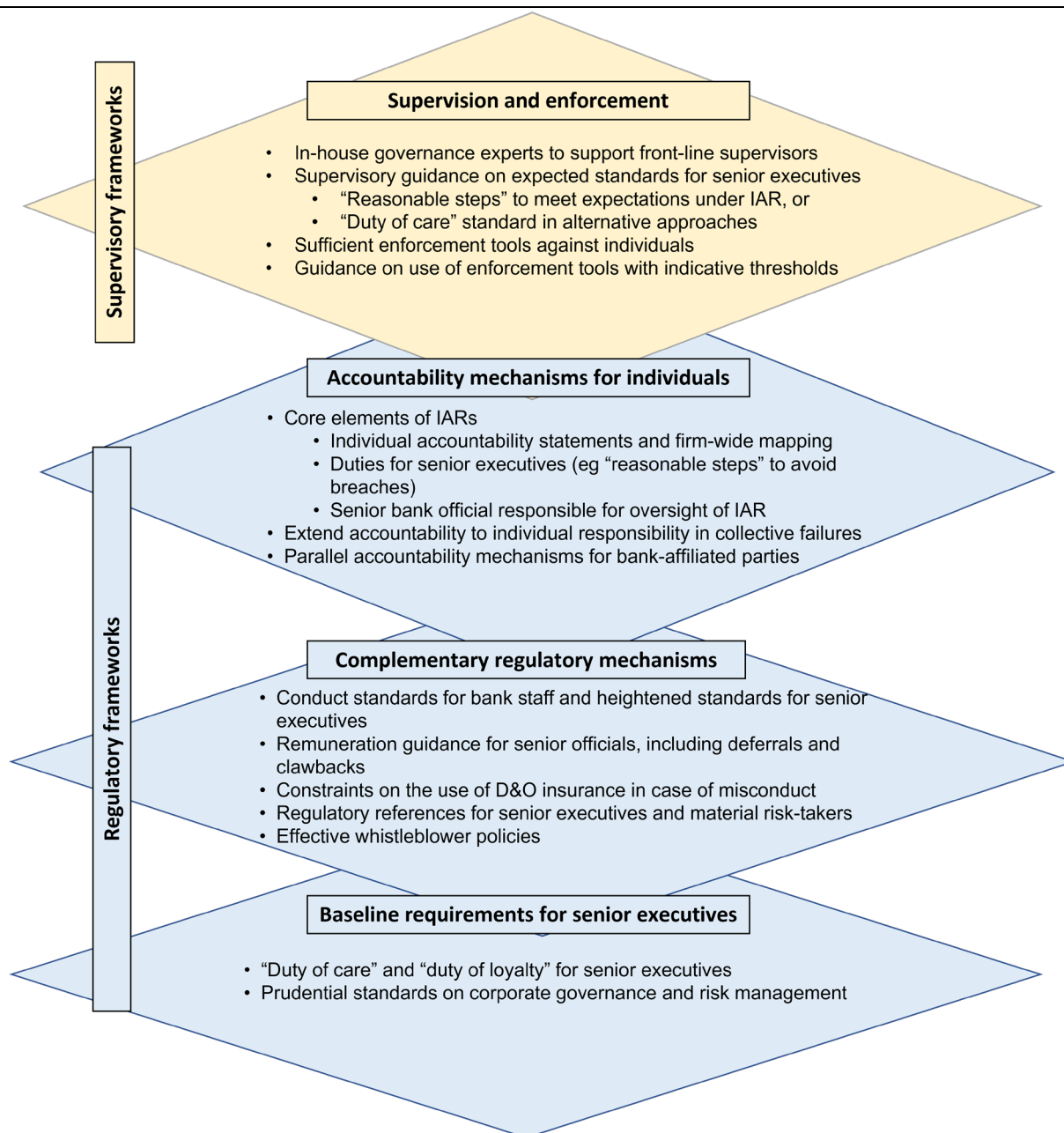
76. **It is the US – a jurisdiction without an IAR – that has the most public information on enforcement actions against individuals.** This observation may suggest that differences in regulatory approaches to individual accountability are not as important as the ability and will of supervisors to take actions. In addition, US supervisors have benefited from detailed supervisory guidance on what constitutes actionable misconduct, together with a methodology to assess the need to impose civil money penalties, to help facilitate supervisory decision-making.

77. **Most documented enforcement actions in the US apply to either mid-level employees or senior executives at smaller banks, and fewer involve senior executives at large banks.**⁶⁰ This may reflect the dispersion of responsibility of senior executives in large companies, where decisions are taken at various levels of the organisation, making it difficult to determine the culpability of high-level executives. In addition, the closest analogy to a reasonable steps requirement in non-IAR jurisdictions, including the US, is the fiduciary duty of care for bank directors, senior executives and certain employees to act prudently and diligently in conducting the affairs of the bank. Further elaboration of this principle, including supervisory expectations and examples of what might constitute due care and diligence, particularly for senior officials who are ultimately responsible for the actions of their subordinates, can help to facilitate supervisory oversight of individual accountability of executives.

Section 7 – A framework to facilitate oversight of individual accountability

78. **A broad set of regulatory instruments and supervisory tools, which we collectively label as the “accountability stack”, are needed to foster greater individual accountability of a firm’s key decision-makers.** That stack (Figure 2) draws from features that are inherent in IAR jurisdictions; elements that are prevalent in jurisdictions that rely on other approaches to accountability; characteristics that are common across all sampled jurisdictions; and the authors' own analysis. Above all, the “stack” includes layers of seemingly disparate regulatory and supervisory frameworks that interact in such a manner where the whole may be more effective in fostering accountability than the sum of the parts.

⁶⁰ See FRB (2018) for the publication of a letter from the US Federal Reserve to the lead independent director at Wells Fargo Bank (WFB), that severely criticised the independent director's inability to rectify repeated conduct failures at WFB.



79. **Regulatory frameworks on accountability can benefit from several seemingly disparate, but mutually reinforcing layers.** These include baseline requirements, such as prudential standards on corporate governance and risk management and well-conceived combinations of complementary mechanisms that target various dimensions of accountability and help reinforce a culture where misconduct has consequences. These requirements can be enhanced through individual accountability mechanisms, such as requiring a senior executive at each regulated entity to oversee individual accountability and obliging senior executives (including all directors) to submit responsibility statements and accountability maps, combined with a reasonable steps requirement to help set the broader context for supervisory oversight. Parallel accountability mechanisms for institution-affiliated parties – including significant shareholders and external auditors – help to extend the reach of accountability regimes to other

individuals who can influence prudential outcomes. Lastly, setting an explicit expectation to expand the concept of individual accountability to encompass identified failures in the *collective* responsibilities of senior executives may help to foster more robust oversight by a firm's key decision-makers.

80. **The regulatory framework can only be effective through a robust system of supervision and a broad suite of enforcement powers against individuals that collectively foster the ability and will of supervisors to act.** For IAR jurisdictions, practical supervisory guidance on what constitutes reasonable steps taken by a firm's key decision-makers could help to provide structure and consistency to the supervision of individual accountability while allowing room for judgment to reflect bank-specific circumstances. Parallel guidance on how the duty of care concept will be interpreted and applied to senior executives can be helpful for supervisory authorities in jurisdictions that have adopted other approaches to accountability. Beyond this, all jurisdictions can benefit from in-house governance experts to support the work of front-line supervisors and a broad range of enforcement tools – including the ability to impose fines on individuals and to remove senior executives for egregious misconduct breaches – to foster greater accountability of bank executives.

Section 8 – Concluding remarks

81. **IARs facilitate the supervision of individual accountability by making it possible to identify the senior executives responsible for specific business areas and functions.** Individual accountability is crucial to preventing those responsible from hiding behind collective decision-making when breaches occur. The IARs discussed in this paper take different forms – freestanding statutory and regulatory regimes as in Australia and the UK, or guidance that overlies existing rules, as in Singapore – but all contain key features that are designed to force senior individuals to take greater responsibility for their actions and make it easier for supervisors to hold such individuals to account. The requirement for firms to allocate core functions and responsibilities to individuals, identifiable through statements of responsibility and responsibility mapping, provides clarity for senior managers and supervisors and reduces the risk that aspects of a firm's business will slip through the net of effective internal oversight and senior accountability. Expectations about how senior individuals should perform their responsibilities and functions, such as the "accountability obligation" under the Australian IAR and the duty of responsibility under the UK regime, aim to hold covered individuals to standards commensurate with their roles and provide a path for determinations of misconduct.

82. **The IARs in the sampled jurisdictions are relatively new but initial evaluations of their impact are broadly positive.** The UK PRA's evaluation published after four years of operation of the IAR⁶¹ found a broadly positive start in delivering its objectives and noted that almost all firms surveyed said that the regime was having a positive effect on individual behaviour that should support better prudential outcomes. Nevertheless, the evaluation recommended clarification or guidance on some aspects of the regime to refine how it operates in practice. However, firms and authorities are still learning how to optimise the effectiveness of the regimes for firms' internal governance and for supervisory oversight.

83. **All IARs could usefully incorporate certain features that are currently only included in some frameworks.** First, the application to NEDs varies in the existing regimes. While NEDs are not involved in the executive management of the bank, their strategic role is crucial for effective governance. Accountability mechanisms are therefore important for ensuring that they perform that role effectively. Second, the responsibilities within the scope of IARs justify heightened conduct requirements for covered

⁶¹ PRA (2020). An academic study of the Australian IAR (Sheedy et al (2020)) similarly found that the regime had produced greater clarity for bank executives about their individual accountabilities and what accountability entails. This was considered to deliver governance benefits, including improved decision-making.

individuals. Third, effective implementation and ongoing application of accountability arrangements requires senior-level support and a concerted effort within firms. The UK authorities have sought to achieve this by requiring firms to designate a senior executive to monitor and be held accountable for IAR implementation. Making an identified senior executive responsible for the firm's ongoing delivery of IAR measures such as responsibility statements and mapping, and ensuring that accountability is understood by all relevant staff is an effective practice that might benefit IAR implementation in other jurisdictions.

84. **Additional guidance on reasonable steps could help effective application of IARs and support the exercise of supervisory judgment.** All three IARs include some form of obligation or expectation about how covered individuals should carry out their responsibilities based on a concept of reasonable or adequate steps. Guidance such as that published by the PRA, while it cannot obviate the need for considerable case-based judgment, goes some way towards assisting supervisors in this task, and providing more clarity and predictability for firms' senior management. Similar guidance – including further guidance on differentiating expectations about what constitute "reasonable steps" for larger and for less complex banks – could help support authorities in assessing individual responsibility.

85. **Internal knowledge-sharing arrangements allow supervisors to draw on institutional expertise when exercising judgment.** Institutional structures such as the PRA's "governance network" or APRA's dedicated team of specialists on governance, risk culture, remuneration and accountability also help promote internal consistency in such assessments and constitute an institutional repository of experience. Other authorities considering an IAR might benefit from similar internal arrangements.

86. **While IARs have demonstrable benefits, they are not a panacea for all shortcomings in accountability and other approaches may achieve similar outcomes.** The strong tradition of enforcement by US authorities, for example, also promotes individual accountability. The effectiveness of that approach arises in part from its scope – the legal ability of regulators to take enforcement action against a wide class of institution-affiliated parties, including any director, employee, controlling shareholder, agent or independent contractor. Its effectiveness also arises in part from detailed supervisory guidance on what constitutes actionable misconduct that forms the basis for supervisory actions. A targeted use of FAP assessments, as practiced in the SSM, may also be useful in pursuing the accountability of senior executives in relation to breaches where they might otherwise be shielded by collective responsibility.

87. **The effectiveness of such alternative approaches to accountability could be enhanced by incorporating certain features of IARs.** In particular, they might benefit from better clarity about which senior individuals are responsible for key management and control functions. This is achieved in IARs through individual responsibility statements and firm-level responsibility mapping. However, such measures are not specific to IARs, as demonstrated by the analogous (albeit streamlined) requirements in Hong Kong SAR. A clear articulation of how senior individuals are expected to perform their responsibilities can facilitate enforcement action by allowing regulators to point to how individuals have fallen short. In the Australian, Singapore and UK IARs, the concept of reasonable steps provides a "hook" for accountability. An analogous articulation of the standards that executives are expected to maintain under other legal frameworks, including an elaboration on how supervisors assess a senior executive's obligation to act in accordance with a duty of care, could provide a similar hook for supervisors.

88. **Irrespective of whether a formal IAR is in place, complementary regulatory mechanisms are important tools for ensuring that misconduct has consequences for responsible individuals.** Jurisdictions use a combination of such mechanisms. Specific conduct rules for senior managers help promote accountability by clarifying expectations for individual behaviour. Whistleblower frameworks can help bring misconduct to light and reinforce a culture of ethics within firms in which all employees have a stake. Arrangements that prevent a broad scope of managers and risk-takers from moving to a new employer without revealing prior misconduct help to ensure that the consequences of material misconduct cannot be avoided by a change of employer. Possibly one of the most direct mechanisms for fostering accountability is to link the fulfilment of senior executives' responsibilities with direct financial

consequences. This can be achieved through requirements about variable remuneration backed with limitations on D&O insurance that prevent it from being used to undermine the withholding or clawback of remuneration, or to offset regulatory fines imposed on senior executives.

89. **However accountability is pursued, there must be an institutional willingness and capacity to take enforcement action where warranted.** For IARs, enforcement is an important backstop. Even if the main purpose of an IAR is to improve firms' governance and management behaviour, the threat of enforcement needs to be credible to prevent firms from adopting a checklist approach. Whether an IAR is in place or not, authorities should have a wide range of tools, for both preventative supervisory actions and proportionate sanctions following a breach. The power to impose financial penalties on individuals is an important element of accountability and may also be a powerful deterrent against misconduct. Enforcement should also be possible against external parties whose actions or omissions can materially affect prudential outcomes. Current IARs do not enable regulators to extend accountability to a firm's shareholders or external contractors who can materially affect prudential outcomes. While such individuals do not fit within an IAR, parallel mechanisms could be developed to allow supervisors to hold them accountable for prudential breaches in appropriate cases. Finally, guidance setting out when and how enforcement and sanctioning powers are expected to be used, with indicative thresholds for what might constitute a severe case, can also help support the effective use of those powers.

90. **There is no quick fix for instilling accountability within banks' corporate governance; mitigating misconduct risk requires a multifaceted approach.** The accountability stack illustrates the multiple elements of a jurisdiction's regulatory and supervisory frameworks that are required to address the range of factors that can influence the behaviour of senior executives and other material risk-takers. These collective elements help to set expectations about the desired behaviour of a firm's key decision-makers, while supporting front-line supervisors' ability and will to act. Above all, jurisdictions need to ensure that the component elements stack up to achieve the desired accountability outcomes that foster improved behaviour and financial stability.

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Annex – Overview of existing IARs

United Kingdom

The UK was the first to introduce an IAR with the launch of the Senior Managers and Certification Regime (SM&CR) in 2016. The SM&CR was a policy response to the findings and recommendations of the UK Parliamentary Commission on Banking Standards⁶² and combines primary legislation,⁶³ regulatory rules and supervisory statements setting out expectations in relation to those rules.⁶⁴ The regime comprises requirements relating to persons performing Senior Management Functions (SMF), who must be identified with clarity about their responsibilities; a Certification Regime (CR) for “significant risk-takers” (other than SMFs); two-tier conduct rules that apply to persons within the SM&CR; and fitness and propriety assessment requirements for senior managers, employees within the certification regime and certain NEDs.

The SM&CR is administered by the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) and applies to all firms authorised to provide financial services in the UK. The functions of each authority in administering the SM&CR reflects the division of regulatory and supervisory responsibilities under the UK framework. As regards UK banks and credit institutions – which are authorised by the PRA, and dual regulated by the PRA and FCA as prudential and conduct regulators, respectively – the PRA specifies certain SMFs that are relevant to prudential regulation and “prescribed responsibilities” that must be allocated to individuals holding SMF. The FCA rules specify additional SMFs and prescribed responsibilities that are important to conduct matters. Both authorities have a role in approving SMF holders, carrying out separate assessments focusing on prudential and conduct issues respectively. Either authority can take enforcement action and, in some cases, joint action is also possible. The CR for banks and other credit institutions is also administered by both authorities, both of which specify “certification functions” that bring persons performing them within the regime. The certification functions specified by the PRA refer to the concept of “significant risk-takers”, while the FCA’s certification functions refer to those that could cause significant harm to customers or clients.

Australia

The Australian Banking Executive Accountability Regime (BEAR) was adopted in 2018.⁶⁵ The BEAR initially applied only to the four largest domestic ADIs, but since July 2019 it has been extended to all ADIs. Like the SM&CR, it was conceived in response to public anger about a series of misconduct scandals in the Australian financial services industry.⁶⁶ The BEAR establishes a new class of Accountable Persons (APs) who perform specified senior executive responsibilities within an ADI. ADIs must notify the Australian Prudential Regulation Authority (APRA) of the identity and responsibilities of its APs through an accountability statement for each AP detailing the part(s) or aspect(s) of the ADI’s operations for which he or she is responsible and an accountability map showing how, collectively, the responsibilities of all APs cover all parts or aspects of the ADI’s operations. The framework imposes “accountability obligations” on both ADIs and APs relating to the conduct of the ADI’s business and links remuneration explicitly to accountability by requiring ADIs to defer specified minimum amounts of APs’ variable remuneration and to reduce variable remuneration where an AP fails to comply with those accountability obligations.

⁶² House of Lords and House of Commons (2013). The report follows the bank bailouts during the GFC, a series of mis-selling scandals and the exposure of the manipulation of the London interbank offered rate (Libor).

⁶³ Through amendments to the Financial Services and Markets Act 2000.

⁶⁴ See for example PRA (2021b), that further details the PRA’s expectations on how firms should comply with the SM&CR.

⁶⁵ The BEAR was adopted as an addition to the Australian Banking Act 1959 (Part IIAA).

⁶⁶ See for example APRA (2018). In that report, accountability failures were seen as an underlying cause of the scandals at the Commonwealth Bank of Australia, specifically linked with a lack of ownership of key risks at the executive committee level.

A new 'Financial Accountability Regime (FAR) is currently in development and will replace the BEAR if adopted. The FAR follows the recommendations of the 2019 report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, that highlighted areas for improvement within the BEAR. The FAR would extend an IAR to all entities regulated by APRA, including superannuation and insurance firms.⁶⁷ While the BEAR is supervised solely by APRA,⁶⁸ the FAR would be supervised jointly by APRA and the Australian Securities and Investments Commission (ASIC). The conduct regulator and would include a new set of conduct-focused accountability obligations for APs.

Singapore

The Singapore IAR was issued in September 2020 and has been in effect since September 2021. It takes the form of Individual Accountability and Conduct Guidelines (IAC GL) issued by MAS and should be read with a set of FAQs on the IAC GL, the relevant Acts, and their subsidiary legislation, written directions, notices, codes and other guidelines that MAS may issue from time to time. Those IAC GL and FAQs apply to nearly all financial institutions supervised by the MAS and set out five key outcomes that these institutions are expected to meet. The outcomes, which predate the IAC GL, are intended to provide a framework and best practices for strengthening accountability and standards of conduct. The IAC GL and FAQs are not intended to be exhaustive or prescriptive.

The five outcomes articulate expectations relating to existing conduct and governance requirements. Outcome one specifies that senior managers responsible for the core management functions (CMFs) should be clearly identified, with up-to-date comprehensive internal records of their roles and responsibilities. These individuals must also be fit and proper (outcome two) and the FI's governance framework must support them in the performance of their roles and responsibilities, with a clear and transparent management structure and reporting relationships (outcome three). Outcome four requires that all other material risk personnel are also fit and proper for their roles and are subject to effective risk governance and appropriate incentive structures and conduct standards, and outcome five requires FIs to have frameworks that promote and sustain desired conduct among all employees.

⁶⁷ In practice, this will increase the coverage from around 140 ADIs to more than 400 entities.

⁶⁸ A memorandum of understanding between APRA and ASIC facilitates cooperation where needed under the BEAR (APRA (2019b)).