CLEVELAND & CO
External in-house counsel

Financial Accountability Regime ("FAR") Bill 2023

Background

On 5 September 2023, Australia's Parliament passed the Financial Accountability Regime Bill 2023 ("**FAR**"), which replaces and expands on the previous Banking Executive Accountability Regime ("**BEAR**"). The FAR applies to insurers, banks, and superannuation providers, and aims to hold key executives accountable for their organisation's activities and decisions.

Amendments

The FAR passed through Parliament with few changes and largely contains prior content. It will extend the provisions of the BEAR to all general, life and private health insurers and registered superannuation licensees (together known as "**Accountable Entities**"). Under the FAR, the accountability obligations extend to director and senior management executives ("**Accountable Persons**") responsible for the management and control of the Accountable Entities. One of the key changes in the FAR bill 2023, is clarification on the scope of the Minister's exemption powers for Accountable Entities, with parliamentary oversight of such power. FAR will be jointly administered by Australian Securities and Investments Commission ("**ASIC**") and Australian Prudential Regulation Authority ("**APRA**").

FAR in a Nutshell

- Under the FAR, all directors and senior executives will be identified as an accountable person and will be subject to requirements of acting with honesty and integrity, skill, care and diligence.
- The FAR outlines transition plans from the BEAR with separate processes for the sectors below.
    - **Accountable Persons:** all Accountable Persons under the BEAR will automatically be transitioned to the FAR and entities may nominate new accountable persons 30 days prior to the FAR being implemented.
    - **Banking, Insurance and Superannuation Sector:** The FAR will extend its application to all nominated Accountable Entities, including the ADIs (previously covered under the BEAR).
- The FAR introduces deferred remuneration requirements, ensuring that at least 40% of variable remuneration for accountable persons is deferred for a minimum of 4 years.

Failing to comply with the new regime carries severe penalties, including: a maximum civil penalty of $15.65 million and 10% of the accountable entity's annual turnover (to a maximum of $782.5 million). Additionally, accountable persons can face liability penalties of up to $1.565 million if they violate the FAR, either directly or indirectly.

Next Steps

The 2024 corporate plans of Australian regulators, ASIC and APRA, cover the scope and implementation of the FAR. Accordingly, companies will need to implement the FAR in their policies and practices to avoid the heavy penalties imposed under FAR. Cleveland & Co can assist you by reviewing your policies and practices to ensure compliance.

For more information, and any guidance or advice on Australian regulators changes in the financial services sector, Cleveland & Co, your External in-house counsel, are here to help.

If you need any help or further information, please contact Tanja Listar:

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