The global push to reform financial markets in the aftermath of the financial crisis of 2008-09 has created an additional layer of regulation that banks in Asia will have no choice but to comply with, said experts at a leading law firm in the region. In addition to dealing with new global standards in such diverse areas as over-the-counter (OTC) derivatives, capital and remuneration, banks in the region would also have to keep up with separate regional and domestic regulatory developments, they said.
“Many things that have happened in Europe and the U.S. as a result of the global financial crisis have triggered mirror developments in Asia.”

Many things that have happened in Europe and the U.S. as a result of the global financial crisis have triggered mirror developments in Asia,” said Alan Ewins, partner at law firm Allen & Overy in Hong Kong. “But to what extent are they absolutely essential?”

On the global level, banks and national regulators have to deal with a wide range of regulations, from G20 initiatives, such as OTC derivatives reform and Basel III, to U.S. regulations with extraterritorial reach, such as the Foreign Account Tax Compliance Act (FATCA) and the Foreign Corrupt Practices Act (FCPA).

Ewins said most jurisdictions in Asia were happy to “play ball” on most of these, even if local conditions meant they were not always relevant or needed. The consequences of not playing ball would be lagging behind international developments and possibly losing a competitive edge regionally, Ewins said.

“They don’t want to be criticized [for not adopting international regulations],” he said. “It’s one of those moments where jurisdictions want to be seen to embrace the international regulatory reform process.”

The regional layer of regulation was driven by competition between the region’s main financial centers of Hong Kong and Singapore, in addition to increasingly active markets such as Taiwan and Shanghai, Ewins said.

Regulators and governments were becoming more aware of the need to put in place regulations that are broadly consistent with what is being done in other jurisdictions around the region, he added. The regional aspect of regulation applied to global reforms as well, he noted, saying regulators in Asia were keeping a close eye on how other markets implement reforms such as Basel III.

“They need to bring in the global regulations because they are international players, but there is also the need to make sure it works and does not disadvantage them from a regional perspective,” he said.

Finally, firms also have to contend with domestic regulations, often with characteristics unique to local markets. These could be based on global regulatory policies but adapted to local circumstances – such as with the Hong Kong Monetary Authority (HKMA) recently introducing measures to limit the amount of banks’ residential mortgage lending that could count as regulatory capital, due to the city’s skyrocketing property market.

“Those three layers are the things that cause a nightmare for compliance officers and legal, because they have to look at each of those levels and see what affects their local back yard, how it affects them regionally, and, if they’re a multinational business, how they fit into that,” said Ewins. “There’s massive tension in terms of actually keeping abreast of it.”

“‘For the foreseeable future, regulatory reforms would continue to be driven from Europe and the U.S., given the larger size and uniformity of those markets compared to Asia,’ said Lian Chuan Yeoh, counsel in the corporate department at Allen & Overy in Singapore.”

REGIONAL COOPERATION

For the foreseeable future, regulatory reforms would continue to be driven from Europe and the U.S., given the larger size and uniformity of those markets compared to Asia, said Lian Chuan Yeoh, counsel in the corporate department at Allen & Overy in Singapore.

“For the time being, the U.S. and Europe will lead on regulatory developments,” he said. “Asian regulators don’t have the anticipation that they will shape the agenda for now. I think Asia has an influence, but I don’t think it will be the leader. In the end, the Americans will take the lead.”

Given the number of markets at different stages of development around Asia, ensuring some level of cooperation on regulatory issues between jurisdictions remains a difficult process, the lawyers said.

“There have been embryonic signs of cooperation around the region in the past few years,” said Ewins. For self-preservation purposes as much as anything, Asia needs to be seen as having more of a single voice – it does not work to go against the much bigger U.S. and Europe single-handedly."

Ewins said the ASEAN nations were showing some encouraging signs of cooperation and moving towards common standards. There was also potential for further cooperation within the greater China region, he said, such as with the mutual fund recognition scheme now beginning to take shape between Hong Kong and China.

“It is going to take quite some time for things to coalesce into something APAC-wide,” he said. For now, Hong Kong, China, Taiwan and possibly Singapore could work more together.

In a rare sign of such regional unity last year, securities regulators from Hong Kong, Singapore and Australia got together to write a joint letter of protest to the U.S. Commodity Futures Trading Commission (CFTC). At issue was the way in which the U.S. regulator was seen to be reaching far beyond its borders in its effort to protect U.S. markets under the Dodd-Frank Act, such as by requiring foreign financial institutions to register with it if they wanted to trade derivatives with U.S. counterparties.

“The letter to the CFTC was a pretty big deal,” Ewins said, noting that it was important for Asia as a block to be well recognized.

At the heart of the joint letter to the CFTC was the issue of how the U.S. regulator would handle substituted compliance – a system under which banks’ compliance with an “equivalent” regulatory regime to that of the U.S. would be deemed acceptable by the CFTC.

“The idea of substituted compliance was a ‘line by line’ approach to compliance, in which you want to prove that each item complies with the equivalent U.S. rules,” said Yeoh. You take item by item, but you’re not looking at regimes [as a whole].”

Yeoh said the Asian regulators would have preferred the U.S. to take a more holistic view of what constitutes equivalence. “How do you prove that one nation’s regime is equivalent? Does each Asian country try to prove it to the CFTC, and make the cross-border comparison? Or does the U.S. regulator do it?”

He said the Asian regulators felt compelled to address their issues to the CFTC, but did not expect the letter to serve as a gate-opener for more cross-border cooperation in the region. “On this particular issue you had the regulators take an interest and give feedback to the Americans. I don’t think that’s surprising. Does it lead to Asian regulators being more likely to come together? I’m not so convinced.”

The level of cross-border coordination was still very low in Asia, Yeoh said.

“In terms of harmonization of regimes it’s still very early on,” he said. “It might increase but it’s not that huge yet. I see developments being more local. Take OTC trade reporting. You want to ensure data are aligned, but there is not a lot of coordination on that. Some countries
have national trade repositories, while others are more open to different models. But are there enough national trade repositories around that you may need to report to potentially different TRs, and are data formats aligned? Are Asian regulators sitting down to talk about data formats with each other? They’re not.”

**CHANGES AFOOT?**

Some of the regulatory reforms being implemented in the West could have unintended consequences in Asia, given their impact on foreign financial institutions operating in the region, Ewins noted. The recent EU regulatory developments limiting bankers’ bonuses are, if implemented, likely to have a negative effect on the hiring situation for branches and subsidiaries of European banks operating in places such as Hong Kong and Singapore, where they could face staff retention issues as key staff consider moving to locally registered financial institutions to avoid the bonus cap.

“You have the unintended consequences of trying to regulate and govern risk management in Europe, potentially causing competition problems for banks ... in Asia,” he said. “An EU bank trying to hire someone in Hong Kong is going to have to be more constrained compared to a Hong Kong bank.”

Plans are also being studied in the region to introduce risk and resolution planning (RRP) schemes for banks, also known as “living wills,” to protect customers and shareholders against a banking collapse. However, with banks in the region running much higher capitalization ratios than their U.S. and European counterparts, it was not quite clear how urgent it is to introduce living wills for banks in places such as Hong Kong, Ewins noted.

However, a side effect of the introduction of such schemes in the West could be that banks’ operations in Asia are restructured, he warned. “If you have a living will in Europe, and you’re being told that your structure is too complicated, you will have to reorganize some [assets],” he said. “That is potentially going to trigger some changes in other parts of the world, such as Asia, as to what you do with your group. For the foreign players in Hong Kong, it could be quite a big potential change if they have to streamline their group structures.”

Further involvement with international standard-setting bodies such as IOSCO and the Bank for International Settlements was likely to be the best way for Asia to ensure any new regulations are drafted with the region’s needs in mind, the lawyers said.

“These developments are global in nature and are important, so Asia cannot ignore them,” said Yeoh. “In Singapore, the MAS has been more proactively engaging with international agencies for over 15 years now. It has been a keen participant in helping set standards. This is now becoming widespread in Asia, and that is a good thing.”

---

**REUTERS/Yuriko Nakao**