HALL ADVISORY

Regulatory Developments in the APAC Region

Asia-Pacific continues to be a dynamic growth region, marked by world-leading innovation in financial services, continued strong GDP growth and rapidly increasing financial inclusion. This paper is split up into three sections that explore trends in regulatory developments across the Asia-Pacific (APAC) region as summarised below.

Part A: Risk and Behaviours

Managing risky behaviours is currently high on the regulatory agenda. Culture and governance have long been areas of focus globally and have come under greater scrutiny in the APAC region through the Australian Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. The Australian landscape will likely prompt other regulators in the region to take a closer look at sales practices, incentives, product design, risk management, and the roles of senior executives and Boards. Individual accountability requirements are already a reality in some countries and will likely begin to figure prominently on regulatory agendas across the region. Financial crime and cyber risk are areas of increasing concern necessitating a holistic approach to risk governance. Weaknesses in the implementation and integration of the traditional three lines of defence model are also evident, promoting a greater focus on improvement in this area.

Part B: Regulation of Financial Risks

The momentum has fallen away from global policy making for now, as evidenced by the prolonged debate concluding the revisions to Basel III. While base capital and liquidity reforms are being implemented to agreed minimums and agreed timetables, there is still a degree of uncertainty in the APAC region as to how some components will be implemented, if at all. Several specific reforms should be monitored including the Fundamental Review of the Trading book (FRTB) and Interest Rate Risk in the Banking Book (IRRBB). Both present their own set of challenges, particularly in the APAC region, where there is considerable diversity in financial markets and economies.

Part C: Innovation

Emerging technology is disrupting business models throughout APAC. Innovation is not new to financial services, but it has notably been used by organisations to offer the same services as competitors in a more efficient manner, rather than to develop entirely different offerings. Digitisation and artificial intelligence (AI) are innovations that will likely contribute to a fundamental change in the delivery of financial services and the APAC region is world leading in this regard. Regulators are under pressure to keep pace with these changes as well as provide a robust environment for acceleration. Increasing online presence and activity also means that privacy is becoming a prominent issue. Juxtaposed against a need to maintain privacy and keep data secure are developments such as open banking and comprehensive credit reporting. As we become more connected, and the industry becomes more disaggregated and disrupted, cyber risk grows as one of the biggest risks the industry and regulators are facing.

PART A: RISK AND BEHAVIOURS

The Australian Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry contains 76 specific recommendations to address misconduct (as published in the Final Report on 4 February 2019). The analysis in the Final Report highlighted four key observations:

1. *The connection between conduct and reward.*
2. *The asymmetry of power and information.*
3. *The effect of conflicts between duty and interest.*
4. *Holding entities to account.*

Key takeaways from the Final Report are outlined below.

Governance	Directors must exercise their powers and discharge their duties in good faith in the best interests of the corporation and for a proper purpose. Non-financial risks are of equal importance, including compliance, conduct, regulatory and operational risks.
Culture	Basic behavioural norms should be adhered to including: obey the law; do not mislead or deceive; act fairly; provide services that are fit for purpose; deliver services with reasonable care and skill; and act in the best interests of others. Problematic aspects of culture should be addressed by organisation, and with regulatory intervention if deemed necessary.
Remuneration	Prudential standards and guidance should be revised. All financial services entities should review the design and implementation of their remuneration systems to focus on how staff do what they do.
Accountability	The Banking Executive Accountability Regime should be extended to other industries and to include responsibility for end-to-end management of product design, delivery, maintenance and remediation.

<u>Remuneration</u>: To address recommendations 5.1 to 5.3 of the Final Report, APRA has drafted a new Prudential Standard: CPS 511 Remuneration. Effective 1 July 2021, the key requirements include:

- ARPA-regulated entities must adjust remuneration outcomes to align with risk outcomes and ensure stronger review and oversight on these issues.
- Elevated importance of managing non-financial risks, so that financial performance measures must not comprise more than 50 per cent of performance criteria for variable remuneration outcomes.
- Clawback of remuneration for senior roles in some organisations must apply.
- Minimum deferral periods for variable remuneration of up to seven years will be introduced for senior executives in larger, more complex entities.
- Boards must approve and actively oversee remuneration policies for all employees, and regularly confirm that they are being applied in practice to ensure individual and collective accountability.

<u>Complaints Handling</u>: To improve practices around complaints handling, ASIC has initiated public consultation on an updated ASIC RG 165 Licensing: Internal and external dispute resolution (RG 165). Expected to be released by the end of 2019, the proposed updates and requirements for internal dispute resolution (IDR) frameworks in RG 165 include:

- Reducing maximum timeframes for IDR responses.
- Reviewing what constitutes a 'complaint', including when it is received through social media.
- Setting clear standards for the content of reasons for decisions.
- Strengthening the requirement for firms to take a systemic focus to complaints handling.
- Introducing a new framework for reporting recurrent complaints data to ASIC.

Disclosing fees and costs in product disclosure statements and periodic statements: Proposed changes to ASIC Regulatory Guide 97 (RG 97) include:

- Revisions to fee templates to increase comparability between products and reduce complexity.
- Removal of implicit cost disclosures other than in relation to counterparty spreads.
- Revisions to disclosure of performance and performance-related fees; performance and performance-related fees to be combined and disclosed on a five year average basis.
- ASIC is also seeking to create a central data repository to facilitate consumer comparison, although this is currently impacted by resource constraints.

Markets Disciplinary Panel (MDP): Key changes to ASIC Regulatory Guide 216 (RG 216) include:

- Consolidation of RG 216 and RG 225 into a single shorter guide.
- Ability to use any published infringement notice as the main method for relaying the MDP's reasons to the market participant and the market generally.
- Replacing the table of factors with four key factors: the character of the conduct; the consequences of the conduct; compliance culture; and remediation.
- Excluding market operators from the remit.
- Including amendments to *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* (Cth) resulting in a potential $3.15 million infringement notice for any alleged contravention of the market integrity rules.

Spotlight on Superannuation

Recommendations from the Royal Commission, as well as regulatory and legislative changes have resulted in key developments in the superannuation industry. Key recommendations from the Royal Commission include:

- Restrict the roles of superannuation trustees to avoid conflicts of interest.
- Prohibit the deduction of advice fees (other than intra-fund) from MySuper accounts.
- Impose civil penalties for breaches of trustees' and directors' covenants.
- Ban all forms of unsolicited offering of superannuation arrangements.
- Subject ongoing fee arrangements for financial advice to annual renewals.
- Require express disclosure of a lack of independence when providing advice to retail clients.
- Give legal enforceability to industry codes.

New measures to strengthen outcomes for superannuation members

Following the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019 (Act) that was registered on 10 April 2019, APRA has released a package of new and enhanced prudential requirements designed to strengthen the focus of registrable superannuation entity (RSE) licensees on the delivery of quality outcomes for superannuation members. The package includes two prudential standards and two guidance notes:

SPS 515 - Strategic Planning and Member Outcomes
SPG 515 - Strategic and Business Planning
SPS 220 - Risk Management
SPG 516 - Outcomes assessment

The introduction of an outcomes assessment is a central component of this framework. The assessment requires RSE licensees to annually benchmark and evaluate their performance in delivering sound and valuable outcomes to all members. The new measures will be effective from 1 January 2020.

Implementation of 'Protecting Your Super' legislative amendments

2019 has seen RSE Licensees working to implement changes for the *Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019*. Some of the measures introduced as part of the reforms include the imposition of a 3% cap on member account balances below $6,000, the prohibition of exit fees, limiting the circumstances on when insurance can be offered through superannuation accounts, and the requirement for trustees to transfer inactive low-balance accounts to the ATO.

Elsewhere in the APAC region

In Japan, the Japan Financial Services Agency (JFSA) has expressed the need for Japanese financial institutions to get their house in order. In October 2018, they published a paper that explained their new dynamic approach to compliance risk management and a shift in Japan's approach to risk-based principles. This is the first time the JFSA has used 'compliance risk' (effectively the same notion as 'conduct risk' by their definition) in its regulatory and supervisory documents. While the paper is a non-binding discussion paper, it will form the basis of the JFSA's supervisory approach in the future. The JFSA have acknowledged that their old approach to supervision was insufficient in addressing misconduct risk and that future emphasis will be on the overall effectiveness of firms' compliance system and governance with a focus on addressing root causes and not just specific incidents.

In South Korea, a Financial Consumer Bureau was created in July 2018 to contend with concerns for bad lending practises and the accumulation of personal debt. The new department has gathered together disparate responsibilities to better address customer protections.

In China, regulators are asking financial services firms to take a stake in supporting growth of the real economy by extending better support to small and micro-firms. While this is not a direct admonishment of misconduct in Chinese financial firms, re-organising to facilitate this directive reorients their credit scoring system and demands robust internal controls. Chinese authorities are therefore placing greater societal expectations on banks in order to better support economic growth.

In Hong Kong, both the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) have increased their focus on senior management responsibility for conduct failures. No longer just looking at 'tone from the top', regulators are placing importance on the 'tone from the middle' to ensure consistent messages are driven from both senior and middle management. In addition, firms are expected to consider how conduct risk affects their business and identify steps to mitigate those risks. Regulators are keen to understand how a firm's business strategy impacts the conduct risks it faces and how existing controls and monitoring process are being adjusted accordingly to address it.

In New Zealand, consideration has been given to the Australian Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. In order to assess conduct and culture, the Financial Markets Authority (FMA) and the Reserve Bank of New Zealand (RNBZ) have jointly initiated a Financial Services Conduct and Culture Review at New Zealand's 11 largest retail banks. A number of weaknesses have been identified in the governance and management of conduct risks and recommendations have been made to improve oversight, controls and processes. In order to see the progress made by each bank, the banks were required to develop a plan to address their individual feedback and report their progress to the FMA and RNBZ by the end of March 2019.

On 24 June 2019, the FMA/RBNZ issued a release on how banks had changed their incentives programmes. This Bank Conduct and Culture Report sets out the expectation that banks would revise their sales incentive structures for frontline salespeople and through all layers of management, which in essence set an expectation for banks to remove such sales incentives.

The Report also found that:

- all banks had outlined plans to remove sales incentives for frontline salespeople and their managers;
- incentives based on financial metrics such as overall bank and/or business unit profit remained in place for senior executives at most banks;
- and future monitoring would focus on understanding how such incentives had evolved and the controls in place to ensure no ongoing potential conflicts remained in relation to sales.

In addition to the comments regarding incentives, the FMA/RBNZ review of bank actions plans found that all banks had now developed plans to address weaknesses in relation to conduct and culture risks in their systems. It was noted that there was still work to be done at the system-level and to address larger concerns about instilling and fostering culture at the governance level.

The FMA and RBNZ will be monitoring progress in relation to embedding these new processes and governance systems at banks.

Additional developments in the APAC region include:

Individual Accountability Regimes

Individual accountability regimes have been implemented in various forms over the past few years in different parts of the world. Within the APAC region, Australia and Hong Kong have already fully implemented programs through their Banking Executive Accountability Regime (BEAR) and Managers in Charge Regime respectively. Malaysia has plans for their own Responsibility Mapping system and Singapore has voiced efforts to strengthen individual accountability for senior managers as a key part of MAS's broader efforts to foster a culture of ethical behaviour and responsible risk-taking in the financial industry.

New Technologies and Business Models

APAC is a region that is embracing technological change and regulators in the region are keen to create an environment that promotes economic development based on new technologies. There is significant incentive for firms to stay ahead of the competition and feel pressure to commit to still nascent and unproven technologies. While regulators in the APAC region are indeed encouraging innovation, they nonetheless expect that the same attention to conduct, governance, and prudential risk management to apply. Privacy, cyber-security and data governance are core aspects of ensuring the safety and proper use of customer data.

Financial crime

New technologies also mean new anti-money laundering (AML) and financial crime considerations are warranted. APAC regulators have focussed on the three aspects:

1. Greater collaboration through private/public partnerships between regulators, law enforcement and the financial industry in order to enhance the quality, precision and timeliness of intelligence, and to leverage domestic and international networks.
2. Renewed focus on taking a risk-based approach in combatting financial crime in order to identify the right areas to place focus and build best-practice regulation.
3. Increased role of emerging technologies in shaping enhancements to identification, mitigation and prevention processes. This also potentially provides enhanced capabilities to threat actors which can introduce new financial crime risks into the environment which need to be managed.

APAC regulators have looked to strengthen specific areas of financial crime recognition and prevention and emphasise that the risk and reward of new technology must be assessed and properly understood upon implementation.

In Japan, in the lead up to their 2019 Financial Action Task Force (FATF) review, the JFSA released guidelines on AML/CTF in February 2018, and a follow-up monitoring report in August 2018. This report noted that there were still gaps in the ability of governance structures and management in Japanese banks to address ML/TF risks. The JFSA have taken a similar stance with respect to emerging technology. Given that the role of crypto-currencies continues to be problematic for regulators, in part due to susceptibility to money laundering and fraud, the FATF release was intended to clarify AML/CTF standards regarding crypto-assets.

In China, regulators have made financial crime management a priority. The People's Bank of China (PBoC) is stepping up monitoring of money laundering activity and have increasee financial and non-financial penalties. In January 2019, the PBoC issued AML/CTF guidelines for online organisations that included; ensuring internal control mechanisms are implemented, having stringent follow-up KYC rules, and reporting large and suspicious transactions.

In Hong Kong, the HKMA published a supervisory approach on AML/CTF as part of the Supervisory Policy Manual, noting that it takes a risk-based approach based on its understanding of ML/TF risks facing the Hong Kong banking sector, as well as authorised individual institutions. The HKMA has also highlighted the use of technology, citing its support of innovative means by which AI can bring new capabilities to financial crime risk management, but have countered this by emphasising the need to ensure that any new technology is appropriately risk assessed and tested.

In Singapore, MAS has credited the role that technology and analytics have played in improving the identification of suspicious activity. To this end, MAS and the Suspicious Transaction Reporting Office implemented a new Suspicious Transaction Reporting form in August 2018 to improve the quality and quantity of this data.

Dynamic Supervision

Emerging events and developments in the financial services sector make a strong case for evolution of the supervision approach from a traditional model to a more proactive, dynamic and real-time manner.

Dynamic supervision is not a new concept, but the regulatory shift towards it is part of the larger press for a more proactive approach to managing behaviour and risks.

In Japan, the JFSA has been advocating a risk-based supervisory approach which they call 'better regulation'. In September 2018, the JFSA released a publication titled '*For providing better financial services in the era of transition*'. In this paper, the JFSA encouraged Japanese banks to utilise a 'Risk Appetite Framework to take into account the financially difficult environment under a prolonged zero interest rate policy, uncertainty of global economic and political developments, and the drastic shift of the financial service industry due to the rapid rise of FinTech.

In Hong Kong, the HKMA plans to boost their effectiveness and forward-looking capability by: automating their supervisory processes with a streamlined bank data collection mechanism; enhancing their analysis of supervisory information; and using newly developed supervisory technology for regulators (SupTech).

In Singapore, MAS is also looking to leverage technology to improve supervision. In February 2017, MAS established a dedicated SupTech office to serve as a hub of expertise to make regulatory supervision more efficient and effective. The office is currently looking to incorporate AI and machine learning to support big data and network analytics used in supervision and enforcement. The SupTech Office may also implement Data Application Programming Interface (API) to streamline the submission of regulatory data, and dashboards for better visualisation of trends and analyses.

In Australia, APRA has laid out an 'ecosystem' approach to supervision. APRA's regulation has been firmly founded on entities: ADIs, general insurers, life insurers, private health insurers and superannuation trustees, but as the lines defining what is and is not a financial services company increasingly blur, there is a proposal to shift the focus to functions, rather than companies. APRA have also begun focussing on supervisory technology as a way to increase connection and collaboration between regulators and industry players.

PART B: REGULATION OF FINANCIAL RISKS

Basel standards are seen as minimum requirements and regulators in Asia-Pacific and elsewhere have often tried to implement standards that go beyond these minima. Key developments in the APAC region are explored in this section.

Basel III Implementation

The Basel III package has 22 specific national discretions allowed for regulators, meaning that countries could impose very different ratio requirements on their banking institutions, while still being fully Basel compliant.

One specific area of concern in relation to implementation has been around revisions to the market risk framework (the Fundamental Review of the Trading Book (FRTB)). Finalised in 2016, and originally due to be implemented by 1 January 2019, the impact of the proposed reform, combined with the complexity of the framework and the system challenges in implementation, has resulted in significant ongoing debate and delays in finalisation at the national level.

In the APAC region, Australia, Hong Kong, and Singapore have each announced delays in their consideration of implementing the framework. In recognition of these growing concerns, alongside the announcement of the finalisation of the Basel III package in December 2017, it was announced that the implementation deadline of the FRTB would be delayed until 1 January 2022 together with other major parts of the reform. The release noted that this was to allow banks additional time to develop the systems infrastructure needed to apply the framework and for the Committee to address certain specific issues related to the market risk framework.

Interest Rate Risk in the Banking Book (IRRBB): Another area of particular interest in the APAC region is the implementation of reforms to the capital treatment of IRRBB. Uncertainty as to region-wide implementation has stemmed from questions over the appropriate application of the standard, to the implementation challenges involved in modelling the interest rate shock scenarios given lack of suitable data and systems.

Although the Basel standards are finalised, there is still much work ahead before the final form and timing is known at an individual country level. Aside from the issues identified, many specific aspects of the reforms will be subject to appropriateness considerations for individual financial systems, such as counterparty credit exposure, treatment of OTC margins, liquidity standards and disclosure reporting.

Interbank Offered Rate (IBOR) transition

Financial Institutions and related sectors are now required to start raising awareness, conducting impact analysis and drawing roadmaps for the implementation of IBORs transition. Changes will directly impact both financial institutions themselves and their customers. As a project, it is expected to need significant resources and will be challenged by the adoption of different approaches in different regions.

The issue was brought to a head in July 2017 with the UK Financial Conduct Authority (FCA) bringing into question the future sustainability of LIBOR. Due to the magnitude of contracts referencing LIBOR, the FCA and Panel members agreed to sustain LIBOR through to the end of 2021, but not beyond. Consequently, there is a material risk that LIBOR will not be sustained beyond 2021, and other benchmarks will likely follow. The 2021 timeline is intended to provide market participants with sufficient time to transition to alternative approaches.

To manage the systemic risk introduced by transitioning away from IBORs, financial institutions will need to make material changes to their ecosystem of operations through industry-wide coordination and adoption. While many short-term contracts will mature before 2021, a large number of longer-term transactions, typically up to ten years, will need to be assessed under the scenario that the underlying benchmark ceases to exist. For institutions in the APAC region, transactions undertaken in foreign currencies (e.g. USD, EUR, GBP, CHF), in addition to local market currency transactions, will be affected.

Several regulators and central banks have begun supporting risk-free rates (RFR) as a suitable alternative benchmark to IBORs (noting though that LIBOR is not risk-free). In other markets, regulators have worked to improve existing benchmarks through enhancements to calculation methodologies. Examples are noted below.

In Japan, the JPY-TIBOR will remain the JPY benchmark. Japan advocates the JFSA's multiple rate approach where the RFR and IBOR are utilised when the situation merits.

In Australia, the Bank Bill Swap Rate (BBSW) has been strengthened by extending the set of actual transactions used in calculations and introducing a volume methodology of bank bill transactions.

In Hong Kong, the HIBOR will remain the interest rate benchmark, however, reforms will be undertaken to underpin the HIBOR to transaction data.

In Indonesia, JIBOR is intended to be one of the money market benchmark rates used by the market as a reference rate.

In India, the Report of the Committee on Financial Benchmarks has recommended regulatory oversight of benchmark administrators. To improve the governance of the benchmark process, it has been proposed to introduce a regulatory framework for financial benchmarks that shall apply initially to benchmarks issued by Financial Benchmarks of India Ltd.

In Singapore, SIBOR will remain the SGD benchmark. A detailed consultation process has been undertaken across the industry to define enhancements to transaction gathering and calculation methodologies.

In New Zealand, the Bank Bill Benchmark Rate (BKBM) rates have always been based on actual transactions, consistent with IOSCO principles. However, a number of improvements to the framework have been made in recent times, consistent with IOSCO and FSB principles.

In Malaysia, KLIBOR is the reference for products such as the floating leg of interest rate swaps, options, futures and structured products. The Central Bank has strengthened requirements for KLIBOR rate setting and introduced a code of conduct for the Malaysian Wholesale Financial Markets.

PART C: INNOVATION

Emerging technologies are paving the way for innovation in financial services, but are also presenting challenges for privacy management and increasing the threat of cyber security. This section explores these challenges across the APAC region.

Emerging technologies

Common themes found in most workplans released by APAC regulators include:

- Their goal is to create a regulatory environment that provides a level playing field for all participants and encourages technological innovation in financial services in pursuit of a global competitive edge.
- They share an ambition to digitise financial services as a way to expand financial inclusion to those who have been traditionally under-served in the region.
- The hold an expectation that risks related to new technologies will be suitably managed, particularly with respect to conduct, and that achieving good customer outcomes will be given priority.

There is a unique harmony between the demographics of APAC countries and the value proposition of digitising financial services. Common across the APAC region is intense scale and large rural populations that have traditionally been under-served in relation to financial services.

In Singapore, MAS was an early adopter of a digital transformation strategy in 2017 with the goal of making Singapore a leading global financial centre in Asia over the course of five years. For MAS, cross-border linkages of payment systems was a top priority in 2018 and remains in focus across 2019 and beyond. Affordable, secure and instant cross border payments will also play a significant role in driving e-commerce trade flows within APAC. With this background, the banking associations of Singapore and Thailand are exploring the possible linkage of their payments to facilitate low cost of transfer of payments. MAS, the Bank of England and the Bank of Canada are also collaborating on a project to explore how wholesale Central Bank digital currency can address inefficiencies in cross border payments, trade finance, foreign exchange.

With respect to emerging technologies, MAS has taken the following approach:

<u>Cloud Computing/Artificial Intelligence</u>

- Created a 10-member Fairness, Ethics, Accountability and Transparency [FEAT] Committee to establish key principles and best practices to assist financial institutions.
- Developed special guidelines/regulation to account for the latest technologies and new risks.

<u>E-Payment</u>

- Implemented Payment Security legislation.
- Have included a number of new activities to be regulated: money changing services; electronic money issuance; domestic money transfer; virtual currency services; merchant acquisition services; cross border money transfer services; and account issuance services.

<u>Block chain</u>

- Have begun considering adoption of block chain technology.
- Are taking an open attitude and are not wanting to rush to regulate innovation.

In South Korea, the Financial Services Commission (FSC) has reshuffled its organisational structure to include a new Financial Innovation Bureau to focus on policy initiatives for financial innovation. It has also laid out its roadmap to promote innovation in the financial sector through:

- Easing the regulatory approval process to allow diversified and specialised tech players to enter financial services.
- A FinTech Policy Roadmap to facilitate mobile payment services.
- A Regulatory Sandbox to test financial innovations within the range of existing regulations.
- A special act to foster financial innovation that will allow regulatory relief for the launch of innovative services in the finance sector.

In Australia, the RBA has taken a significant step towards digitizing Australia's payments systems. Launched in Feb 2018, the New Payments Platform [NPP] is a real time fast payment system that allows customers to make real time payment both during and after normal business hours. The RBA also plans to introduce new technologies like cloud computing, artificial intelligence and cryptology to shape its retail payments structure in coming years. This openness to emerging technologies includes consideration of a central bank digital currency on a blockchain, however, the RBA does not currently have any strong case to either accept or reject the use of cryptocurrencies.

On 1 August 2019, the ASX released guidance to listed companies who are engaged in cryptocurrency-related activities. This follows earlier guidance from the ASX on its concerns for listed entities who were engaged in conduct involving cryptocurrency. In those earlier communications, the ASX noted that cryptocurrency related activities raise significant legal, regulatory and public policy issues. The ASX has strongly encouraged any listed companies engaging in or proposing to engage in cryptocurrency-related activities to read ASIC's Information Sheet 225 *Initial coin offerings and crypto-assets* and to seek legal advice from a reputable Australian law firm about its application to the company's activities.

This guidance emphasised compliance with the ASX's listing rules as well as other important issues including:

- Warnings on claims made by listed companies that their cryptocurrency-related activities are regulated or have been approved by ASX or that they are regulated by AUSTRAC.
- The use and issue of Simple Agreements for Future Equity (SAFEs) and Simple Agreements for Future Tokens (SAFTs) by listed entities in conjunction with or as a precursor to an Initial Coin Offering or Initial Exchange Offering, which may raise issues under the ASX listing rules.
- Need for consultation with the ASX and new listings of Listed Investment Companies (LICs), Listed Investment Trusts (LITs) and Exchange Traded Funds (ETFs).

In Japan, the JFSA has provided a rationale for the change to a sectoral regulatory framework in a September 2018 document on providing better financial services in the era of transition. Traditionally, the same services under different sectors are governed through differing rules and regulations, and because bundling/un-bundling of services is driven by advanced technologies, it will become critical to introduce function-based, cross-sectoral frameworks where functions with the same risks share the same rules.

The JFSA has also set forth a Digitisation Strategy that covers:

1. Accumulation and application of data.
2. Customer protection in terms of privacy, anonymity and credibility of customer data against new technologies.
3. Information/financial literacy to make use of digitisation.
4. Digitalising financial infrastructure that enables transformation and non-financial information.
5. Digitalisation of financial administrative services (e.g. establishment of a Regtech eco system).
6. Promotion of various innovative changes (e.g. a FinTech Support Desk and FinTech Innovation Hub).
7. Promotion of innovation via open architecture.
8. Global Authority Network (a framework on co-operation with foreign authorities).
9. Promotion of block chain, AI and big data technology that serve as infrastructure for digitalisation.
10. Response to issues concerning cyber security, financial system and other financial system issues (including international cooperation to ensure cyber security).
11. Function based, cross sectoral financial regulations that seek to address the above-mentioned issues/challenges.

In Malaysia, technology is a key focus for the BNM, and is included as a key growth area in its Business Plan for 2018-20. The BNM has also adopted a co-opetition strategy, which has introduced bans and instructed non-banking financial institutions to compete at service levels whilst sharing the underlying infrastructure. Other developments in Malaysia include:

- The Real time Retail payments Platform (RPP) is an emerging game changer in the Malaysian economy. The platform launched in January 2019 with E2E functionalities, which also allows cross border payments.
- PayNet (owned by BNM and 11 other Malaysian banks) and other payment system operators in Singapore, Thailand, Indonesia and Vietnam have entered into an MOU to link their respective systems. The platform would allow ease of transactions using identification card, mobile and business registration numbers.
- The BNM also introduced Interoperable Credit Transfer Framework [ICTF], connecting banks and non-banks on a single payment network.

In Hong Kong, the HKMA upgraded its FinTech Supervisory Sandbox (FSS) to enable discussion of RegTech projects/ideas by different tech firms in its ChatRoom. It has also launched a series of RegTech special projects through its Banking Made Easy Initiative focussing on 4 areas:

- AML/CTF – in the FSS Chatroom, banks, technology specialists and regulators can come together to address AML and CTF issues. There is also a plan to kick off a study on the timely retrieval and transmission of ML/TF data from banks and other operators.
- RegTech for prudential risk management and compliance – the HKMA intends to work with the banking industry and fintech community to identify areas of collaboration in designing new regulatory guidelines and compliance frameworks.
- Exploration of SupTech – the HKMA is exploring options to automate parts of its supervisory processes, which aim to boost the effectiveness and forward-looking capability of its supervisory process.
- Study on machine-readable regulations – the HKMA plans to conduct a deep-dive study on the application of machine readable regulations to enhance already-existing regulations. This would help in analysing the feasibility of machine-readable regulations in Hong Kong and the use of technology in improving the regulatory process.

In China, a number of regulatory responses to digital disruption and innovation are being explored including:

- Regulations on peer-to-peer lending and over-the-counter markets.
- Restrictions on access to websites for foreign cryptocurrency trading and initial coin offerings are enforced. Authorities will continue to monitor and shut down domestic websites related to cryptocurrency trades, and ban the acceptance of cryptocurrencies including bitcoin.
- The China Centre for Information Industry Development (CCID) Research Institute of the Ministry of Information and Technology has established a committee for developing a national standard for blockchain covering smart contracts, privacy and deposits, with an expected completion date at the end of 2019.
- Implementation of Data Governance Guidelines (May 2018) aimed at guiding banks to strengthen data governance, improve data quality, realise full value of data, and improve the level of operations and management, from high-speed growth to high-quality development.

In India, the Reserve Bank of India (RBI) established an inter-regulatory working group consisting of representatives from RBI, Securities and Exchange Board of India, Insurance Regulatory and Development Authority, Pension Fund Regulatory and Development Authority, CRISIL and FinTech consultants to report on the granular aspects of FinTech, digital innovations and broader implications on the financial sector.

The working group released a report that made the following recommendations:

- Regulatory actions should vary from disclosure to light-touch regulation and supervision to tight regulation and supervision.
- Innovation labs should be established to stimulate technological innovations.
- An appropriate framework should be established to provide regulatory support and to assist innovators to experiment with payment solutions.

Open Banking

The approach adopted by Australia (the first country in the APAC region to legislate open banking) strongly echoes the sentiments of an individual's right to control their data and data portability found in the UK's Open Banking Standard as well as the EU's revised Payment Service Directive and the GDPR. In the report of the Review into Open Banking (the Farrell Report) released in February 2018, open banking is described as the first step of a broader Consumer Data Right legislative program that will 'give customers greater control over their data'. All Australian banks will be required to implement open banking standards for all the products laid out in the Farrell Report by 1 July 2021.

New Zealand is currently working through their legislative options, while other jurisdictions across APAC are opting for non-legislative approaches to open banking. These approaches are discussed below.

In New Zealand, they are taking a more cautious approach, with trials of common API standards currently being coordinated by Payments NZ and industry players in order to allow third parties to make retail payments on behalf of customers. To date, Open Banking in New Zealand has had more of a focus on payments than on access to customer data, however, the Privacy Commissioner's submission on the Privacy Bill currently before the New Zealand Parliament makes specific mention of the EU's General Data Protection Regulation. Recommendations have been made for New Zealand's privacy law to include a right to personal information portability to strengthen an individuals' control over their personal information in the digital economy. It is therefore not inconceivable that New Zealand may follow Australia towards mandating the adoption of open banking and its focus on access to customer data.

In Singapore, MAS believes that banks opening up consumer data is a larger good that has potential to benefit customers, but ultimately something that should be a ground-up process led by the banks themselves. MAS had an early start in the region; in 2016 it issued the *Finance-as-a-Service: API Playbook* with the Association of Banks of Singapore to facilitate widespread adoption. This has resulted in a mature Open API and data infrastructure.

In Hong Kong, they have taken a similar approach with the launch of their Open API Framework as a part of the 'New Era of Smart Banking', which prescribes risk-based principles, a four phase implementation strategy, and encourages prevailing international technical standards to ensure fast adoption and security. The goals of the program are to ensure competitiveness and drive innovation, as well as keep up with international developments. The final framework was published in July 2018 and is now binding for the region's largest retail banks.

In China, the digital payment ecosystem has been rapidly developing based on its data-sharing capability. In an effort to enhance oversight, the government created a centralised online clearing platform and reached an agreement with 45 non-bank financial firms (including Alibaba and Tencent) to connect and route transactions through the new platform. Recent regulatory updates have mandated that, from 2019, private digital payment institutions must deposit prepaid funds received from users with the central bank.

In Malaysia, in September 2018, the BNM published a paper for public comment on the adoption of standardised open APIs. The focus of Malaysia's Open API implementation was to increase access to financing for small-to-medium enterprises, improve customer choice as well as leverage technology for innovation in financial services.

Privacy

In recognition of the rapid rise of personal data collection and processing, and increasing community awareness of privacy risks and rights, key global and APAC economies are strengthening their privacy regulations or signalling forthcoming changes. Countries that have long established and comprehensive privacy laws are looking to strengthen existing legislation, while countries that have had little in the way of law to govern privacy are now placing privacy on the agenda. Developments in the APAC region will no doubt also be influenced by the 2018 commencement of the European Union's General Data Protection Regulation (GDPR).

In India, draft legislation (The Personal Data Protection Bill) is currently being considered by the national parliament which would require a copy of all personal data transferred out of the country to be maintained in the territory of India and which recommends processing of 'critical' personal data to be conducted within India only. Offences under the draft Bill have been categorized as cognisable and non-bailable as a deterrent to ensure effective enforcement of the provisions.

In South Korea, the Personal Information Protection Act (PIPA) has been amended to require data handlers to clearly indicate important information in a legally prescribed manner that is easily noticeable by data subjects when obtaining consent for the collection, use and provision of personal information. Certain proposed amendments seek to introduce the de-identification methods set forth in the Guidelines for the PIPA and the Network Act and to expand the types of personal information that can be used by data handlers and online service providers.

In New Zealand, they introduced a bill in March 2018 to amend privacy legislation, which is currently being considered by Parliament. The Bill passed its second reading on 18 June 2019, and is reasonably expected to come into force in 2020. This version of the Privacy Bill repeals and replaces the 25-year-old Privacy Act of 1993. Key changes proposed by the bill are the introduction of a mandatory data breach notification scheme, increased powers for the privacy commissioner and increased fines.

In Malaysia, certain classes of data users are required to register as data users under the Malaysian Act and the certificate of registration must be renewed periodically.

In Indonesia, the Government has issued a new draft of the personal data protection law. The draft law deals with personal data categorisation, differentiation between the concepts of data controller and data processor (which has been absent to date), processing personal data, and the forming of a dedicated dispute settlement commission. The content of the updated draft law is virtually unchanged from the initial draft and continues to draw on concepts from European Union law. While the government is planning to pass the bill in 2019, this may be hampered by a general election and possible replacement of members of the House of Representatives.

In Singapore, the Personal Data Protection Act provides for a Do Not Call Registry where consumers can apply to the Commission in the manner prescribed to opt out of receiving marketing material over the phone from organisations. The government also announced the Data Protection Trustmark Scheme (DPTM) in July 2018 following the theft of the personal data of 1.5 million SingHealth patients. The DPTM allows for official certification of a company's data protection methods and is unique in the Asia-Pacific region.

In China, the Information Technology – Personal Information Security Specification was made effective in May 2018. It provides a set of data protection rules for companies that obtain and use personal information. The specification also expands the definition of personal information to include a person's online activities.

In Thailand, the first draft of a Personal Data Protection Act has been released. This is the first notable privacy legislation issued in Thailand.

Cyber Risk

Regulators are placing additional scrutiny on the effectiveness of organisations to manage cyber risk. Cyber-crime is a growing threat, however, a report by the BIS in August 2017 noted that only four global jurisdictions had specific supervisory or regulatory initiatives that captured it (being the US, the UK, Hong Kong and Singapore).

Since 2017, regulatory activity has increased noticeably, and a significant pipeline now exists for both policy and programme implementation across the APAC region.

In Australia, APRA has released the final version of its prudential standard focused on managing information security (CPS234), the next step in bringing direct regulation of cyber risk management to the Australian financial services industry. Updated guidance (CPG 234) has also been developed to address several common information security weaknesses that APRA has observed through its regular supervisory activities.

In Singapore, MAS has released a baseline set of six cyber security controls. The Parliament of Singapore has also passed the Cybersecurity Act 2018, bringing into law a framework for the prevention and management of cyber incidents.

In India, with increased focus towards digitisation, a strong need was felt to improve the level of cyber security awareness and build a larger pool of cyber security experts in the workforce. To address this, the Microsoft & Data Security Council of India in association with ISEA Ministry of Electronics & IT launched a unique initiative titled 'Cyber Shikshaa' for skilling female engineering graduates in the niche field of Cyber Security. Another program launched by the Government of India is 'Cyber Surakshit Bharat' 102 (Cyber Secured India) which aims to create a Cyber Resilient IT setup, build cyber security awareness, and build technical capacity.

In China, Cyber Security Law published in July 2017 was an important legislative milestone. It requires organisations to continue to ensure that internal cyber security systems are robust and constantly improved and may mean that technology will need to be sourced from local Chinese vendors to reduce reliance on foreign technology. The emergence of new technologies such as internet finance, big data, blockchain, mobile applications and the 'Internet of Things' means that cyber security management will become even more important in the future.

In Hong Kong, the HKMA has launched the 'Cybersecurity Fortification Initiative' which is described as a one-stop shop for threat intelligence, alerts and solutions for industry, regulators and any other participants. To help increase the resilience of local banks to cyber-attacks, it includes a three-pronged approach:

- The Cyber Resilience Assessment Framework; this seeks to establish a common risk-based framework for banks to assess their own risk profiles and determine the level of defence and resilience required.
- A Professional Development Programme; a training and certification programme in Hong Kong which aims to increase the supply of qualified professionals in cybersecurity.
- The Cyber Intelligence Sharing Platform; this was developed to allow sharing of cyber threat intelligence among banks in order to enhance collaboration and uplift cyber resilience.

The HKMA released a circular in June 2018 detailing a rollout plan for these beginning in June 2018 and extending out to 2020.

In Japan, the JFSA released a document titled *Policy Approaches to Strengthen Cyber Security in the Financial Sector* in 2015 and subsequently released an updated version in October 2018. This release contains the JFSA's Five Policies in addressing cyber security which are:

1) Constructive dialogue with financial institutions.
2) Improvement of the information sharing framework.
3) Continuous implementation of industry-wide cyber security exercises.
4) Cybersecurity human resource development.
5) Arrangement of cyber security initiatives in the JFSA.

In the Republic of the Philippines, they have unveiled a National Cybersecurity Plan 2022. This is a government initiative to establish and deploy a National Cybersecurity Strategy Framework in order to protect the nation's critical infrastructure across the public and private sectors.

In Thailand, they have opened a cyber-security centre to train personnel from across ASEAN in helping combat cyber threats.

In Indonesia, the have launched a National Cyber and Encryption Agency, reporting directly to the President, to track and identify perpetrators of cyber-crimes.

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