

EdwinCoe LLP

BRIEFING

Implications of the extended Senior Managers and Certification Regime

It is not just those in the banking sector that pose a threat to economic and financial stability – misconduct can be seen in firms of any size and nature within the financial services industry.

Accordingly, the Bank of England and Financial Services Bill 2015-2016 (the “Bill”) proposes to extend the scope of the new Senior Managers and Certification Regime, which imposes a statutory duty of responsibility for senior managers to prevent regulatory breaches, beyond the banking sector to all aspects of the financial services industry (including insurers and insurance brokers).

The key features, as may be applied to the remit of the financial services industry as a whole by the end of 2018, are as follows:

- The Senior Managers Regime will directly replace the existing (and largely discredited) Approved Person Regime in its application to those performing the senior roles in a firm, namely senior management functions, whilst the Certification Regime will apply to individuals who are not carrying out senior management functions, but whom have been identified by the regulators as being in positions capable of causing significant harm to the firm or its customers.
- There will be a statutory duty of responsibility to be applied consistently to all senior managers across the financial services industry, with individuals being required to ensure that they take all reasonable steps to prevent regulatory breaches in the areas of the firm for which they are responsible.
- The burden will be on the regulators to prove that a senior manager has failed to do this and, accordingly, regulators will only be able to take action against individuals in the wider financial sector where they failed to take the steps that it is reasonable for a person in that position to take in order to prevent a regulatory breach from occurring.
- Regulators will be provided with the power to make and enforce Rules of Conduct (which will also apply to non-executive directors).
- Whilst there will still be regulatory approval of certain individual appointments at the outset, there will also be a requirement for firms to take responsibility for ensuring those in less senior (but nevertheless important) positions remain “fit and proper” on an annual basis, thereby rendering the duty an on-going one.
- The PRA is also introducing the Senior Insurance Managers Regime (SIMR) for insurance firms which, for those subject to the requirements of the EU Solvency II Directive, shall include requirements relating to the fitness and propriety of individuals performing senior and/or operationally important roles in insurance firms.





The Bill, which passed through the Committee Stage in the House of Lords on 11 November 2015, will now be subject to a detailed examination and further amendments at the Report Stage, which has yet to be scheduled.

It is thought that extending the Senior Managers and Certification Regime across the financial services industry will create a more consistent and rigorous regime for all firms, evening out the industry as a whole. In advance of the expected implementation date in 2018 for the non-banking sectors, brokers and insurers would be advised to start considering those individuals that may be affected by these changes, and begin to develop the necessary internal procedures required to ensure compliance.

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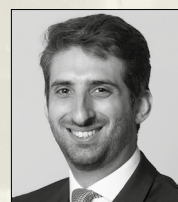
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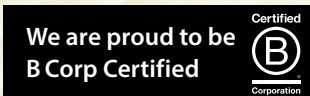
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