

ARTIFICIAL INTELLIGENCE AND NEW ENFORCEMENT POWERS IN THE REGULATOR SPOTLIGHT FOR 2017

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News

Artificial intelligence and biometrics will become part of the digital toolkit for global financial services regulators, while in Australia, culture and new enforcement powers will be a focus, according to Herbert Smith Freehills.

Outlining the key regulatory developments for the next 12 months around the globe and in Australia, the firm's *Financial Services Regulation Insights - 2017 Outlook* predicts that the burden on companies will increase as regulators adopt new technologies.

To date, regulators have been playing catch up with technology advancements but this will change in 2017, according to Australian head of disputes Luke Hastings. "Regulators need to be able to efficiently track a huge volume of transactions and assets which often move across multiple borders and involve numerous counterparties."

"Global regulators will increasingly use artificial intelligence and biometric tools to collect, analyse and respond to data, as well as to predict and detect financial services wrongdoing. As a result, regulators will demand more information and move closer to real time surveillance."

"This will mean an increased burden for companies and they will need to ensure they are meeting regulatory requirements, not just in the jurisdiction they are headquartered but in all the countries they do business," Mr Hastings said.

Companies operating across borders will face the challenge of discrepancies in the approach of regulators to investigations and enforcement. For example, companies may find an internal investigation is enough to satisfy the UK's Financial Conduct Authority (FCA) that compliance obligations are being taken seriously but this will not be sufficient for the US Securities and Exchange Commission (SEC). Similarly, the approach of the Australian Securities and Investments Commission (ASIC) to breach reporting and penalties for failures differs to Hong Kong's much more stringent requirements, which also have extraterritorial effect.

The election of Donald Trump to President in the US will also have an impact. "Donald Trump's victory will result in more uncertainty in terms of the approach likely to be adopted by the SEC and the Department of Justice given President-elect Trump's apparent focus on de-regulation, while at the same time proposing to reinstate the Glass Steagall Act which separated commercial and investment banking. We expect to see a further divergence in strategy between US regulators and their global counterparts," Mr Hastings said.

Partner Andrew Eastwood said that in Australia, regulators will continue to focus on culture, with ASIC seeing culture as an early warning sign for potential misconduct. "While there has been a move away from introducing some form of direct enforcement action for 'bad culture', there is some political impetus for poor corporate culture to be prosecuted. A Senate inquiry due to report in mid-2017 may be a catalyst for ASIC to lobby for a better culture 'stick' and for ASIC to use it," Mr Eastwood said.

"ASIC is expected to seek a significant increase in its enforcement abilities and the penalties it has available. We predict the regulator will succeed in its push for an increase in penalties in 2017. In addition, we expect ASIC will seek to significantly widen breach reporting obligations."

Partner Fiona Smedley said Australia was also likely to see a crackdown on institutions offering consumer credit. "ASIC has become increasingly active in its enforcement of responsible lending laws, and we predict this will only increase in 2017. Companies offering consumer credit will therefore need to ensure they comply with their obligations," Mrs Smedley said.

Competition will also be a key trend for 2017 and the banking industry will continue to attract regulatory scrutiny for an apparent lack of robust competition. "Both ASIC and the Australian Competition and Consumer Commission (ACCC) want to strike a balance between protecting consumers and promoting competition and innovation."

"We expect that 2017 will see continued cooperation between both regulators," Ms Smedley said.

The full outlook and an infographic snapshot is available [here](#).