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MAS Proposes Mandatory Reference Checks for Representatives & Certain Employees of Financial Institutions

Executive Summary

On 14 May 2021, the Monetary Authority of Singapore ("**MAS**") issued a consultation paper seeking feedback on proposals to mandate reference checks of representatives and specific employees of financial institutions in Singapore ("**FIs**").

This consultation follows an earlier July 2018 MAS consultation paper on proposals to mandate reference checks for representatives of FIs ("**2018 Consultation Paper**"). In 2018, MAS proposed, among other things, that FIs conduct reference checks and respond to reference check requests on prospective representatives.¹ Respondents were broadly supportive of the proposal for FIs (including registered fund management companies) to conduct reference checks on prospective representatives and to respond to reference check requests. For details, please refer to MAS Response to feedback received on the 2018 Consultation Paper issued on 14 May 2021, available [here](#).

The practice of conducting reference checks is not new. Under the present framework, the regulatory expectation is to conduct reference checks with the prospective representative's past employer(s) and assess the individual's fitness and propriety. Further, FIs are expected to conduct adequate due diligence on prospective hires to assess their character, integrity and track record.²

To maintain public confidence and trust in the financial industry, a collective effort across the financial industry in the form of mandatory reference checks extending beyond representatives to other employees, and to ensure meaningful information exchange, will be introduced. Under the proposed mandatory reference check framework, FIs will be required to respond to reference check requests, based on a set of minimum mandatory information within a specified period of time. MAS' proposals in the present consultation take into account feedback from the 2018 Consultation Paper so that reference check requirements for representatives and other relevant employees are aligned, where appropriate.

This Update highlights the salient points of MAS' proposals relating to the scope of FIs and employees that will be subject to these mandatory reference checks requirements, standardising requirements

¹ As defined under the Securities and Futures Act and Financial Advisers Act and includes representatives for registered fund management companies and broking staff for insurance brokers.

² These expectations are set out in MAS' Guidelines on Risk Management Practices – Internal Controls.

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concerning request and response to reference checks, FIs' duty on record keeping and investigation/disciplinary process as well as the implementation timeline.

The consultation ends on **25 June 2021**.

Scope of FIs Subject to Mandatory Reference Check Requirements

To mitigate risks of individuals who engage in misconduct in one firm and move across different segments of the industry without disclosing earlier misconduct, MAS proposes to apply the requirements to conduct reference checks and respond to reference check requests to various FIs regulated by MAS. These FIs include (amongst others):

- Any holder of a capital markets services licence under the Securities and Futures Act and any person exempted from holding a capital markets services licence under paragraphs 3(1)(d), 3A(1)(d), 5(1)(i) and 7(1)(b) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (which would hence include licensed fund managers and registered fund management companies);
- Any bank licensed under the Banking Act ("BA");
- Any merchant bank approved under section 28 of the Monetary Authority of Singapore Act;³
- Any insurer licensed under the Insurance Act ("IA");
- Any foreign insurer operating in Singapore under a foreign insurer scheme established under the IA;
- Any registered insurance broker under the IA;
- Any financial advisers licensed under the Financial Advisers Act;
- Any person exempted from holding a financial adviser's licence under Regulation 27(1)(d) of the Financial Advisers Regulations;
- Any operator of a designated payment system under the Payment Services Act 2019 ("PS Act");
- Any settlement institution of a designated payment system under the PS Act; and
- Any holder of a standard payment institution / major payment institution licence under the PS Act.

Representatives and Certain Employees Subject to Mandatory Reference Checks

Apart from imposing the requirement to conduct reference checks on representatives (covered in the 2018 Consultation Paper), MAS also proposes that FIs conduct reference checks on certain employees who may potentially cause harm to the FI and its customer's interests. These employees include individuals identified as senior managers, who are defined as those employed in an executive capacity

³ Merchant banks will be regulated under the BA. The legislative amendments have been passed in Parliament and are pending commencement.

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by, and are principally responsible for the day-to-day management of the FI, examples of which are set out in Annex A of the Consultation Paper.

Apart from senior managers, MAS also seeks feedback on extending the scope of conducting reference checks on individuals under two options. The first involves a greater scope of individuals, including those in risk-taking functions, risk management and control functions, who perform critical system administration or who can authorise or approve payments (excluding small payments). The second option is narrower and targets individuals whose functions can directly cause or result in financial risks to FIs or customers. This second option excludes individuals who are responsible for (i) taking actions that result in an FI undertaking operational risk, technology risk, legal risk, regulatory risk or reputational risk in the course of the FI's business; and (ii) auditing the FI's compliance with policies and procedures.

Cross-sector and Cross-border Reference Checks

When hiring individuals who are or were employees from FIs in Singapore *but outside the proposed scope of FIs*, or from companies located outside Singapore or non-financial sectors, FIs may face practical constraints when performing reference checks on prospective employees. This was a difficulty highlighted in the feedback to the 2018 Consultation Paper. MAS clarified that FIs are expected to take reasonable steps to request relevant information in such instances, and may proceed with recruitment if the FIs satisfy themselves of the fitness and propriety of the prospective employees, despite absence of or an insufficient response.

Standardise Requirements in Requesting for and Responding to Reference Checks

Minimum information to be covered in reference checks and lookback period

To standardise practices across the financial sector, the MAS proposes that the reference checks must cover specified mandatory information relating to the individual's records in the past five years. FIs would be required to provide the following mandatory information, including:

- Information on the individual's employment history with the FI, including duration of employment, roles and job functions, the reason(s) for cessation of employment (including resignation, termination etc);
- Compliance records relating to the individual's fitness and propriety, unless there is risk of tipping-off the individual which may compromise the integrity of investigations (if any). This includes incidents where the FI has knowledge, or reasonable grounds to believe that the individual has or may have been in breach of legal or regulatory requirements while performing his duties as

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employee of the FI, extent of customer detriment, and whether misconduct reports were filed with MAS, among other things;

- Last four balanced scorecard grades assigned to the individual (where applicable); and
- Persistency ratio of insurance policies sold by the individual and the methodology used in computing the persistency ratio (where applicable and available).

FIs' duty to respond

FIs will be required to provide the mandatory information no later than 21 calendar days from date of receipt of a reference check request. This is similar to the proposed requirements for representatives.

Representatives' / employees' right to review

To instil fairness and objectiveness, it is proposed that FIs be required to provide the individual with the right to view the references upon the individual's request. These proposed requirements on mandatory information and the response timeline are aligned with the proposals for representatives covered in the 2018 Consultation Paper.

Duty of care when providing reference checks

The MAS has clarified that the law will not provide an express legal immunity to FIs to absolve FIs from liability arising from the provision of responses to reference checks.

As such, FIs should bear in mind the duty of care owed by employers to employees (both present and former) when providing reference checks. Under Singapore law, the standard of care required of an employer when providing reference checks is discussed by the Singapore Court of Appeal in *Ramesh s/o Krishnan v AXA Life Insurance Singapore Pte Ltd* [2016] SGCA 47, where the court opined that an employer's duty is to exercise reasonable care to ensure that:

- (i) the facts stated in the reference are true; and (ii) any opinions expressed there are based on, and supported by, facts which are true;
- the reference does not give an unfair or misleading overall impression of the employee, even if the discrete pieces of information which it contains are factually correct; and
- it discloses any further information which relates to information that has already been provided, where to withhold such further information would render the information that has been disclosed incomplete, inaccurate or unfair.

On what constitutes "reasonable care", the court will have regard to the gravity of any adverse suggestion or inference contained in the reference, with the court scrutinising in greater detail the employer's conduct the greater the gravity of the adverse suggestion or inference.

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In light of the foregoing, FIs should take reasonable care in preparing and communicating references to ensure that reference checks are accurate, objective, clear, balanced and based on verifiable facts.

FI's Duty on Record Keeping and Investigation and Disciplinary Process

As employees (presently outside the scope of reference check requirements) may be hired into a role within the scope of reference check requirements, MAS proposes that FIs maintain records of specified mandatory information for all employees, except for ancillary service personnel,⁴ for a minimum period of five years, once the reference check requirements take effect.

Additionally, to ensure fairness and accuracy of the reference checks, any deviations from policies and procedures and laws and regulations that are applicable to the FIs and their employees (in relation to their duties and responsibilities in the FI) should be independently investigated, reported and addressed by the relevant parties. MAS also proposes that FIs establish a framework to provide guidance on actions that may be taken against employees who have breached policies, procedures and regulations. This is aligned with MAS' expectations under the MAS Guidelines on Risk Management Practices – Internal Controls. FIs are expected to establish robust internal investigation and disciplinary policies and processes, properly communicate these to all employees, conduct fair and objective investigation and disciplinary proceedings promptly and properly document these proceedings.

Implementation and Transitional Period

These reference check requirements will be applied on a prospective basis, and will be set out in the form of Notice(s) to be issued under the relevant legislation. Non-compliance with the Notice would be a breach of legal requirements. Potential consequences of breach include regulatory action by MAS for breach of the Notice (including but not limited to issuing warning or reprimand letters). MAS may also consider other actions, such as issuing further directions to, or imposing licence conditions (where applicable) on, the relevant FIs.

MAS proposes to effect the requirement for FIs to conduct reference checks on prospective employees and respond to reference check requests with a transitional period of six months, i.e. six months after the Notice(s) under the relevant legislation is published.

⁴ E.g. drivers, food and beverage personnel and clerical personnel

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Further Information

For details, click on the following links (available on the MAS website www.mas.gov.sg):

- MAS Consultation Paper titled "[Public Consultation on Proposals to Mandate Reference Checks](#)" (14 May 2021)
- [MAS Response to Feedback Received in Public Consultation on Revisions to the Misconduct Reporting Requirements and Proposals to Mandate Reference Checks for Representatives](#) (14 May 2021)
- MAS Consultation Paper titled "[Consultation Paper on Revisions to the Misconduct Reporting Requirements and Proposals to Mandate Reference Checks for Representatives](#)" (6 July 2018)

If you have any queries on the above development or would like to submit any feedback to the Consultation Paper, please feel free to contact our team members below who will be happy to assist.

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