

Client Alert

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Central Bank of Malaysia publishes Responsibility Mapping Discussion Paper to strengthen corporate governance

On 23 February 2018, the Central Bank of Malaysia ("**BNM**") published a Discussion Paper on Responsibility Mapping to obtain the feedback from the industry and the public on its proposal to introduce a framework that is intended to increase accountability of senior members of a financial institution, and therefore promote a sound corporate culture amongst financial institutions.

Key features

BNM has identified three key elements that underpin a strong corporate culture within financial institutions. These are set out below.

1. Identification of roles

Under the proposed framework, BNM will identify certain senior roles and allocate generic responsibilities to each such senior role. These senior roles include the Chief Executive Officer, Chief Risk Officer, and Chief Compliance Officer. There is potential for the framework to extend to other senior roles such as the head of human resources and head of a key business function.

The prescribed senior roles will be bound by generic responsibilities determined by BNM and will be overlaid with specific responsibilities determined by the respective financial institution. At this juncture, BNM has yet to prescribe the generic responsibilities for the senior roles.

In addition to the responsibilities outlined above, BNM is intending to introduce a set of basic duties for senior managers to promote a baseline expectation for each individual in an executive senior role (similar to that prescribed under the Financial Services Act 2013 for directors). This set of basic duties will include:

- taking reasonable steps to ensure that the activity for which they are responsible is managed effectively and in compliance with the relevant legal and regulatory requirements; and
- disclosing appropriately any information which the Bank would reasonably expect a notice.





2. Allocation of responsibilities

Once the senior roles and their corresponding responsibilities have been crystallised, BNM requires financial institutions to examine their governance structure – is an individual holding a senior managerial position in fact discharging a greater responsibility and therefore should be allocated the responsibility of a senior role? Is a person dual-hatting and what are the safeguards in place?

At the heart of this key feature is BNM's intent on identifying the individual who would be discharging a specific responsibility, and therefore being able to hold the relevant person accountable for his area of responsibility.

3. Individual accountability

Consequentially, where there has been a regulatory breach by a financial institution, or where a senior management has failed to discharge his duty, the relevant individual can be identified and held to account for the breach or failure.

The concept of individual accountability does not override collective responsibility. BNM retains the discretion to hold the board of directors or other senior management responsible for the breach or failure.

Conclusion

The approach towards responsibility mapping by BNM is consistent with the approach adopted in comparable jurisdictions like Singapore, Hong Kong, Australia and the UK. BNM is therefore following the footsteps of other financial regulators through a prescriptive regime – specific roles are prescribed with corresponding responsibilities, and individuals will be held to account for breaches. This approach, it is anticipated, will require the management and the board of financial institutions to be mindful and more deliberate in discharging their duties.

Although the framework is still in its consultation phase, financial institutions should employ a forward-looking analysis by reviewing their current internal governance arrangements to ensure a smooth transition and implementation of the regulation, which is anticipated to come into force in 2019.

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