Navigating Regulatory Change in Asia Pacific

A simplified and concise guide to analysing and complying with financial regulation in Asia Pacific

A report from Kapronasia in collaboration with Broadridge
Methodology

Navigating Regulatory Change in Asia Pacific from Kapronasia produced in collaboration with Broadridge is based on both primary and secondary research. Secondary research sources include both internal and external public and private databases. Primary research includes interviews with bankers, financial institutions, technology providers and industry experts.
Introduction

Regulation has always been the bugbear of the financial sector. On the one hand, it is a necessary part of stable industry growth. On the other, regulatory requirements are one of the biggest challenges for banks today; the global banking industry spends an estimated US$270 billion a year on compliance-related costs.¹

Nowhere is the regulatory challenge more acute than in Asia Pacific, where a confluence of cultures, political systems, languages, and financial systems come together daily across the region. A Stock Connect program allows portfolio managers in Shanghai to buy equities in Hong Kong. A prop trader on a beach just outside of Sydney does high-frequency trading in Japan. A Singapore retail bank launches a digital-only bank in India.

Even with the differences, the interconnectedness between markets across Asia is quite remarkable, especially considering the lack of regulatory harmonisation.

In the European Union (E.U.), the European Central Bank (ECB) and the European Securities and Markets Authority (ESMA) help define regulations and directives that drive the financial markets in the twenty-eight E.U. member countries. This may be further complicated by Brexit whereby the UK may adopt diverging regulations from the EU 27.

In the United States (U.S.), the Securities and Exchanges Commission (SEC) sets the market requirements at a federal level for fifty independent states. Despite the size and importance of Asia, there has not been, and for reasons we will discuss, likely will not be, a pan-regional regulatory authority anytime soon.

So, for the foreseeable future, Asia Pacific financial industry participants will need to manage continually morphing regulations that govern each individual country and economy in the region. Increasing global regulation compounds the challenge and will force Asia Pacific firms to deal with not just regional regulations, but extraterritorial regulations such as those from the E.U. or the U.S. This can be complicated and cumbersome as firms not only need to worry about their own regulatory compliance but also that of their clients and counterparties.

While compliance is not always straightforward, certain best practices can make things easier. Through proper education on, preparation for, and consolidation of compliance efforts, financial institutions can lower cost and create a competitive advantage.

It is in this context that Kapronasia, in partnership with Broadridge, is pleased to bring you this report entitled *Navigating Regulatory Change in Asia Pacific*. Based on discussions with regulatory experts from across the region, the report offers a practical and concise guide on how to be better prepared for future regulation and is a critical read to make sense of a shifting and complex regulatory market.

We hope you find this as enjoyable to read as it was for us to research and write.

Key Findings

• Despite a myriad of languages and cultures, Asia Pacific is the world's fastest growing region with GDP growth of 5.6% in 2018 supported by a US$29 trillion financial market.

• Regulations still remain a challenge for the Asia Pacific financial industry as pressure from extraterritorial regulation (e.g. FATCA, MiFIDII) continues to affect the operations and profitability of banks while the lack of a cohesive Asia Pacific regulatory framework means that institutions need to take a country by country approach to compliance.

• Personal responsibility and accountability within the financial industry is increasing as regulators push to more tightly enforce personal accountability for corporate malfeasance.

• As China's Belt and Road Initiative continues to expand, it could serve as a catalyst for regional regulatory harmonisation, but there is no clear direction from the Chinese government of what that may be.

• The costs of compliance are expensive, but even more so for non-compliance. An 'education, preparation, and consolidation' approach to regulatory compliance can provide a systemic framework to better address internal challenges of managing regulation.

• Asia Pacific institutions continue to partner with external organisations and firms who have the benefits of scale, global reach, and industry experience working with similar institutions to help reduce cost and increase operational efficiency.
Regulations with Asian Characteristics

Asia Pacific is the fastest growing economic region in the world with a GDP growth rate projected to be 5.6% in 2018, as compared to the world’s 3.1% growth. The region boasts 2,197 languages, eight religions, and 35 countries across a land mass of 24 million km² and a population of 4.3 billion people. Regional financial centres, including Hong Kong, Mumbai, Tokyo, Singapore, and Shanghai amongst others, facilitate cross-border trading of everything from equities to commodity futures to help support growth of the region’s aggregate US$29 trillion financial market.

For the most part, these bustling financial centres have developed independently with their own regulations based on their unique needs, challenges, and objectives. Hong Kong, Australia, and Japan are more mature markets and continue to be very open markets, where nearly anyone can trade. On the other hand, China’s mainland markets are still developing and have stringent requirements on who can trade, and how. China also has a capital-controlled currency which, like India, complicates the movement of money in and out of the country.

Common Goals, Different Approaches

This has resulted in a confusing mix of regulations across Asia Pacific. As an example, if you are looking to trade equities in the region, your systems and operational processes need to be able to handle T+3 settlement in Japan, T+2 in Hong Kong, Indonesia, and Singapore; and then be agile enough to move to T+2 trading in Japan in July 2019.

Approaches to newer business models vary significantly as well. The Monetary Authority of Singapore (MAS) started discussions around application programming interfaces (APIs) and open banking in 2016 and published an “API playbook” to further support standards and growth. However, Malaysia only published their open banking guidelines in September 2018.

Different countries across Asia Pacific also have different levels of openness to third party competition. Challenger banks have had a long history in Australia, where Tyro Bank, a ‘virtual bank’ offering corporate banking services, was opened in 2001 and followed by several others. Conversely, Hong Kong’s financial industry has been relatively closed to third party competition but is now in the middle of a nearly two-year exercise to allow virtual banks to open in the jurisdiction. The concept of digital-only banks is not new globally, as we’ve seen Atom, Monzo, and other United Kingdom (U.K.) and E.U. ‘challenger banks’ gain traction with asset-lite models and in jurisdictions with friendly regulations.

Even with these advances and the fact that the Asia Pacific financial industry is, in many ways, leading the world in technology and business model adoption, the challenge is still how to operate seamlessly across the region. If an organisation is successful in getting a virtual bank license in Hong Kong, it would still need to go through the same process in every other Asia Pacific jurisdiction. Similarly, setting up a business in Hong Kong may make it slightly easier to set up in mainland China, but success is by no means ensured.

3 Stephen R. Anderson, “How many languages are there in the world?”, Linguistics Society of America, https://www.linguisticsociety.org/content/how-many-languages-are-there-world
5 International Monetary Fund, “About the office for Asia and the Pacific”, https://www.imf.org/external/et/asiaoap/about.htm#asiaregion
Setting an Example

Despite political changes in Europe, the harmonised twenty-eight country regulatory framework of the E.U. has been a critical driver of the development and modernisation of the European financial industry and is a model that Asia Pacific should consider. It has enabled efforts such as Europe’s Revised Payment Service Directive (PSD2), which provides a standard approach framework for APIs and open banking and will likely be a critical part of the future of the financial industry.

European Economic Area (EEA) passporting has also been very helpful for firms to expand and grow across the EEA. Passporting allows a firm registered in the EEA to do business in any other member state without needing further authorisation in each country. This is beneficial for multi-nationals with their headquarters in the region, as it allows them to almost immediately, and without hassle, expand their footprint. It also helps non-EEA companies who want to establish a base in the region; by setting up in one EEA locale, they can ‘passport in’ to the other member markets. In the U.K., 5,476 firms have been issued outbound passports to do business in other EEA countries. On the flip side, over 8,000 firms from around the EEA have inbound passports authorising them to work in the U.K., although Brexit may put this at risk.8

In Asia, it may be years or even decades before we see this type of approach to regulatory passporting. The lack of common regulation means that there is a lot of duplication and regulatory inefficiencies for participants across markets. A sizeable multi-national bank with branches across Asia Pacific will need to deal with a plethora of rules and regulations, many of which are inconsistent across markets.

These inconsistencies and inefficiencies are proving to have a knock-on effect on new technology adoption for the region too, as found by Broadridge in a recent survey undertaken at the 2018 Singapore Fintech Festival. 51% of respondents flagged compliance and regulatory change as a hurdle to new technology adoption.

The challenge is that there is no precedent for Asian regulators giving up sovereignty over their domestic regulations and we do not see any near-term drivers that would change this situation. As mentioned above, each country is, rightly so, first and foremost concerned with its own stability and development. It could be argued that the E.U. has been reasonably successful over the years because most of the member countries are at nearly the same level of development and economic growth. In Asia Pacific, the rates of growth and stability are anything but similar, which would make any pan-regional regulations challenging.

International standards are starting to make an impact. In Australia, for example, the Anti-Money Laundering and Counter-Terrorism Financing Act defines the beneficial ownership threshold as 25%, which is similar to Financial Action Task Force (FATF) standards and international practices. In 2018, Hong Kong raised its threshold of beneficial ownership from 10% to “more than 25 percent”, similar to FATF standards and international practices.9 If countries continue to use other regions as models, we could see more harmonised regulation across the region.

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8 Andrew Bailey, A letter, the UK House of Commons Treasury Committee, September 20, 2016, https://www.lexology.com/library/detail.aspx?g=ca6dded4-45c9-43f6-a6d4-8f3c9e9c7b30
Asia Pacific’s Increasing Focus on Data

Data is a critical part of any financial services business, but also one of the most significant risks. The global average cost of a data breach to an organisation is US$3.9 million, not to mention the potential reputational damage.10 As the financial industry increasingly adopts emerging technologies and new customer channels, the potential for and impact of cyber incidents is increasing rapidly and has gained the attention of regulators globally.

One of the most well-known data protection regulations is Europe’s General Data Protection Regulation (GDPR). GDPR is a pan-E.U. regulation that defines data protection and privacy rights for individuals within the E.U. and EEA. It covers consent, how companies can use data, and how data must be handled. Not only did GDPR increase data protection in the E.U., but it also encouraged regulators across Asia to increase their focus on data protection.

China, for example, has always required banks to set up Mainland China core systems and keep data onshore, and further formalised and standardised the requirements at the end of 2017 as part of a broad new national standard on data protection and cybersecurity.

China’s cybersecurity law, which was modeled on GDPR, is viewed by some to be stricter than GDPR in particular ways. For example, GDPR applies to specific types of “sensitive personal information” while the China standard includes “any personal data that would cause harm to persons, property, reputation, and mental and physical health if lost or abused.”11 This is a much broader interpretation of data and has a more substantial impact on firms and what they are permitted to collect.

Another country pushed forward by GDPR is Japan, a country with a long history of data protection. Japan’s data protection policy was updated in August 2018 to enhance existing protections as well as aid in compliance with GDPR regulations. Similarly, Hong Kong, Australia, and Singapore either have or are in the process of updating their data protection policies.

Despite all the focus on data protection and cybersecurity, they are not foolproof and cyber incidents still happen. China’s cybersecurity law or the E.U.’s GDPR are useless when a hacker has already walked off with your client data. Proper preparation, which we will discuss later in the paper, is vital.

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China and Financial Industry Regulation in Asia Pacific

One of the key questions about the future of Asia Pacific regulation is the role that China will play in defining it, especially in the context of the Belt and Road Initiative (BRI). The BRI is a key centrepiece of China’s future growth plans for the country as they seek to shore up their slowing domestic economy and tackle some of the overcapacity challenges that the country is facing.

The BRI is designed to create economic cooperation across a ‘maritime road’ and a ‘land belt.’ As the program includes a large amount of cross-border investment, having consistent standards and regulation around financial markets and products will be important. Without common standards, creating, syndicating, and trading financial products across markets would be a significant challenge. This leads to the question: will China seek to establish unified regulation?

We have seen China start to suggest standards in other areas related to the BRI including internet rules and the development of shared internet infrastructure. This would, in theory, give China more of a say in what goes across the shared infrastructure and what rules should be applied, much like they do with their domestic internet. The challenge with the BRI is that it is currently very nebulous in its definition and intentions. The initiative, for the most part, is just covered in speeches from the government and a few official documents. What classifies a project as part of the BRI is unclear and seems relatively informal.

For these reasons, we may see the Chinese government continue to seek more regional regulatory harmonisation as an extension of its economic power, but it may not be through the efforts of the BRI.
A Sampling of Key Regulatory and Market Structure Changes across Asia Pacific

Extraterritorial

Consolidated Audit Trail (SEC Rule 613)
- Countries impacted: Global
- Date of implementation: Q4-2019

 Basel III (Potentially Basel IV)
- Countries impacted: Europe then Global
- Date of implementation: October 2019

MiFIR
- Countries impacted: Global
- Date of implementation: January 2018

Central Securities Depositories Regulation (CSDR)
- Countries impacted: Europe then Global
- Date of implementation: October 2019

Alternative Investment Fund Managers Directive (AIFMD2)
- Countries impacted: Europe
- Date of implementation: Ongoing

Manager in Charge Regime
- Country impacted: Hong Kong
- Date of implementation: October 2017

Banking Executive Accountability Regime
- Country impacted: Australia
- Date of implementation: July 2018

MiFID II: Shareholder Rights Directive
- Countries impacted: Europe
- Date of implementation: June 2018 - Ongoing

 Basel III
- Countries impacted: Europe then Global
- Date of implementation: June 2018

Japan Government Bond T+1 Settlement
- Country impacted: Japan
- Date of implementation: February 2018

Global

Mas Liquidity Risk Management
- Country impacted: Singapore
- Date of implementation: TBD

SGX PTE2
- Country impacted: Singapore
- Date of implementation: November 2018

Japan Equities T+2 Settlement
- Country impacted: Japan
- Date of implementation: Q4 2019 / 2020

RG97
- Country impacted: Australia
- Date of implementation: Expected Q1-2019

Mas Liquidity Risk Management
- Country impacted: Australia
- Date of implementation: TBD

Banking Executive Accountability Regime
- Country impacted: Australia
- Date of implementation: July 2018

Regulation

Market Change
When Lehman Brothers collapsed in September 2008, the financial industry inexorably changed. The bankruptcy of one of Wall Street’s venerable giants set off a chain of events that ended up with average real estate assets across the U.S. losing 23% of their value,12 the New York Stock Exchange losing US$8.7 trillion in market capitalisation,13 and global GDP growth contracting by 1.7%14 in what became known as the Global Financial Crisis (GFC).

As the crisis unfolded, banks and governments around the world were faced with two challenges. Firstly, how to prevent further contagion. Secondly, how to avoid the same thing happening again. Governments and regulators created task forces to ‘bail-out’ some of the world’s largest banks.15

The GFC had many causes. A commonality of many was the lack of understanding of counterparty risk. Retail lenders either did not fully understand consumer’s financial footprints or chose to ignore them. Underwriters used questionable risk management practices to create complex and opaque financial products, which were eagerly snapped up by investors without a full understanding of the risks. Ratings firms gave AAA-ratings to instruments that, underneath, were anything but. Regulators and market supervisors did not fully appreciate and address the risks building up in financial markets, keep abreast of financial innovation, or consider the systemic risks.

On November 14, 2008, about two months after the crisis started, the G20 met in Washington, D.C. for the Washington Summit on Financial Markets and the World Economy. During the session, representatives spoke of creating a “Bretton Woods II” to bring about “genuine, all-encompassing reform of the international financial system.”16

The meeting concluded with a written commitment to take whatever actions necessary to stabilise the financial system, recognise the importance of monetary policy support, use fiscal measures to stimulate domestic demand, support developing markets, and encourage support for multilateral development banks, such as the World Bank, to help global economic development.

The G20 published a short-list of guiding principles for reform with the objectives of:

- Strengthening transparency and accountability
- Enhancing sound regulation
- Promoting integrity in financial markets
- Reinforcing international cooperation
- Reforming international financial institutions

15 It was around this time that regulators started to use the term ‘too big to fail,’ used to describe those financial institutions, that because of their size, were considered systemically important.
If you look at any global financial regulation implemented in the past decade, it inevitably falls under one or more of the principles listed above and is likely related to ‘Know Your Customer’ (KYC) practices or creating a better understanding of counterparty risk. As one expert told us, “If you don’t know exactly who you are dealing with, you don’t know the risks.”

While the G20 principles made sense, they are by their very nature just principles, with specific implementations left up to individual countries and regions. This has led to a confusing array of implementations around the world and certainly made things more complicated for financial institutions.

As an example, Europe’s Markets in Financial Instruments Directive (MiFIDII) and Markets in Financial Instruments Regulation (MiFIR) were launched on January 3, 2018. The regulations, long in the works, are a set of rules governing financial transactions and relationships that work towards many of the G20 principles mentioned above.

Although MiFIDII and MiFIR are E.U. regulations, they have both direct and indirect implications for Asia Pacific-based institutions.

Firstly, Asia Pacific-headquartered firms with branches or subsidiaries providing investment services in the E.U. are directly subject to MiFIDII. Secondly, MiFIDII requirements can be indirectly relevant when an Asia Pacific-based entity deals with European clients on a cross-border basis.

At a minimum MiFIDII means additional data reporting requirements and potentially the need to reconsider legal entity structure, systems, and processes. So, an Asia Pacific institution in Hong Kong, which might not have any local regulations that require similar levels of reporting and compliance, would inevitably need to comply to an entirely different set of regulations that they may not have been aware of or fully understand.
Most E.U. regulations, including MiFIDII and GDPR, would impact any Asia Pacific entity that has:

1. A subsidiary doing business directly in the E.U.
2. European clients with cross-border investment activity
3. A European counterparty in a cross-border transaction

MiFIDII is also having a significant impact on the Over-The-Counter (OTC) market, and more specifically, how OTC derivatives should be traded and how trading should be reported. The directive suggests that organised trading facilities (OTFs) be established to clear trades that would otherwise have been handled OTC. The idea, in-line with the overall direction of MiFIR and MiFIDII, is to increase pre- and post-trade transparency.

In Asia Pacific each jurisdiction has taken its own approach to OTC derivative reporting requirements as well as centralised clearing. Japan required OTC derivatives to be cleared on central counterparties (CCPs) in November 2012 but Singapore only recently required the change in October 2018.

Although not specifically a regulation, one second-order consideration is tax. Trading in different jurisdictions often have different tax requirements. Some jurisdictions, such as Singapore very clearly lay out tax responsibilities and requirements. While others, like China’s Stock and Bond Connects, were very vague when the platforms were launched as to what the tax ramifications would be.

Many market participants find it easier to bring in outside help to navigate tax requirements, turning to either a tax specialist or a shared service provider who has cross-regional experience and expertise.

The Securities Financing Transaction Regulation (SFTR) is the next E.U. regulation that may have an impact on Asia Pacific markets. The rules aim to increase transparency on the use of instruments such as repos and stock loans, and on the risks of entering collateral arrangements. There is a rolling implementation calendar which is likely to start in the second quarter of 2020 and although it is not currently clear what the impact on Asia Pacific will be, it will likely be similar to that of GDPR and MiFIDII.
Best Practices

With both the lack of intra-region regulatory harmonisation and extraterritorial regulatory implications, Asia Pacific's financial institutions have their work cut out for them to keep on top of regulation and regulatory trends. Although there is no simple solution to address these challenges, we have highlighted a few best practices.

Education

Certainly, every financial institution has a division or group that is at least partially devoted to keeping up with the latest regulatory announcements and trends and educating the organisation about the potential impact. Often though, the observations are limited to a particular subset of staff.

Having an internal process for collecting, analysing and disseminating regulatory changes is key to being able to assess and respond to regulation effectively. SFTR is being implemented in 2020, but Asia Pacific firms should be examining and preparing for the potential impact today.

Ensuring that internal education processes are in place can also help satisfy another stakeholder: your customers. For example, MiFIDII requires the use of a Legal Entity Identifier (LEI). The “No LEI no trade” regulatory principle applied under European regulation means that Asia Pacific entities need to get an LEI to ensure access to liquidity. Many clients may still be unaware of the need for an LEI and need to understand the implications.

Finally, if education is approached proactively, it can become a source of competitive advantage for you and your clients. If you are ahead of your competitors in understanding the regulatory requirements, you may be able to offer unique products or services to the market; e.g. helping a client access E.U. securities and ensuring MiFIDII compliance.

Preparation

A solid internal education strategy can also go a long way to preparing an organisation for regulatory impact. If a complete assessment is done as part of the education, that plan can be used to adjust internal strategies, product roadmaps, and business direction to be better prepared for regulations to come. As an example, when it comes to data protection, organisations should be:

- Reviewing data access protocols and levels
- Defining, consolidating, and operationalising cybersecurity and data privacy governance policies and channels
- Identifying and addressing at-risk business processes and data
- Performing data protection impact assessments and testing response protocols

Anticipating what is to come is a critical part of this and builds on the work done through education.

It is also essential to not only look at regulations moving forward but also the potential of moving backward. We typically expect regulation to be additive rather than
regressive, with jurisdictions either creating new or adjusting existing requirements, but rarely remove. China is the exception, where regulations governing market access were strong to start, but have been loosening, progressively opening the market to international participation.

But we are in a unique time. The current U.S. administration has already rolled back certain aspects of the Dodd-Frank law that affected small and medium banks. Previously, banks with balance sheets of US$50 billion and above were deemed too big to fail and subject to additional reporting and compliance requirements. The Economic Growth, Regulatory Relief and Consumer Production Act raised the threshold to US$250 billion. This may only be the start as the U.S. administration may go even further in removing regulations.

The final aspect of preparation is system readiness. Many financial institutions today are hampered by legacy infrastructure and separate data lakes that may not be standardised or consolidated. Having a ‘golden source’ of data is important for ensuring the right data is being reported back to the right entities. That ‘data harmonisation’ is critical and is a good excuse for banks to improve their overall data quality, but an activity that needs to be done with extreme consideration for the data protection and cybersecurity regulations discussed above.

Consolidation

Beyond data consolidation, the industry also needs to look at regulatory consolidation, because unlike education, meeting regulatory requirements is nearly always a net cost and provides little competitive advantage in and of itself.

Many firms today are looking externally for solutions to mutualise interpretation of regulations effectively. There are a few ways that this can be accomplished:

Firstly, many geographies have industry working groups that cover regulatory issues and topics either regarding advocacy or education. In Asia Pacific, the Hong Kong-based Asia Securities Industry & Financial Markets Association (ASIFMA), is composed of industry practitioners who work together to promote the development of Asia Pacific capital markets through engagement with regulators and exchanges. Similarly the Alternative Investment Management Association (AIMA), has been doing work to support the asset management industry. ASIFMA has been instrumental in working with mainland Chinese regulators to address initial shortcomings in the bond and stock connect programs.

Secondly, many firms choose to pursue a shared solution. Shared solutions can either be a number of companies that come together to provide a platform or a completely external third party. A third party solution provider makes it their job to stay on top of regulatory requirements and provides best-of-breed solutions that are typically better than any single firm could do on their own.

For example, Broadridge has a proven track record of helping major banks and institutions consolidate several source systems, reporting multiple asset classes (FX, rates, credits, commodities, and equities) for a number of jurisdictions, into a single platform. Streamlining the reporting strategy in this way helps to enhance the
control and risk management capabilities across an organisation, as well as bringing additional benefits to cost and process efficiency.

However a market participant chooses to consolidate their approach to regulatory compliance and reporting, a shared approach is nearly always preferable to a go-it-alone approach. Tackling regulation on your own can be time-consuming and costly; better to share the costs, rather than replicate and duplicate what has already been done by a solution provider.

In either case, it is essential to ensure that regulatory compliance and the new operational processes that it requires are internally consolidated and addressed. In today’s large multi-nationals, it is easy to duplicate efforts, and we have seen many cases with clients where one department is not talking to another, leading to duplicated work and additional wasted time and cost. So, many institutions have already created a whole new business functions: “Reg Ops”, often global in coverage, to ensure best practice.
Stay Out of Jail

Most of us wake-up every morning and, although we may not say it aloud, subconsciously desire to stay out of jail. Although the title of this section may seem flippant, it brings attention to what is increasingly a risk for individuals and banks: corporate, and increasingly personal, punishment for non-compliance.

One of the most salient facts of the 2008 GFC is that, despite an incredible amount of economic damage, no individual person went to jail. Indeed, only one bank was charged for anything related to the GFC – a small bank focused on the Chinese community in New York City called Abacus Bank. The main actors that created the GFC largely escaped any type of enforcement and were, in many cases, bailed out instead.

Even today, most of the individuals that end up in jail are either working individually or had a very defined role that allowed law enforcement to neatly segregate their activities from those of the greater corporation. In 2015, a trader in Hounslow England was arrested for allegedly using automated computer programs that helped precipitate the 2010 Wall Street ‘flash crash’. More recently, a former UBS trader was jailed for Britain’s largest fraud, which comprised unauthorised trades that cost the Swiss bank US$2.3 billion, and then deported to his home country of Ghana.

With this as a backdrop, one might think that there is little chance that any individual could go to jail or face fines for their actions as long as they are part of a larger entity. Historically, this seems to have been the case, but this is changing. In fact, over the past couple of years there have been significant efforts by regulators globally to more tightly enforce personal accountability for corporate malfeasance.

The most recent regulations around senior executive accountability started when the U.K. introduced the Senior Manager Regime (SMR) in March 2016. Managers designated as responsible, can be pursued as individuals for six years after leaving the firm in question. This was followed by other markets, including Australia’s Banking Executive Accountability Regime (BEAR), Hong Kong’s Manager-in-Charge regime and Singapore’s Guidelines on Individual Accountability and Conduct. Following this, other markets have introduced their own accountability regulations.

This is a trend that we will likely see continue as regulators and institutions focus on the actions of individuals to map and record who is making decisions and potentially hold them accountable. As enforcement strengthens, it is becoming increasingly important for banks to stay on top of risks within the organisation.
Conclusions

One of the things that has become clear is that despite how bad a financial crisis gets and how much we think we have learned as an industry, we always seem to find a way to create a new crisis. This makes new regulation inevitable as governments around the world seek to keep the industry on an even keel and deal with the crises of today and tomorrow. It also makes it even more critical for industry participants to have a well-thought-out approach to handling existing and future regulation.

The unique challenges for Asia Pacific are unlikely to abate anytime soon. Although China’s efforts through the BRI may change the economic landscape of Asia, how it affects regulation across the region is still unclear. Beyond the potential of China’s insistence, there seems no clear path to regulatory harmonisation across the region, although we may see sub-regional initiatives in places like South East Asia. Passporting is another option, but without a country well-positioned to lead the effort, we should not expect much anytime soon.

Asia Pacific will also need to continue dealing with extraterritorial regulations from other regions, many of which may arise from geopolitical issues, such as Brexit or the softening of existing regulations and standards such as Dodd-Frank.

For industry participants, this means an ongoing cycle of education, preparation, and consolidation will continue to be critical for companies to stay on top of regulation. Although many institutions have shifted operations to move into advantageous regulatory jurisdictions, regulatory arbitrage is not a sustainable long-term solution. As one expert we spoke to aptly put it, “A facet of globalisation is the removal of regulatory arbitrage.” We have seen this in many different segments of the financial industry, especially banking where banking secrecy seems to have become a historical concept rather than a present practice.

Firms should also increasingly look to regulatory consolidation, either internally or externally through third party solutions. Third parties with global scale and deep expertise across different jurisdictions will often be better positioned to take an informed approach to regulations and their potential implications. With very little to be gained and much time and money to be lost, tackling regulations alone is rarely the right strategy.

In the end, while there is no perfect solution to regulatory compliance, regulation and regulatory change is inevitable if we want to have a stable and growing financial industry. The only difference will be how firms decide to deal with the changes.
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