



Australasian
Compliance
Institute

Committee Secretary, Parliamentary Joint Committee on Corporations
and Financial Services
Department of the Senate
PO Box 6100 Parliament House
Canberra ACT 2600

By Email – corporations.joint@aph.gov.au

27 August 2009

Submission to the Inquiry into Financial Products and Services in Australia

The Australian Compliance Institute (ACI) would like to take the opportunity to thank the Joint Committee for providing an opportunity for ACI to respond to its request for public comment toward the inquiry into Financial Products and Services in Australia.

ACI is the peak industry body for the practice of compliance in Australasia. Our members are compliance, risk and governance professionals actively engaged in the private, professional services and Government sectors within Australia, New Zealand, Singapore, Thailand and Hong Kong.

We have addressed the relevant issues as outlined in your terms of reference as below.

General Comments

Observations by ACI's members of the recent financial product and services provider collapses have identified a number of issues which are discussed below, along with some suggestions for the inquiry to consider. The general observation though, is that the regulatory framework would have been sufficient to prevent such problems; the weakness in the system lies in the supervision and enforcement by the regulator and licensees.

Within the current framework provided by the Corporations Act Section 912A (the General Provisions) financial services are required to be provided efficiently, honestly and fairly. It requires licensees to manage their risks and conflicts of interest, to supervise and train their representatives, and to have the necessary resources and competency to provide the services. Additionally, Section 945A provides an obligation that advice is appropriate to the client. The failures evident in the Storm and Opes Prime incidents are therefore not due to the absence of appropriate requirements and safeguards within the Corporations Act. However there are weaknesses in the ability of the regulator to enforce the legislation and supervise the market as currently resourced and it is

Principal Members





1. The role of financial advisers

ACI acknowledges the need for financial advisers in a market that provides for (and requires in the instance of superannuation) individuals to invest their savings in anticipation of growth in wealth. However, there are a number of variables that need to be considered by the Joint Committee that interplay and have bearing on the effectiveness of the adviser-investor relationship. These may include but are not limited to:

- The financial sophistication of the investor and their ability to understand or comprehend:
 - the documentation in regard to products (PDS and the like);
 - the risks associated with various products;
 - the implications of their own circumstances on investment strategies;
 - the breadth of options for products available in the market place;
 - how the fee structures payable to their advisers and/or products work and how that will affect them financially;
 - what is a conflict of interest and when they should be concerned;
 - the difference between 'advice', 'coaching', 'financial education' and the like; and
 - the amount of reliance they can (or should place) on their financial adviser.
- The range of products available in the market place and
 - The knowledge of advisers in regard to all aspects of the various products including suitability for clients' circumstances and/or risk appetites;
 - Investor awareness of this breadth of products and their applicability, financial returns and risks.
- Fee structures
- Quality of advisers and/or advice

It is a unique relationship of trust and reliance, with a large variance in the experience and knowledge of investors against another possible variation in the quality of advisor they may be consulting. Additionally there are the above factors within the market that may affect the advice given and as a result there are a number of issues identified by ACI that need to be considered if this layer is to be constructed between investors and the products they invest in.

Removal of financial advisers will provide no advantage to investors, however, the quality and supervision of the advisors and their advice could be improved. ACI's feedback and suggestions have been categorised as follows:



a. Quality of financial advisers:

Given the size of the market and the current methods of supervision, there is a large variation in the background, training, skills and qualification of advisers, as well as management by the licensees and the consistency in the quality of advisers could be improved. This is especially relevant to the skills and knowledge needed to adequately provide advice for more complex and/or higher risk financial products.

Minimum standards for education and qualifications need to be raised in conjunction with appropriate supervision of individual advisers (as opposed to just licensees). ACI suggests that this could be best achieved by the supervision of advisers being delegated to an ASIC "approved" professional body (and there could be a number of such bodies approved with the choice of membership up to the individual advisor, as long as they are a member of at least one and are being supervised by that body).

It is also necessary for there to be some method of tracking the "bad apples" and preventing them from continuing to provide advice.

The above suggested arrangement is similar to the UK model where the advisers are centrally authorised by the FSA. The advisers must be sponsored by a licensee, who is also responsible for advising the FSA if that advisor leaves or their duties change. This has assisted with the issue of a poor advisor simply doing the rounds of the dealer groups.

These professional bodies would be empowered to be responsible for:

- Maintenance of a register of advisers including details of qualifications and disciplinary actions taken against them by the professional body.
- Setting (with ASIC input) the standards for qualifications, skills and knowledge for advisers with the possibility of the establishment of "tiers" of skills/knowledge that correlated to levels of complexity and risk in financial products they are permitted to advise on.
- Supervision of training diaries/records.
- Requirement for adherence to a "Code of Conduct" with appropriate powers of disciplinary actions against advisers including those that may preclude them being able to continue to give advice.
- Accrediting

b. Supervision of financial advisers:

There appears to be sufficient regulation with the current laws, regulations and licence conditions but these must be properly managed and utilised by the regulator. As proposed above, tighter supervision of the advisers themselves (as opposed to just the AFSL holder) is suggested and one method of achieving this may be through this mandatory membership of professional body "approved" by ASIC.

The Inquiry should also be aware of various practices or approaches that may operate between advisers and clients (or potential clients) including the practice of having an element of financial 'coaching' for the client. There may also be confusion in the market (by both advisers and investors alike) in relation to the difference between "advice" and "sales". Attention and scrutiny needs to fall on these areas, especially in the area of "coaching" to ensure it is not motivational

hype to merely get the clients overly excited and artificially raising their 'desires' for the moment.



As previously suggested one method of providing resources to assist the regulator with meaningful supervision of advisers would be through the delegation of these authorities and responsibilities to professional bodies "approved" by ASIC. To undertake this kind of change would take considerable cooperation between the regulator and industry.

c. Products and financial advisers:

There are two issues the inquiry should be aware of in relation to products and financial advisers that we have touched on earlier but would like to highlight:

i. Complexity of products

There are some extremely complex products on the market and it may be that the current two tier system needs to be extended, perhaps with considerations as to the skills and experience required to "sell" different levels of complexity of products. Advisers should also have a sound understanding of risk and the risks posed with various products and be able, and required, to convey these to potential investors. Training requirements could be added as previously suggested to cover both of these issues.

ii. Conflicts of interest

It is recommended that the legislation be amended to ensure that product developers/owners cannot advise on their own product(s).

2. The general regulatory environment for these products and services

ACI is of the view that in general terms the legislation, regulation and licence conditions currently in place for the market should be sufficient, without being overly prescriptive. ACI welcomes the proposed additional regulation of credit, geared products and mortgages and the protection this will offer for retail investors.

Where ACI sees that advantages could be made would be in the areas of:

- Resourcing the regulator (ASIC) adequately so that supervision of such a large market could be of a higher quality. Given the size of the market and the increased responsibilities of the regulator there are concerns that it is not appropriately resourced to undertake the scope of supervision necessary.
- And/or assistance in supervision of individual advisers could be provided by approved professional bodies as suggested at Item 1.
- Mandating the independent review of a percentage of advice cases by licensees annually. Reviewers would be required to be accredited by one of the approved professional bodies.
- Maintenance of a register of financial advisers (as suggested in Item 1) by the approved professional bodies. This register would be used to identify advisers and licensees recommending high risk products. In conjunction with the independent review of advice cases it would also potentially identify the frequency of recommendation of such high risk products and may flag advisers and/or licensees worth monitoring more closely.
- It is also suggested that ASIC and/or the supervising professional bodies engage in proactive activities like shadow shopping.
- Additionally the efficacy of disclosure requirements could be reviewed by a recognised and suitably experienced consumer advocate periodically.



Lead indicators versus lag indicators:

Too often regulatory intervention is reliant on breach reporting or known incidents in the marketplace, well after the problem has occurred. In addition to responding to these lag indicators the regulator should also concentrate on monitoring the quality and embedding of compliance planning, controls and monitoring for new and existing regulation *in advance* of a breach. Whilst RG104 attempts to deal with this, other methods of encouraging these activities and raising the standard for these programs within industry should be utilised.

Regulators and government should be encouraging licencees to devote resources to developing a quality compliance program with a minimum requirement for either a compliance manager, with appropriate skills and knowledge, to be employed or outsourced by the licensee (in proportion to its size – refer to ACI’s LRCP paper at Appendix One) and/or a compliance committee.

Areas where regulation/legislation could be reviewed:

ACI would recommend a review of the adequacy and appropriateness of capital requirements for licensees.

ACI also believes that there is also a need to better define the difference between the “sales” and “advice” business of the adviser and better defining “advice”, as well as its relationship to the individual. Once adequately defined the minimum criteria for the expertise for advisers should also be strengthened, as previously mentioned.

Our members would also question whether a company that issues a product should be licensed to provide personal financial advice to existing and prospective clients for just its own product and if in this instance this is could genuinely be considered “advice”.

We would also recommend a review to require greater disclosure of the relative risk of a product in its PDS. This might also be something that could be registered on the ASIC website making it easier for investors to compare product risks on a single register.

3. The role played by commission arrangements relating to product sales and advice, including the potential for conflicts of interest, the need for appropriate disclosure, and the remuneration models for financial advisers

The remuneration model for financial advisers is acknowledged as problematic and potential conflicts of interest that may be present in the model are often justified on the basis of making the advice affordable for consumers, who would not be able to or perhaps not want to pay upfront the ‘real’ cost of the advice.

However, many of the investors currently receiving advice may be considered some of the most vulnerable in the market (i.e. they have a low understanding of the market and its various products and are heavily reliant on the advice they receive) and so considerations for their protection are important.

Quality financial advice is intended to be about financial **strategy** and not just individual **products**. An alternate model may be that financial advice has a billable hour cost similar to accountants and lawyers, however this may make it less



attractive to investors to seek advice and thereby may not improve the results in the market place because investors may choose the option of operating without the assistance of a financial adviser. Investors acting independently and without advice may still (and may be even more likely to) fall victim to incidents like Storm and Opes Prime.

Commission and other remuneration practices such as shelf or platform fees, trail commissions, ongoing adviser fees, adviser service fees and asset based adviser fees paid to financial advisers by product issuers have always been recognised as a potential conflict of interest for financial advisers, who on one hand are required to provide advice that is appropriate for the client and on the other hand are at risk of being influenced by commission arrangements offered by product providers.

Also, such remuneration mechanisms could be considered to guarantee that there is always an element of **sales** in financial advice and are not consistent with a 'best interests' obligation but disclosure requirements alone may not be the most effective means of managing the actual conflict.

Additionally, some of these remuneration models are so complex in themselves that disclosure does not ensure that a client understands and can make a judgment about the effect of the fees on the advice they are being provided; the total of the fees; or how it affects their return on the investment. However, as mentioned, alternate possibilities, including having only a 'fee for service model' may mean that adequate financial advice is expensive for the investor.

Other alternatives might include (and might include a blend of):

- A balance of wage or fee for service and commission.
- The same commission established for similar product types, with these commissions being registered and supervised.
- "Front end loading" for commissions being restricted.
- Giving the investor the ability to stop trail commissions in appropriate circumstances, where, for instance, the adviser is no longer servicing them.
We regard this as an absolute essential.
- Reviewing the current disclosure arrangements, including the operational level of conflicts of interest registers and the supervision of these kinds of issues.

At a minimum, advisers should be required to adhere to ethical guidelines developed by their profession and should be able to be held accountable in some way if they breach these standards. This could be incorporated into the earlier suggested model for the supervision of advisers by a professional body who can take appropriate disciplinary action and inform the regulator of any adviser who is no longer authorised to practice as a consequence of disciplinary action.

Making any changes to the current models will be a significant shift for the industry and if changes are proposed as a result of this inquiry a realistic transitional period is encouraged, as is the use of professional bodies and other mechanisms for change management in the industry.

4. The role played by marketing and advertising campaigns

ACI understands the need for those providing products to advertise and market their offerings is a commercial reality and there is nothing inherently wrong with marketing and advertising, provided it is truthful and not misleading.



Again, the current rules around this should be sufficient, but perhaps the inquiry might like to consider the below input from our members:

- The penalties need to be a real disincentive and the regulator needs to be able to respond more quickly and decisively in the instances of misleading advertising.
- Licensees may require more guidance in this regard.
- The market should also assist by reporting those who wish to challenge to spirit of the law.
- Whenever commissions will be paid to advisers by a product provider these commissions should be made clear in any advertising or marketing material, irregardless to the level of commission paid.
- Outside of the regulatory framework industry needs to be responsible for its ethical behavior and establishing codes of conduct in regard to advertising and marketing. Again, this could be encompassed within the model suggested by ACI of supervisory arrangements with professional bodies.

Although not technically an advertising or marketing issue, the inquiry should also give thought to instances where there can be confusion for investors between what is genuinely education or information on a product or service and what is merely “motivational” hype of the type that can be found in face to face seminars, workshops and promotional materials for various products or schemes. The regulator and industry should have guidelines and measures in place to be able to require that investors be made aware of the difference between these activities or preferably incorporate into codes of conduct and/or regulations that the latter practice not be able to be employed by product providers at all.

5. The adequacy of licensing arrangements for those who sold the products and services

Again, ACI is of the view that in general terms the legislation, regulation and licence conditions currently in place for the market should be sufficient, without being overly prescriptive. However the regulator (ASIC) must be adequately resourced so that supervision of such a large market could be of a higher quality. Given the size of the market and the increased responsibilities of the regulator there are concerns that it is not appropriately resourced to undertake the scope of supervision necessary.

Supervision of advisers by the licensee:

Again, ACI would suggest that it is not the licensing process per se that is flawed but perhaps the supervision of the advisers provides for additional weaknesses in the arrangements.

As proposed previously, tighter supervision of the advisers themselves (as opposed to just the AFSL holder) is suggested and in regard to licensing arrangements, an onus should also be on the dealer groups and/or the AFSL holder to supervise their advisers better as well as the previously suggested model utilising professional bodies to undertake some supervisory activities of advisers. There is evidence in the market of failure by licensees to appropriately select, authorise and supervise their representatives and it is appropriate to include as part of their licence conditions to address this deficiency.



In addition to the previously discussed standards for education and qualifications for advisers it is suggested that:

- New advisers should not be able to provide unsupervised advice until they have passed all necessary qualifications and obtained a satisfactory standard of SOA.
- On-going monitoring of their SOAs, interviews, knowledge, training, quality of business must be undertaken.
- Advisers should not be able to advise on products if their knowledge is not “current” i.e. there should be a time limit on “product knowledge” and if the adviser has not had exposure to the product for some time their knowledge may be out of date or poor and so needs to be updated.

Internally a licensee should also conduct regular reviews of a percentage of advice cases, in addition to the previously suggested external or third party review to be undertaken (which should be mandated).

Similarly, as suggested previously there should be a register of financial advisers maintained by the approved professional bodies with this register used to identify advisers and licensees recommending high risk products and **the licensee** should maintain the same kind of register of its own advisers, tracking their advice cases and monitoring the risk profile of advice given.

Additional requirements for licensees:

ACI considers that it may also be useful to set a threshold as to who can apply for an AFSL License, for example ensuring that the entity should be at least Pty Ltd, with a minimum of two directors and with an executive director.

ACI would also suggest that there should be imposed a requirement for an Enterprise Risk Management Programme and independent audit as mandatory. The ERM framework must be such that would identify the risk exposure of the AFS entity proactively and any high level risks (for example, as in Storm) are more readily identified.

Regulators and government should also be encouraging licensees to devote resources to developing a quality compliance program with a minimum requirement for either a compliance manager, with appropriate skills and knowledge, to be employed or outsourced by the licensee (in proportion to its size – refer to ACI’s LRCP paper at Appendix One) and/or a compliance committee.

Additionally, as part of the licensing approval process (and monitoring) the regulator should be ensuring that there are adequate resources and expertise committed to the business and strengthen the minimum criteria for licensing for advice in relation to resources and expertise.

The role of the Responsible Manager:

ACI also recommends that the regulator seriously address the requirements and role of the Responsible Manager. At a minimum it is suggested that the Responsible Manager should be one of the directors and the regulator should increase supervision and hold responsible managers to account. At present this position seems to be a “token” contact point for the regulator.



6. The appropriateness of information and advice provided to consumers considering investing in those products and services, and how the interests of consumers can best be served

Consumer information and advice should be clear and easily understood and needs to include at a minimum:

- A risk rating for the products being recommended (with again, clearly understood definitions for each rating). This rating system should be consistent across the industry.
- The adviser should clearly and unambiguously document how and why the advice is appropriate to the investor.
- It is recommended that the client's circumstances be documented in the advice and if any possible alternatives to the advised products were considered the reasons why they have not been included in the recommended products could also be documented.
- The adviser must genuinely take all *reasonable* steps to ensure that the consumer has understood the advice.

It is not unusual to hear stories of consumers being supplied with sixty page Statements of Advice, which do not assist them in their assessment of the advice. ACI also supports the utilisation of established and experienced consumer groups to set the standards and benchmarks for the presentation of Statements of Advice. Consumer organisations like Choice have lots of expertise in delivering complex research type information in formats that enable the 'typical consumer' to make informed choices to suit their needs.

ACI would suggest that the legislation needs to be amended to require the *adviser* to act in the best interests of the client. Currently they are exempt from this fiduciary duty.

ACI recommends that the adviser groups need to also be taking greater ownership of the advice model and making sure that they are comfortable with the advice their representatives are providing. Licensees should be ensuring that their compliance and risk frameworks have established controls for the monitoring and reporting of the quality and appropriateness of advice given to consumers and measures in place to remedy deficiencies as they are observed.

ACI anticipates that the new credit margin lending regulations may go some way to addressing some of the past problems regarding the promotion of margin lending facilities, specifically the requirement to consider clients capacity to service loans.

7. Consumer education and understanding of these financial products and services

As mentioned previously there will be a wide variation in the financial literacy of consumers. In order to benefit from advice and participate actively and consciously in the advising process and investment strategy consumers would ideally be able to understand the advice being given including:

- how it is (or is not!) suitable for their circumstances;
- the **basic** characteristics and risks of financial products and services being offered to them; and
- have some understanding, similarly, of what other products might be available in the market as alternatives.



Ideally it could be reasonably expected that a consumer would have a basic idea of the product and services he is to going to purchase so that he can at the very least ask the right questions to the retailer or the adviser. In many instances though, the consumer is disadvantaged in terms of knowledge and information and relies on the adviser to exercise his/her best judgment for the clients' best interest.

There are a number of possible approaches to this problem, that may need perhaps to be deployed simultaneously, rather than relying on any single measure, for instance the supply of the PDS, to provide all of the information a consumer needs to fully engage in the process.

1. Rather than the adviser relying on, (or assuming for their own benefit) the consumer has this basic level of knowledge the adviser could, when gathering the information necessary to establish the appropriateness of the advice (which they already need to obtain from the client), they also gather information that enables them to **assess the financial literacy of the client**. There already exists the 'suitability rule' and this could be extended to include the requirement for the adviser to understand and estimate the financial literacy of their client and their aptitude and ability to understand the figures and documentation that they would be presented with in the course of the financial adviser services to him/her. To enable this process though, would require industry input to assist advisers in establishing what the right questions are to ask, and to make the questions and standards for assessment and response consistent across industry.
2. It is often questioned whether consumers bother to read the PDS documents that may be supplied to them as part of the advice. Secondary to this also is of course the question of whether they are understood if read. There is the danger that the PDS may only serve as a legal document to cover the product provider, rather than providing any benefit to the consumer. Many are extremely voluminous. To supplement the provision of the PDS and as part of the responsibility of the product provider it is suggested that they also be required to supply a clear, concise and plain English 'educative information sheet' that may reference detailed areas of the PDS that can be referenced in addition to the summary. In theory if the product documentation and advice documentation provided by the product issuers and financial advisers was of a high standard this should provide all the information the consumer needs.
3. To supplement the efforts of the product providers and advisers it would be helpful if there was also some generic education provided by the Government and/or the regulator. Plain English pamphlets should be available and again, consumer based organisations will have the experience and expertise to assist in providing input in regard to the presentation of useful and digestible information. All this will allow the consumer to easily undertake their own research on advice provided to them.
4. Enhanced disclosure should be required for new products or product features as traditional products may be well understood by consumers and advisers but new products or product features may not be as well understood and may carry an increased element of risk which should be considered and addressed by adviser in making such recommendations.
5. ACI also suggests that there are likely to be some learnings from reviews of the Code of Banking Practice and Uniform Consumer Credit Code that could shape the thinking and it may be useful to consider similarly developing a "Financial Advising Code".



8. The adequacy of professional indemnity insurance arrangements for those who sold the products and services, and the impact on consumers

ACI regards this benefit of PI insurance as being questionable for consumers. If the adviser is properly supervised then they should have limited scope to amass huge indemnity requirements. However, if there is a need to call on the PI cover then the PI cover must meet its purpose. It seems that frequently it is very difficult to claim against, suggesting that it simply adds costs for no consumer benefit. If this is the case there may be little point continuing with it in its current form.

Once suggestion brought forward by members is that the regulation could address the hardening insurance market by complementing it with a 'Fidelity Fund' where the fund must place aside a percentage of its return in a fidelity trust fund. Again, adequate supervision of these arrangements would need to be in place and resourced.

9. The need for any legislative or regulatory change

ACI believes this had been commented on throughout previously in this submission. There is not necessarily a need for more legislation or regulation but what is in place needs to be applied, supervised and enforced. This is not a criticism of the regulators as these activities also need to be undertaken by the licensees, advisers and issuers for the most part.

ACI would like to offer its support for the better resourcing of the regulator to undertake these supervisory and education activities. We would also request that the inquiry consider additional ways to encourage licencees to devote resources to developing a quality compliance program and including requirements for either a compliance manager, with appropriate skills and knowledge, to be employed or outsourced by the licensee (in proportion to its size – refer to ACI's LRCP paper at Appendix One) and/or a compliance committee.

ACI also anticipates that the new credit margin lending regulations may go some way to addressing some of the past problems regarding the promotion of margin lending facilities, specifically the requirement to consider clients capacity to service loans which may in turn rectify some of the weaknesses in the market in terms of consumer protection.

10. The involvement of the banking and finance industry in providing finance for investors and the practices of banks and other financial institutions in relation to margin lending associate with those businesses

It is evident from submissions already provide to the inquiry that banks did not undertake sufficient enquiries into the capacity of applicant to service loans under the margin lending facilities. It appears that banks relied on information provided by Storm on behalf of clients, which some are suggesting wasn't entirely accurate.

Through the other measures suggested within this submission and the review of the margin lending legislation and regulation some of these issues may be addressed, especially if there is an improvement in the quality and understanding of the advice to incorporate assessments of an investors capacity to service the loans under these facilities.



Conclusion

Once again ACI would like to thank the Joint Committee for providing an opportunity to make a submission to this inquiry and we would be happy to respond to any questions Committee members may have about his submission.

Yours sincerely

Martin Tolar
Chief Executive Officer





RECOGNITION OF THE COMPLIANCE PROFESSION

A DISCUSSION AND POSITION PAPER PREPARED BY THE AUSTRALASIAN
COMPLIANCE INSTITUTE

August 2009

PREAMBLE

During the past 10 years, significant improvements have been made in relation to governance, compliance and risk oversight in Australia – notably within financial services. This has been driven both by regulation and from within industry. The objective has been to ensure that all stakeholders are afforded appropriate protection and that informed decisions can be made based on accurate information.

Notwithstanding the significant gains, unacceptable breaches continue to occur. This not only translates into a financial loss to stakeholders, but also increased regulatory costs through enforcement and monitoring, erosion of consumer confidence and unemployment.

A brief review would indicate that many of such issues have not resulted from a lack of regulation. Nor have many companies that have collapsed failed to have a compliance and risk program in place. Part of the problem has been that these entities did not have a trained and equipped compliance management resource with sufficient authority to ensure that these programs are effectively implemented and compliance risks identified and treated.

While standards are in place for compliance principles and the need for compliance professionals is articulated in various regulatory supporting materials, there is currently little regulatory reinforcement of the need for specialised compliance support or recognition of the compliance profession in delivering the compliance framework.

The Australasian Compliance Institute ('ACI') recognises that a number of regulators – both in Australia and overseas – have made significant attempts to identify and support compliance professionals in their respective industries. The State Offices of Fair Trading, for example, have engaged in regular dialogue with some industries around ensuring that compliance professionals are appointed in senior positions and adequately trained. Moreover, regulators across Asia have determined that the appointment of compliance professionals should be mandatory and in some cases have prescribed minimum standards that must be met.

Although recognition of the compliance profession cuts across many industries, this paper will concentrate on the pressing need for competent compliance professionals by entities regulated by the following Federal regulators (and the Australian Securities Exchange Limited ('ASX')) who have documented support for robust compliance systems and recognised the necessary role of a compliance resource:

- Australian Securities and Investments Commission ('ASIC')
- Australian Competition and Consumer Commission ('ACCC')
- Australian Transaction Reports and Analysis Centre ('AUSTRAC')
- Australian Prudential Regulation Authority ('APRA')

The purpose of this paper is to:

- reinforce the basis of a compliance framework for an ethical, effective and efficient entity;
- outline the need for a dedicated, trained compliance professional to support and drive the implementation and management of that framework;
- set out the core competencies required for a compliance professional; and
- discuss the practical advantages to business through the proper implementation of a compliance regime by a professional resource.

While specific ACI recommendations, categorised by regulator (and the ASX), are made at the conclusion of this paper, generally the ACI recommends the following:

- Formal recognition of Compliance Professionals through policy or regulation (including recognition of the need for such professionals to hold appropriate seniority and authority in order to effectively discharge their role).
- That a minimum skill and experience requirement (through defined competencies) is required to appoint a compliance professional.

COMPLIANCE FRAMEWORK

Standards Australia published the initial Australian Standard of Compliance Programs in 1998 as a result of a request from the ACCC. Revised in 2006, this document sets broad principles for the development, implementation and maintenance of effective compliance programs within both public and private organisations.

The Standard has now also been recognised in New Zealand and Standards New Zealand has approved the adoption of this standard as a joint standard with support from ACI.

The Standards Australia 'Standard of Compliance Programs NZS/AS 3806-2006' ('the Standard') has been strongly supported by regulators in Australia. Clearly the Standard has been supported by the ACCC¹, and the fundamentals are also expressed in ASIC Regulatory Guide 104 Licensing: Meeting the general obligations.²

Comprising of twelve principles, the Standard provides a useful tool to scope out a framework from which a compliance program can be developed and embedded into an organisation. This has been particularly practical for financial services organisations during the recent developments of increased licensing obligations and the development of enhanced programs in Anti-money laundering and governance.

Whilst the principles focus on commitment by the business, it is clearly stated that a compliance manager is required to implement and manage such a program. However, the Standard does not state that such a manager is mandatory nor the skill set required of the individual to ensure that the elements of the program are properly implemented.

It is our view that focusing on the framework and program is only part of the solution. Where a compliance program is recognised as being required by a regulator, then it follows that there should be equal attention to the skills and attributes of the resources required for its successful implementation.

¹ ACCC (2005) *Corporate Trade Practices Compliance Programs*, Australia, pg 23.

² ASIC (2007) *Regulatory Guide 104, Licensing: Meeting the general obligations*, pp 29-31; and previously in ASIC Policy Statement 164 (now superseded).

COMPLIANCE PROFESSIONALS

Australia

The need for competent compliance professionals for financial services and other related industries in Australia is not mandated in legislation. However, AUSTRAC has mandated the need for an AML/CTF compliance resource(s) in its Rules, and both ASIC and ACCC expect that a compliance resource for reporting entities will be appointed to address their specific requirements – particularly if the institution is large. APRA has increasingly recognised the value of the compliance function, especially in ensuring that APRA standards are incorporated into regulated entities compliance plans. The ASX (pursuant to its Corporate Governance Principles) also strongly encourages structured governance frameworks, which by implication demands the need for a compliance professional to oversee and manage.

The following standards are set out in the respective regulatory statements:

ASIC

As part of the licensing requirements as an Australian Financial Services Licensee (AFSL), ASIC states that it expects an AFSL to allocate a resource to undertake compliance duties, but it is not a mandatory licence condition to do so. In addition, the supporting regulatory guide ('RG') does not state the standard or skill set required to undertake the compliance role:

ASIC RG104.49-50:

104.49 'We expect that you will allocate to a director or senior manager responsibility for:

- (a) overseeing your compliance measures; and
- (b) reporting to the governing body ...

104.50 You need to ensure that the area responsible for compliance:

- (a) is independent enough to do its job properly;
- (b) has adequate staff, resources and systems; and
- (c) has access to relevant records³

ACCC

The ACCC has published two generic documents on trade practices compliance programs (one designed for large to medium firms and a separate small business guide)⁴. In both documents, the ACCC strongly recommends the development of a compliance program which is supported by a compliance officer. For large firms, the ACCC appears to expect a compliance officer will be appointed:

³ Ibid, pg 16.

⁴ ACCC (2005) *Corporate Trade Practices Compliance Programs*, Australia; ACCC (2006) *Small business guide to trade practices compliance programs*, Australia. In addition, specific guides have been issued in relation to franchising and the Horticulture Code.

ACCC (Large to medium firms)⁵:

‘Large corporations will have a dedicated compliance officer with responsibility for compliance ... Compliance professionals make compliance strategies come alive – in a way that external regulators can never achieve alone – by making compliance programs that are contextually specific, demonstrate genuine organisational commitment from the inside out and which will mitigate penalties in the event of a breach of the [Trade Practices] Act.’⁶

Both guides also discuss the role of compliance programs, compliance officers, compliance advisors and reviewers in relation to the s87B Enforceable Undertaking templates⁷. The generic requirements differ by Template and are as follows:

- Level 1 Template:
 - No compliance officer, compliance advisor or reviewer requirement.
- Level 2 Template:
 - Requirement for the appointment of a compliance officer who has attended practical trade practices training, focusing on the issue relating to the s87B Enforceable Undertaking. No other compliance skills or knowledge appear to be required.
 - Requirement for the appointment of a reviewer who is a ‘suitably qualified, independent compliance professional with expertise in trade practices law.’ Whilst section 7.2 of the Template outlines the criteria for ‘independence’ no criteria is established for ‘suitably qualified’.
- Level 3 Template:
 - Requirement for the appointment of a compliance officer, but no skills or compliance criteria stated.
 - Requirement for the appointment of a compliance advisor who is ‘a qualified, internal or external compliance professional with expertise in trade practices issues’. However, there are no criteria for ‘qualified’ or ‘compliance professional.’
 - Requirement for the appointment of a reviewer who is a ‘suitably qualified, independent compliance professional with expertise in trade practices law.’ Whilst section 11.2 of the Template outlines the criteria for ‘independence’ no criteria is established for ‘suitably qualified’.
- Level 4 Template:
 - Requirement for the appointment of a compliance officer ‘with suitable qualifications or experience in corporate compliance’, but no competencies to meet this standard are stated.

⁵ Notwithstanding the classification, ‘large’ or ‘medium’ firms are not defined in ACCC Guides.

⁶ See above n1.

⁷ A **compliance officer** is the person who will develop, implement and maintain the elements of the compliance program; a **compliance advisor** is a person who will carry out a trade practices compliance risk assessment and design the appropriate program. The compliance officer and compliance advisor can be the same person. The **reviewer** is an independent person who reviews the compliance program.

- Requirement for the appointment of a compliance advisor who is 'a qualified, internal or external compliance professional with expertise in trade practices issues'. However, there are no criteria for 'qualified' or 'compliance professional.'
- Requirement for the appointment of a reviewer who is a 'suitably qualified, independent compliance professional with expertise in trade practices law.' Whilst section 11.2 of the Template outlines the criteria for 'independence' no criteria is established for 'suitably qualified'.

AUSTRAC

The AML/CTF Rules require that it is mandatory for a reporting entity to appoint a compliance officer, and has issued a specific guidance note outlining the generic role attributes and function of that individual. However, it does not set out the standards or criteria necessary to meet the critical 'relevant skills and experience' component:

AUSTRAC Guidance note 08/02:

'2.2 Chapters 8 and 9 of the AML/CTF Rules ... set out the obligation upon reporting entities to designate an AML/CTF Compliance Officer ... at the management level. The AML/CTF Rules provide that the AML/CTF Compliance Officer may have other duties.

...

3.1 ... 'management' may be interpreted broadly to mean a person who undertakes the handling, direction or control of AML/CTF compliance within a particular reporting entity.

3.2 The following may be relevant when designating who undertakes the role of the AML/CTF Compliance Officer:

- a) independence
- b) seniority
- c) accountability
- d) reporting lines
- e) access to executive/board
- f) relevant skills and experience, including knowledge of the business and AML/CTF legislative obligations.⁸

APRA

As a result of the reforms to the financial services industry due to the *Financial Services Reform Act 2001* ('FSRA'), APRA has been increasingly engaged in the role and function of compliance as it relates to risk management and related control functions. The functional nature of the financial services compliance regime through the FSRA (and other related reforms extending from the Wallis Inquiry) has resulted in some regulated entities with dual obligations to ASIC and APRA tending to focus on ASIC requirements and not incorporating APRA Prudential Standards ('Prudential Standards') or Guidance Notes (in the case of Registrable Superannuation Entity ('RSE') Licensee) into entities' compliance plans.

⁸ AUSTRAC (2008), *Guidance Note 08/02 AML/CTF Compliance Officers*, pg 1.

APRA regulated entities are required to comply with Prudential Standards/Guidance Notes; a number of these mention the function of compliance both explicitly and implicitly. Moreover, while current Prudential Standards/Guidance Notes such as those covering Risk Management, Fit and Proper and Governance give explicit responsibilities to the Appointed Actuary, Internal Audit and Risk Management, in practice a significant amount of the monitoring and oversight of compliance with APRA Prudential Standards/Guidance Notes is conducted by compliance managers of the regulated entity. For example, the requirement for an independent Internal Audit function (Prudential Standard 510 as set out below) is usually a function of compliance management rather than Internal Audit. Internal Audit will generally review the effectiveness of the compliance management's controls, not the actual compliance itself.

The following sets out some compliance functions required by the Prudential Standards typically managed and/or conducted by compliance professionals within an APRA regulated entity:

Prudential Standard GPS 220, Risk Management

- 35(i) Provide an overview of the processes and controls in place for ensuring compliance with all other prudential requirements.

Prudential Standard GPS 510, Governance

Audit Committee

- 44. The Board Audit Committee must establish and maintain policies and procedures for employees of the regulated institution to submit, confidentially, information about accounting, internal control, compliance, audit, and other matters about which the employee has concerns. The Committee should also have a process for ensuring employees are aware of these policies and for dealing with matters raised by employees under these policies. ...

Internal audit

- 48. A regulated institution (including a Category C insurer in relation to its Australian business) must have an independent and adequately resourced internal audit function. If a regulated institution does not believe it is necessary to have a dedicated internal audit function, it must apply to APRA, in writing, seeking an exemption from this requirement, and set out reasons why it should be exempt. APRA may approve alternative arrangements for a regulated institution where APRA is satisfied that they will achieve the same objectives.
- 49. The objectives of the internal audit function must include evaluation of the adequacy and effectiveness of the financial and risk management framework of the regulated institution (including a Category C insurer).⁹ To fulfil its functions, the internal auditor must, at all times, have unfettered access to all the regulated institution's business lines and support functions.

ASX

ASX is a regulated entity with some supervisory powers, pursuant to multilateral contracts entered into with its direct customers. These contracts comprise of

Operating Rules, which shape the behavior of market users. The ASX monitors compliance with the Operating Rules to ensure fair, orderly and transparent markets.

One component of the Operating Rules is the Listing Rules, which sets out technical requirements for listed entities. Listed entities generally comprise the largest business operations in Australia, with the S&P/ASX 200 index being recognised as the investable benchmark for the Australian equity market. The S&P/ASX 200 is comprised of the S&P/ASX 100 plus an additional 100 stocks.

The Listing Rules in part require an entity to report its governance practices on an "if not, why not" basis in response to the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations. While the compliance function is not prescribed under the Operating Rules, due to their complexity and necessary oversight, in practice compliance managers are a critical member of any management team of a listed entity.

Any changes to the Contracts with market participants are subject to government oversight.

International

While the above Australian regulators either require (or expect) compliance management, the emphasis is on the framework/program that they should administer, rather than the skill set they need in order to carry out this important function.

This approach is similar to that of Hong Kong, Malaysia and Thailand – especially in the insurance sector. However, a number of countries (especially in Asia) have recently developed standards to ensure that not only is the appointment of a compliance professional mandatory, they must also demonstrate that they have the skill set to undertake the role. A detailed paper is attached at Appendix A.

Australia has been at the forefront of setting the agenda for compliance frameworks and programs, but now lags Asia and other countries in the recognition of compliance as a profession with specific knowledge and experience that must be held prior to taking up such an appointment.

CORE COMPETENCIES FOR COMPLIANCE PROFESSIONALS

With the increased roles and responsibilities of compliance resources over the years, compliance has emerged as a distinct profession. A profession requires a number of attributes including:

- a theoretical base of core skills and underlying ethical values;
- formal training on the specific skills, with the view of providing unique qualifications; and
- public service as a principal goal.

The ACI was initially founded in 1996 on the premise that compliance professionals needed an industry body to educate, support and promote the compliance profession. Specifically, the ACI has focused on developing the relevant competencies for ethical compliance professionals and ensuring that high quality training programs are available to maintain the standard of the profession at different levels.

Compliance professionals need to have appropriate skills in order to discharge their professional responsibilities to their employer/client. It is clear that the skill set required for the compliance professional would be contingent upon a number of factors, including size and complexity of the business. Notwithstanding the extent of the compliance resources required by a business, it is still imperative that the compliance manager (or head of the department where more than one compliance resource is required) demonstrate a minimum standard to ensure that the role is being properly discharged.

The ACI has developed a set of generic capabilities for compliance professionals that articulates the different skills required. These are set out in Table 1. These capabilities have been strongly embraced by the compliance community, and form the basis of the ACI practitioner designation 'Certified Compliance Professional' ('CCP') since 2006⁹. Currently just under 30% of ACI's total membership (2,200) has completed (or is completing) one of the three levels of the ACI practitioner designations in compliance¹⁰. In addition, a number of staff from various regulators have either presented at or attended the ACI courses as participants and hold the ACI practitioner designation.

We maintain that these capabilities should form the basis of competencies to be demonstrated by individuals engaged in compliance roles. A large number of the competencies are generic and could be achieved through recognised prior learning (or equivalent experience) in other related disciplines. Alternatively, compliance staff could undertake one of the ACI courses which address the three levels at Table 1 (ACI Associate, ACI CCP or ACI CCP (Fellow) respectively).

⁹ However the CCP designation is not just based on the competencies. Applicants must also demonstrate a commitment to the profession and that they will adhere to the ACI Code of Ethics.

¹⁰ The ACI also offers a 'Compliance and Risk 101 course' which is an introductory (1 day) course to compliance and risk and managing a compliance program. 'Risk 202' courses are also available in relation to managing a risk program.

While there are a number of competencies listed, they can be easily grouped into subjects – for example, the CCP course has grouped the 22 capabilities into 10 subject modules.

Small business may not need a full-time compliance resource. However, the incumbent should still meet the ‘pre-management’ capabilities as a minimum, and not undertake the role whilst performing other roles that may result in a conflict of interest. For example, Peter Madoff (of the recently defunct Bernard L. Madoff Investment Securities LLC) was both the Head Trader and Chief Compliance Officer¹¹. Although Peter Madoff stated ‘Chinese walls’ were in place to enable him to conduct both roles, there is clearly a potential conflict when you are in charge of the operations you are investigating.

While ASIC, ACCC and AUSTRAC recognise the need for a compliance resource to manage the compliance program (or in the case of APRA, the need for compliance with Prudential Standards/Guidance Notes), it is critical that the compliance resources are properly skilled to undertake the task.

Moreover, where there is an overlap between regulators and the entities they regulate (specifically ASIC ASF Licensees and AUSTRAC reporting entities, and ASIC ASF Licensees and APRA regulated entities), the standards for appointment and required skill set of compliance professionals should be consistent. Ideally, a generic compliance skill set (at varying levels) for the four regulators should be established. These could be developed in conjunction with the ACI, and preferably based on the existing CCP competencies. We recommend that the minimum standard for an appointed compliance professional is demonstrated through satisfying the skills set of the ACI Associate, or holds this designation.

BENEFITS

There are clearly a number of benefits for the mandatory appointment of skilled compliance resources to manage the compliance program within an organisation.

Effective Implementation of the compliance framework

A skilled compliance professional will be better equipped to develop and implement a compliance framework that addresses both regulatory and business needs.

Increased Market and consumer confidence

Through the effective management of a compliance framework, the appointment of skilled compliance managers should result in greater market and consumer confidence that companies are transparent and all issues fully disclosed.

¹¹ Tom Lauricella and Aaron Lucchetti, ‘Madoff brother, at arm’s length?’ *Wall Street Journal Asia*, 12 January 2009, pg 6.

Reduction in Business Compliance costs

Due the nature of the competencies, the requirement to engage compliance staff who have met the appropriate standard would not impose greater costs on a business. Instead, it would result in a reduction of repeat recruitment costs and training.

Greater regulator interaction and reduction of regulatory costs

Skilled compliance professionals are better equipped to identify regulatory issues, engage in dialogue with regulators on systemic matters and are better supported to manage breaches as and when they occur in the entity. This should enable regulators to better target their resources on specific entities where concerns about non-compliance or insufficient standards may be raised, and potentially reduce the need for extensive regulatory intervention to address breaches as the matter is being managed by an in-house expert.

Emphasis on business ownership to mitigate compliance risks, not more regulation

By ensuring that skilled compliance professionals are managing the compliance programs of the company (including regulatory compliance), regulators can focus on the ownership by the business in meeting their obligations. Better results under existing regulation are preferable to increased regulation.

Clarity of Compliance Programs as effective mitigation factors

Currently section 12.3(1) *Criminal Code* adopts a compliance culture approach to determining corporate liability. The emphasis on 'compliance culture' demonstrates the need to have an effective, embedded compliance program within the entity – not merely documented processes. Not only would a skilled compliance professional be better able to work with the business to develop the culture, but the nature of that work would, of itself, be clear evidence in mitigation of any alleged offence, as would serious attempts at resourcing this function and providing for the implementation and maintenance of the compliance program organisation wide.

Having such standards for programs and the staff responsible for their design, implementation, maintenance and monitoring (compliance professionals) also gives the courts a measure against which to assess the legitimacy of claims by organisations that they have made efforts to establish frameworks to ensure compliance.

Table 1: Compliance Professional Capabilities

	Pre- Management*	Management**	Senior Management***
Generic Skills			
Skill Transfer Training	✓	✓	✓
Communication Programs	✓	✓	✓
Assertiveness	✓	✓	✓
Leadership and Team Building	✓	✓	✓
Negotiation, Influencing, Facilitation and Mediation		✓	✓
Creative Problem Solving		✓	✓
Business Process			
Change Leadership & Organisational Behavior	✓	✓	✓
Project Management	✓	✓	✓
Performance Management & Analysis	✓	✓	✓
Investigatory: Forensic Review & Monitoring	✓	✓	✓
Quality Processes and Systems		✓	✓
Information Management Systems & Reporting		✓	✓
Internal auditing and general monitoring		✓	✓
Business Planning, Budgeting and Reporting		✓	✓
Generic Compliance			
Compliance Framework, Planning & Implementation	✓	✓	✓
Risk Management Frameworks including fraud	✓	✓	✓
Corporate Governance Frameworks	✓	✓	✓
Ethics and Social Responsibility	✓	✓	✓
Breach Identification Management & Escalation Processes		✓	✓
Complaints Handling Processes		✓	✓
Compliance Policy Development & Regulatory Relationships			✓
Due Diligence Processes			✓
Whistleblower Systems			✓
Compliance Training Programs			✓
Legal Compliance			
Law for Non Lawyers	✓	✓	✓
Privacy, Anti-Trust, Consumer Protection, Corporations Act.		✓	✓
Criminal Code, Anti-Money Laundering			✓

* 2-5 years experience (competency component of ACI Associate designation)

** Greater than 5 years experience and generally in people management role (competency component of ACI CCP designation)

*** Greater than 10 years experience – senior management demonstrating thought leadership in compliance (competency component of ACI CCP(Fellow) designation).

RECOMMENDATIONS

The following recommendations (by regulator) set out broad statements as to the next steps the ACI believes need to be taken in order to ensure a more effective regulatory compliance regime.

ASIC

ACI Recommendation 1A

The appointment of a Compliance Professional to a licensed financial services entity must be a mandatory licence condition (including recognition of the need for such professionals to hold appropriate seniority and authority).

Depending on the size and complexity of the entity the appointment may be part-time, however the incumbent must not also be engaged in role where there is a direct conflict with the compliance function and another part of the business.

ACI Recommendation 2A

The appointment of the Compliance Professional to the licensed financial services entity must be subject to satisfying clearly stated relevant skills and experience (based on documented standard competencies approved by ASIC), taking into the account the size and scale of the business. The ACI recommends that the minimum standard for the Compliance Professional is demonstrated through satisfying the skill sets for an Associate or hold that designation.

Consistent with Recommendation 1A, details of the compliance professional's skills and abilities should be submitted to ASIC prior to the appointment being confirmed (as part of the ASF Licence process) for senior staff appointments.

ACI Recommendation 3A

When approving external compliance consultants to assist licensed financial services entities in relation to ASIC enforcement requirements (e.g. undertake a review for an Enforceable Undertaking), such consultants must satisfy the skill sets for a CCP Practitioner or hold that designation.

ACI Recommendation 4A

The ACI is granted power through legislation to create the standards and rules for the compliance profession under the *Corporations Act 2001*, commensurate with powers granted to UASB and AASB to make audit standards (sections 336 and 334 respectively).

Alternatively, the agreed standard for compliance skills and experience is, at a minimum, consistent across ASIC and APRA based on an agreed set of generic competencies developed in conjunction with the ACI (preferably based on the existing CCP competencies). Ideally, the agreed standard is consistent across ASIC, APRA, ACCC, ASX and AUSTRAC.

ACCC

ACI Recommendation 1B

A compliance officer, who is appointed pursuant to a s87B Level 2 Template, must (in addition to undertaking specific training on trade practices compliance) undertake a generic short course on compliance management (equivalent to the content and level of the ACI Compliance 101 course).

ACI Recommendation 2B

A compliance officer, who is appointed pursuant to a s87B Level 3 Template, must undertake specific training on trade practices compliance (commensurate with the requirements set out in sections 2.1 to 2.3 of the Level 2 Template) and a generic course on compliance (equivalent to the content and level of the ACI Associate course) or hold the ACI Associate designation.

ACI Recommendation 3B

The minimum standard for a 'qualified compliance professional' for a reviewer, who is appointed pursuant to a s87B Level 2, 3 or 4 Template, is demonstrated through satisfying the skill sets for a CCP Practitioner or hold that designation.

ACI Recommendation 4B

The minimum standard for a 'qualified compliance professional' for a compliance advisor, who is appointed pursuant to a s87B Level 3 or 4 Template, is demonstrated through satisfying the skill sets for a CCP Practitioner or hold that designation.

ACI Recommendation 5B

The agreed standard for compliance skills and experience for ASIC, APRA, ACCC, ASX and AUSTRAC is based on an agreed set of generic competencies developed in conjunction with the ACI (preferably based on the existing CCP competencies).

AUSTRAC

ACI Recommendation 1C

The mandatory appointment of the AML/CTF Compliance Officer to a reporting entity must be subject to satisfying clearly stated relevant skills and experience (based on documented standard competencies approved by AUSTRAC), taking into the account the size and scale of the business. The ACI recommends that the minimum standard for the Compliance Officer is demonstrated through satisfying the skill sets for an Associate or hold that designation.

Depending on the size and complexity of the entity the appointment may be part-time, however the incumbent must not also be engaged in role where there is a direct conflict with the compliance function and another part of the business.

Preferably, senior appointments should be submitted to AUSTRAC for approval prior to the appointment being confirmed.

ACI Recommendation 2C

The agreed standard for compliance skills and experience is, at a minimum, consistent across AUSTRAC and ASIC based on an agreed set of generic competencies developed in conjunction with the ACI (preferably based on the existing CCP competencies). Ideally, the agreed standard is consistent across ASIC, APRA, ACCC, ASX and AUSTRAC.

APRA

ACI Recommendation 1D

The appointment of a Compliance Professional to a Registrable Superannuation Entity ('RSE') Licensee, must be a mandatory licence condition (including recognition of the need for such professionals to hold appropriate seniority and authority).

Depending on the size and complexity of the entity the appointment may be part-time, however the incumbent must not also be engaged in role where there is a direct conflict with the compliance function and another part of the business.

ACI Recommendation 2D

The appointment of a Compliance Professional to Authorised Insurers, Registered Life Insurers and Authorised Deposit taking Institutions must be mandatory under the relevant Prudential Standards (including recognition of the need for such professionals to hold appropriate seniority and authority).

Because such firms are usually large, the position would be expected to be full-time.

ACI Recommendation 3D

The appointment of the Compliance Professional to the RSE Licensee must be subject to satisfying clearly stated relevant skills and experience (based on documented standard competencies approved by APRA), taking into the account the size and scale of the business. The ACI recommends that the minimum standard for the Compliance Professional is demonstrated through satisfying the skill sets for a Associate or hold that designation.

Consistent with Recommendation 1D, details of the compliance professional's skills and abilities should be submitted to APRA prior to the appointment being confirmed (as part of the RSE Licence process), especially for senior appointments.

ACI Recommendation 4D

The appointment of the Compliance Professional to the Authorised Insurer, Registered Life Insurer and Authorised Deposit taking Institution must be subject to satisfying clearly stated relevant skills and experience (based on documented standard competencies approved by APRA), taking into the account the size and scale of the business. The ACI recommends that the minimum standard for the Compliance Professional is demonstrated through satisfying the skill sets for an Associate or hold that designation.

Preferably, senior appointments should be submitted to APRA for approval prior to the appointment being confirmed.

ACI Recommendation 5D

The agreed standard for compliance skills and experience is, at a minimum, consistent across ASIC and APRA based on an agreed set of generic competencies developed in conjunction with the ACI (preferably based on the existing CCP competencies). Ideally, the agreed standard is consistent across ASIC, APRA, ACCC, ASX and AUSTRAC.

ASX

ACI Recommendation 1E

The appointment of a Compliance Professional should be included in the Listing Rules as a mandatory requirement (including recognition of the need for such professionals to hold appropriate seniority and authority).

As listed firms are large, the position must be full-time.

Preferably the mandatory appointment should be for all listed entities, but at a minimum for S&P/ASX 200 entities.

ACI Recommendation 2E

The appointment of the Compliance Professional to listed entities must be subject to satisfying clearly stated relevant skills and experience, taking into the account the size and scale of the business. The ACI recommends that the minimum standard for the Compliance Professional is demonstrated through satisfying the skill sets for an Associate or hold that designation.

Appendix A

International Compliance Practitioner Requirements

Background

This paper provides a brief overview of the standards required in order to be engaged as a head of compliance (or equivalent) in the Asia region¹², British Virgin Islands¹³ and other international locations. The bulk of the information was obtained via a review of the life insurance sector in Asia, and is primarily orientated to that industry. In Asia however, insurance still remains a dominant force in the savings, risk and investment vehicles offered in the financial markets.

Executive Summary

The development of the compliance function across Asia has primarily been borne out of developing more effective corporate governance. While the description of the function is wide ranging (compliance officer, head of inspection committee, law-abiding overseer) there is a recognition for the need of a robust compliance function that is responsible (at a minimum) for ensuring that internal controls are working, that effective identification and implementation of regulatory change and that Boards are appraised of the compliance risk management of the entity.

The need for a compliance manager is required in some countries and recommended by the regulators in others. As a matter of course however, given that the requirement is expressed by the regulator, it is generally regarded as a business operation requirement. In the countries where the compliance manager is mandated, they almost all (with the exception of Singapore) prescribe the minimum criteria for appointment. This can either be by submission of prescribed material to the regulator for approval (China and British Virgin Islands), meeting high level prescribed experience and capacity requirements (South Korea and Vietnam), meeting the Responsible Officer 'fit and proper' requirements (Taiwan), undertaking courses (Philippines Insurance) or completing an exam (Philippines SEC regulated entities).

Generally however, where a professional standard for the compliance manager exists, the legislation/regulator is seeking a demonstration of experience to undertake the role together with honesty, integrity and financial stability.

The table on the following page sets out the range of requirements as discussed in this paper.

¹² Excluding Australia.

¹³ Many entities in Asia are incorporated in the British Virgin Islands which is why it is captured in this paper.

SUMMARY OF INTERNATIONAL COMPLIANCE PROFESSIONAL STANDARDS

Country	Mandatory Compliance function	Qualifications	Recommended Compliance function	Recommended Qualifications	Notes
United Kingdom	Yes	Fit and Proper			Must be approved by regulator before commence role
South Africa (Financial Services)	Yes	Prescriptive requirement with three options including accreditation by the Compliance Institute of South Africa.			
USA (Securities)	Yes	NYSE Series 14 exam			
British Virgin Islands (Trusts)	Yes	Prescriptive educational and capacity requirements.			Must be approved by regulator before commence role.
China (Insurance)	Yes	Prescriptive educational and capacity requirements.			Must be approved by regulator before commence role.
Hong Kong (Insurance)			Yes	No	
Hong Kong (Pensions)			Yes	Relevant experience and qualifications	
India – co's & insurance			AML only		
Indonesia (Insurance)	AML only				
Malaysia (Insurance)	AML only		Yes – concept paper only	No	
New Zealand			No		
Philippines (Insurance)	Yes	Vice President, Fit and Proper, One Day course.			
Philippines (SEC)	Yes	Vice President,			Financial penalty for

		Exam.			non-compliance. Courses offered by regulator
Singapore (Insurance)	Yes	No			IBF developing industry competencies
South Korea (Insurance)	Yes	Experience and fit and proper			
Thailand (Insurance)			Yes	Professional skills	Linked to Basel Consultative Document.
Taiwan (Insurance)	Yes	Fit and Proper			
Vietnam (Insurance)	Yes	Experience & fit and proper			

Compliance Professional Standards

Although the compliance profession in Asia has only been in existence for around a decade, the regulators in the region have placed considerable emphasis on ensuring that a compliance department is in place and appropriately managed. The United States, UK and South Africa have also made significant progress in outlining expectations for a professional compliance function.

The following discussion sets out the requirement for a compliance function and where that is mandated, the qualifications necessary to be appointed a compliance manager. For consistency and ease of comparison, the countries have been grouped into segments (1) where a mandatory requirement for a compliance manager (or related descriptor) exists, (2) where it is only recommended by the regulator and (3) where little or no progress has been made.

Mandatory Requirements

ASIA

1. PHILIPPINES

Life and General Insurance

The insurance sector of the Philippines requires the appointment of a compliance officer to an insurance company. The insurance regulator (Insurance Commission) issued an Insurance Commission Circular Letter 31-2005 'Corporate Governance Principles and Leading Practices' (dated 26 September, 2006,) where Part V states that "the Chairman of the Board shall designate a Compliance Officer who shall hold at least the position of Vice President or its equivalent. He shall have direct reporting responsibilities to the Board."¹⁴

While no specific mandatory qualifications are set out in the Circular Letter, the fit and proper rule requirements for officer and directors of insurance companies would apply. These are set out in section 187 of the *Philippines Insurance Code* (1974), which provides that only a person of "good moral character, unquestioned integrity and recognised competence may be elected or appointed director or officer of an insurance company."¹⁵ Further, as the compliance officer is at least a Vice President position, they are also required to complete a one-day seminar on Corporate Governance to be provided by an accredited training provider of the Insurance Commission.

The Insurance Commission has expressed an interest for insurance compliance officers to complete compulsory exams to undertake their role as which is the

¹⁴ http://www.insurance.gov.ph/html/_clArc.asp?category=Press&page=3

¹⁵ <http://www.insurance.gov.ph/html/pd612.htm>

case for Philippine Securities and Exchange Commission regulated entities (see below).

Superannuation (Pensions)

Under their corporate governance standards, the Philippine Securities and Exchange Commission ('SEC') also require that a compliance officer be appointed at a Vice President level. The role of the compliance officer is to ensure that the entity adheres to the Philippines SEC Corporate Governance Code, good corporate principles and best business practices. These are all set out in the Model Corporation Manual of Corporate Governance, which is a template guide for use by SEC regulated entities.¹⁶

The compliance officer must pass a certifying exam in order to undertake the role. This is mandated in SEC Circular No.8 (dated 13 May 2004)¹⁷ which states (in part):

The Commission ... mandates all [regulated] companies to have at least one officer or director certified by examination as compliance officer to ensure that regulatory safeguards imposed on said entities are complied with and that leading practices on corporate governance are observed by such companies.

The certification as compliance officer shall be issued upon passing satisfactorily a written examination as to his proficiency and knowledge in the laws and regulations on the industry where he is associated and on corporate governance principles and practices ...

Failure to comply with the certification requirement of this Circular shall subject the company to a penalty of Ten Thousand Pesos (P10,000) and Five Hundred Pesos (P500) per day of delay of compliance¹⁸, or suspension of authority or registration in case of continued defiance with the aforementioned directive.

During the transition to this requirement, the SEC conducted four modules by seminar (it is unclear as to whether they continue to run such courses). The modules were specific to the regulated sector but essentially comprised the following subject areas:

- The roles and responsibilities of the compliance officer
 - Code of Corporate Governance
 - Regulatory requirements for the relevant industry sector.
- Recent developments in the industry sector
- Other Pertinent Specials Laws/Rules
- Alternative Dispute Resolution

¹⁶ <http://www.sec.gov.ph/>

¹⁷ <http://www.sec.gov.ph/circulars/cy,2004/sec-memo-8,2004.pdf>

¹⁸ As at 26 July 2008, AUD1 = 42 Peso.

2. CHINA

The China Insurance Regulatory Commission ('CIRC') issued a circular requiring the mandatory appointment of a Chief Compliance Officer for insurance companies. CIRC Circular No. 29 (2008) ('CIRC Circular') required that from 1 August 2008, all CIRC regulated entities must have appointed a Chief Compliance Officer who has been reviewed and approved by the CIRC.

Sections 2 and 3 of the CIRC Circular set out the following minimum criteria which must be met prior to approval by the CIRC¹⁹:

Knowledge, Professional Practices and Management Ability

1. Having the educational background of university or higher;
2. knowing the insurance laws and administrative regulations, basic civil laws and being familiar with insurance regulatory provisions and industrial self-regulation norms;
3. knowing the compliance work, having the compliance work experience for certain years, having worked in the field of law, compliance, audit, accounting etc for five years or more, or having worked in the business department, internal control department or risk management department of any financial institutions for five years or more;
4. having certain compliance management abilities, and having taken up any managerial posts in any financial institutions for two years or more;
5. being able to use Chinese language proficiently;
6. having the time necessary for normal fulfilment of duties within the territory of China; and
7. other conditions prescribed by the CIRC.

Applicants who have worked in any financial regulatory departments for more than five years do not need to comply with items 3 and 4 above.

Capacity

1. No limited capacity of civil conduct;
2. not subjected to criminal or administrative penalties;
3. not a former director, senior manager or manager of a bankrupt or liquidated company, where they were personally liable, in the past three years;
4. not a legal representative of a company where business licence revoked and company ordered to close down, where the applicant was personally liable, in the past three years;
5. does not have a relatively large amount of debt that are due but unpaid;
6. not under investigation by justice, discipline, supervisory or financial services authority where a conclusion on the conduct has been concluded; and
7. any other circumstances prescribed by CIRC under which one is unfit for assuming the Chief Compliance Officer office.

In order to be approved, the insurance company must submit an application containing validation of the above issues together with a written comprehensive assessment of the morality, compliance awareness, legal expertise, compliance management capabilities and compliance performance of the applicant.

¹⁹ The list is an abbreviated literal translation in English. The CIRC version is in Chinese only.

The role and function of the compliance department is also set out in CIRC Release no. 91 (2007) which reinforces (at article 10) the need to have a Head of Compliance who cannot also be the Head of a business or financial department.

3. TAIWAN

The Taiwan Regulations Governing Implementation of Internal Control and Auditing System of Insurance Enterprises (issued December 2001) ('Regulations') requires the establishment of a 'legal compliance unit' and a 'compliance chief'.

Article 20 of the Regulations state:

The legal compliance unit shall be staffed with a legal compliance chief to handle the compliance operation. The ranking of such legal compliance chief shall be the equivalent of senior manager or manager.

The appointment and dismissal of legal compliance chief shall be approved in a board of directors meeting attended by the majority of directors, in which the majority of directors attend to give their consent. The reason for such appointment or dismissal, together with the board of directors meeting minutes shall be filed with the competent authority before the 10th of the following month in accordance with the provisions stipulated in the Criteria for the Qualification Requirements for the Responsible Person of Insurance Companies.²⁰

As indicated above, the criteria for a compliance manager is pursuant to that of a responsible person, as set out in the Criteria for the Qualification Requirements for the Responsible Person of Insurance Companies.²¹ The qualification requirements are essentially those of a fit and proper person test, relating to capacity, solvency, honesty and integrity. There are no specific requirements relating to the experience or qualifications of the compliance manager.

4. SOUTH KOREA

While the insurance legislation does not specifically state the appointment of a compliance officer, Article 17(2) of the *Insurance Business Act 2003* requires the appointment of a person

...charged with the duties of checking on the observance of internal-control standards, investigating any violation of the internal-control standards and reporting the findings of such investigation to the auditor or the audit committee (hereafter referred to the 'law-abiding overseers')²²

This role (as with Vietnam discussed below) is typically the function of the compliance department and is regarded as the requirement making it mandatory to appoint a compliance manager.

20 <http://db.lawbank.com.tw/Eng/FLAW/FLAWDAT0202.asp>

21 <http://law.tii.org.tw/Eng/FLAWQRY03.asp?Isid=FL006758&keyword=Responsible%26Person>

22 <http://www.fsc.go.kr/eng/lr/list04.jsp?menu=010304&bbsid=BBS0088>

The law-abiding overseer (compliance manager) must fulfill the following minimum criteria prior to appointment²³:

- ten years or more service in a financial institution; or
- five years or more service period in a research institute or university with a Masters degree or higher in finance-related fields; or
- five years or more work experience as a lawyer, CPA or actuary (licensed in Korea only); or
- five years of more work experience as an employee of a regulatory body.

In addition, a person must meet capacity, integrity and honesty standards as they cannot have a criminal penalty history or a personal regulatory penalty history in the past five years.

5. VIETNAM

While the Vietnamese insurance law does not specifically set out requirements for a compliance manager, it does set out certain requirements for the Head of Inspection Committee, which is interpreted to be a role of the Head of a Compliance function in Vietnam. The Inspection Committee must conduct a review of the controls at least annually.²⁴

The legislative requirements for the Head of Inspection Committee are that they must:

- Not fall within the category of people prohibited from managing an enterprise as stipulated in the Socialist Republic of Vietnam *Law on Enterprises 2005*.
- Have not been or not currently be criminally prosecuted, subject to a prison sentence, or deprived of the right to practice by a court in accordance with law,
- Have not been the legal representative of an enterprise declared bankrupt, except where bankruptcy was for a reason of force majeure or not having been a manager or executive of an insurer or broker whose operating licence was revoked for a breach during insurance business activities.
- Have full capacity for civil acts.
- Have a university or post-university degree, be knowledgeable in the speciality in which he or she proposes to accept the appointment and having directly worked in the insurance, financial or banking sectors and in the speciality in which he or she proposes to accept the appointment for at least three (3) years.
- Reside in Vietnam during the term of office.

²³ Ibid, Article 17(4).

²⁴ Article 112, Socialist Republic of Vietnam Law on Insurance Business 2001.

6. SINGAPORE

The financial services regulator – Monetary Authority of Singapore ('MAS') has issued a mandatory requirement that Life Insurance Companies have a Compliance Unit, and that it is headed by a senior officer (compliance manager). Section 13 of MAS 306 (Market Conduct Standards for Life Insurers providing financial advisory services as defined under the *Financial Advisers Act 2001*) requires the following:

- 13 A direct life insurer shall set up a Compliance Unit headed by a senior officer i.e. Compliance Officer. The Compliance Unit should conduct regular audits on the provision of financial advisory service by the life insurer and its representatives and maintain documentation relating to such audits. The Compliance Officer should report directly to the Principal Officer on any compliance or non-compliance.²⁵

Neither the *Financial Advisers Act 2001* nor MAS306 prescribe any minimum standard for the compliance manager. However, the Institute of Banking and Finance ('IBF') is working with the MAS to develop a competency framework for the financial industry, which includes compliance.

7. BRITISH VIRGIN ISLANDS

The Financial Services Commission ('FSC') in the British Virgin Islands ('BVI') issues trust licences to superannuation and pension trustees who are registered in that country (but may be located anywhere in the world, including Asia). The operations of trustees licensed by the FSC ('licensee') are subject to the Virgin Islands *Financial Services Commission Act 2001* ('FSC Act').

Section 34(1) of the FSC Act previously required that the trustee appoint one of their staff, approved by the FSC as a Compliance Officer for the purposes of the FSC Act. Section 34(2) required that the Compliance officer 'be a senior officer with relevant qualifications and experience to enable him to responds sufficiently well to enquiries relating to the regulated person and the conduct of its business.'

The FSC Act was amended in 2006²⁶ resulting in section 34 setting out in more detail the appointment of the compliance officer and approval by the FSC. As with the earlier version of the section, there is also a mandatory requirement for an AML Compliance Officer, and the FSC Act permits (and indeed assumes) that the Compliance Officer will conduct both functions.

The amended section 34 FSC Act requires (in part):

²⁵http://www.mas.gov.sg/legislation_guidelines/insurance/notices/MAS_306_Market_Conduct_Standards_for_Life_Insurers_FA_Services.html

²⁶ Financial Service Commission (Amendment) Act [Virgin Islands] 2006

s34(3) A licensee shall appoint an individual approved by the Commission as its compliance officer to have responsibility for overseeing the licensee's compliance function as specified in subsection (1), and for

(a) reporting

(i) to the Commission in such manner as with such frequency as may be specified in the Regulatory Code, and

(ii) to the directors of the licensee; and

(b) acting as the liaison between the licensee and the Commission; with respect to the licensee's compliance function.

s34(4) The Commission shall not approve an individual as a licensee's compliance officer unless it is satisfied that he satisfies the Commission's fit and proper criteria.

S34(6) The Regulatory Code may include provisions with respect to the compliance function and with respect to the responsibilities of compliance officers.

S36(7) Without limiting subsection (6), the Regulatory Code may specify of provide for ...

(b) person who may, or who may not, be appointed by a licensee to oversee its compliance function under subsection 2.

All current Compliance Officers must resubmit their application on the approved form for approval under the 2006 amendments. The FSC issued a Provisional Guidance Note on Compliance Regime (dated 9 April 2008) ('Provisional Guidance Note') which sets out the criteria to be considered in the application for compliance officers (together with information about the structure of the compliance regime within a BVI licensee). The Provisional Guidance Note is to be incorporated into the FSC Regulatory Code in due course.

The criterion for a compliance officer is that they meet the 'fit and proper test' as detailed in Appendix C of the Provisional Guidance Note.²⁷ In short, The FSC considers:

- Honesty, integrity and reputation
 - This section includes issues relating to convictions, disqualifications, insolvency, investigations by regulatory authorities, contravention of legislation, connection with licensees who have had their licenses suspended or revoked and if the person has been co-operative with the FSC in past dealings.
- Competence and Capability
 - This section focuses on the experience and expertise of the candidate. Specifically it includes that the compliance officer has "the technical knowledge and ability to perform the prescribed duties for which they are engaged. In relation to this point, recognised professional qualifications and

²⁷ <http://www.bvifsc.vg/Publications/GuidanceNotes/tabid/259/Default.aspx>

membership of professional institutions will be particularly relevant.”²⁸

- Financial Soundness.
 - This section includes solvency, bankruptcy and the ability to provide a satisfactory credit reference.

Other International Requirements

1. SOUTH AFRICA

Compliance Officers engaged by an authorised financial services entity must fulfill one of three mandatory requirements before being appointed. Section 117(2) *Financial Advisory and Intermediary Services Act* (2002) sets out the requirements as follows:

Qualifications and experience of compliance officers

2. A person to be appointed as compliance officer other than a director, member, auditor, trustee, principal officer, public officer or company secretary of a particular authorised financial service provider as contemplated in section 17(l)(b) of the Act must be a person complying with the following qualifications and experience, namely, the person must-
 - (a) hold a legal or business diploma or degree at NQF level **6**, and have at least 3 years' experience in a compliance or risk management function in the financial services industry; or
 - (b) have attained any specific financial services industry, or compliance certificate, diploma or degree at NQF level 5 recognised by the Registrar by notice in the **Gazette** as being appropriate for this purpose, and have at least 3 years' experience in a compliance or risk management function in the financial services industry; or
 - (c) be an accredited member of the Compliance Institute of South Africa, or be a member of any other organisation recognised by the Registrar.

2. UNITED STATES OF AMERICA

The Financial Industry Regulatory Authority ('FINRA') is the largest independent regulator for all securities firms doing business in the USA.

FINRA Rule 3130 (replacing the previous NASD Rule 3013) requires that the member firm designate a Chief Compliance Officer/s (CCO) and that the firm CEO certify annually that the member firm has in place processes to establish, maintain, review, modify, and test policies and procedures reasonably designed to achieve compliance with applicable rules, federal securities laws and regulations.

The designated CCO/s may hold another position within the member, so long as that person can discharge the duties of the CCO in light of his or her other

²⁸ Ibid, pg 42.

additional responsibilities. The CCO/s must be notified to FINRA on the prescribed form.

While the qualifications of the CCO are not prescribed, Rule 3130 states that:

A chief compliance officer should have an expertise in the process of (1) gaining an understanding of the products, services or line functions that need to be the subject of written compliance policies and written supervisory procedures; (2) identifying the relevant rules, regulations, laws and standards of conduct pertaining to such products, services or line functions based on experience and/or consultation with those persons who have a technical expertise in such areas of the member's business; (3) developing, or advising other business persons charged with the obligation to develop, policies and procedures that are reasonably designed to achieve compliance with those relevant rules, regulations, laws and standards of conduct; (4) evidencing the supervision by the line managers who are responsible for the execution of compliance policies; and (5) developing programs to test compliance with the member's policies and procedures.

However, members of the New York Stock Exchange ('NYSE') are required under NYSE Rule 342.13(b) to ensure that compliance supervisors pass the Series 14 Examination. Series 14 (administered by FINRA) requires that any individual who has general compliance responsibilities for an NYSE firm and/or anyone who supervises ten or more individuals involved with compliance is required to take the qualifying exam. The three hour exam consists of 110 questions with a pass mark of 70%.

The Securities and Exchange Commission ('SEC') Rule 206(4) – 7 (the 'Compliance Rule') also requires that a CCO be appointed to be responsible for administering the policies and procedures for all registered Investment Advisers. No specific qualifications are prescribed.

3. UNITED KINGDOM

The Financial Services Authority (FSA) is the regulator of all financial services in the United Kingdom. The FSA requires that individuals who perform one or more 'controlled functions' on behalf of an authorised firm must be approved by the FSA before undertaking that function. The FSA has also issued standards of conduct expected of an approved person (in the FSA 'Statements of Principle' and 'Code of Practice')

The Statements of Principle document sets out the conduct expected of an individual once approval is granted. There are seven principles, four applying to all approved persons and three applying to persons who carry out significant influence functions.

The 'Compliance Oversight Function' is a controlled function (of 'significant influence') pursuant to section 59 *Financial Services and Markets Act* (2000), thus requiring pre-approval by the FSA.

FSA may approve only where it is satisfied that a candidate is fit and proper to perform the controlled function(s) applied for. When considering a candidate's fitness and propriety, the FSA considers (i) honesty, integrity and reputation; (ii) competence and capability; (iii) financial soundness.

Recommended Standards

1. HONG KONG

Life and General Insurance

The regulator for Life and General insurance in Hong Kong is the Office of the Commissioner of Insurance ('OCI'). The OCI issues Guidance Notes which sets out the policy position of OCI on a range of issues, both procedural and on specific subject matter.

Guidance Note 10 ('GN10') refers to corporate governance of authorised insurers. While it is not mandatory to appoint a compliance officer (nor are specific qualifications required) section 19, GN10 states:

An authorised insurer is encouraged to appoint a compliance officer to oversee the compliance by it and its staff with the relevant laws, regulations, guidance notes and industry standards and codes of practice. The compliance officer shall also report to the Board at regular intervals.²⁹

Insurance companies are also required to appoint a compliance officer in both Hong Kong and Macau to ensure that the AML and CTF reporting obligations are met.³⁰

Superannuation (Pensions)

The Mandatory Provident Fund Schemes Authority ('MPFA') regulates approved mandatory provident fund (compulsory superannuation) schemes in Hong Kong. It issued a 'Compliance Standard for MPF approved trustees' in July 2005 which sets out the minimum standards for compliance. In relation to compliance manager requirements and qualifications, standard 3 of the MPFA Standard states that the appointment of a compliance manager is 'expected' and that they have 'relevant' experience and qualifications, although the minimum standard is not prescribed. The relevant part of standard 3 is set out below:

An approved trustee is expected to have designated compliance resources, including a compliance manager. The compliance manager is expected to:

²⁹ <http://www.oci.gov.hk/download/gn-eng.pdf>

³⁰ For Hong Kong - section 8.2.3 Guidance Note 3 (Guidance Note on Prevention of Money Laundering and Terrorist Financing); for Macau - section 36(d) Guidelines on Prevention and Combating Money Laundering and Financing of Terrorism in Insurance, Monetary Authority of Macau.

- I. Have seniority within the approved trustee and be responsible, together with an approved trustee's Board of Directors, for assisting business owners within the approved trustee to implement the compliance programme and ensure it is effective;
- II. Have relevant experience and qualifications to effectively advise on the implementation of a compliance framework.³¹

2. MALAYSIA

Mandatory appointment of a compliance manager is only required for AML purposes. Section 19(4) Malaysia *Anti-Money Laundering Act 2001*, requires the appointment of compliance officer(s) at management level to manage the AML program. This is also reinforced by Bank Negara Malaysia (the financial services regulator) ('BNM') Standard Guidelines on AML/CFT issued in November 2006 (section 10.3 refers).

BNM recently issued a concept paper on Risk Management Guidelines which recommended a 'proactive compliance function' and provided broad statements about role clarity, controls, and communication. No comments are made on the appointment of, or minimum standards relating to, compliance personnel.

3. THAILAND

While Thailand does not have a mandatory requirement to appoint a compliance manager, the Office of the Insurance Commission ('OIC') issued a guideline relating to corporate governance of insurance companies in Thailand, which recommended a compliance function. While no English translation is available, we are advised that the recommendation is based on the principles of the Basel Consultative Document 'The Compliance Function in Banks' (issued 31 January 2004).

Whilst not specifically referenced in the Thailand OIC document, it is important to note Principle 8 of the Basel Consultative Document which states:

Principle 8

Staff exercising compliance responsibilities should have the necessary qualifications, experience and professional and personal qualities to enable them to carry out their duties effectively.

31. Appropriate professional qualities would include a sound understanding of the applicable laws, rules and standards and their practical impact on the bank's operations. The professional skills of compliance staff, especially with respect to keeping up-to-date with developments in the applicable laws, rules and standards, should be maintained through regular and systematic education and training.
32. Appropriate personal qualities (as for most other bank staff) would include integrity, a questioning mind, neutrality and independence of judgement, good communication skills, discretion and tact, as well as capability to robustly challenge others in the organisation of compliance skills.

³¹http://www.mpfa.org.hk/english/leg_reg/leg_reg_sta/files/compliance_standards_first_edition.pdf

OTHER

India - there are no competency standards set in India by either the insurance regulator (the Insurance and Regulatory Development Authority, or IRDA) nor is there such a requirement provided for in the *Companies Act*, the statute governing incorporated enterprises.

Though there are statutes that hint at the requirement of a compliance officer e.g. the *Prevention of Money Laundering Act* (PMLA) which requires a principal compliance officer to be appointed to establish an anti money laundering regime, no standard has been prescribed for the incumbent.

Indonesia – while there is no requirement for a compliance function in Indonesia in the insurance sector apart from AML, we understand that there are compulsory requirements in the banking sector.

New Zealand – there is no mandatory or recommended compliance function currently promoted by legislation and no licensing regime currently exists for financial services either, which would have a substantial impact on the role of compliance. Draft reforms to the financial services industry due for implementation by 2010 should result in a greater awareness in this area.

Research Paper
Australasian Compliance Institute
August 2009