

# MAS Consults on Revisions to Misconduct Reporting Requirements and Proposals to Mandate Reference Checks for Representatives

On 6 July 2018, the Monetary Authority of Singapore ("MAS") issued a *Consultation Paper on Revisions to Misconduct Reporting Requirements and Proposals to Mandate Reference Checks for Representatives*.

The proposed changes are in relation to the misconduct reporting requirements by financial institutions ("FIs"), to provide greater clarity on such requirements, and to reduce errors in the submission of misconduct reports. MAS is also proposing to standardise industry practices by mandating FIs to carry out and respond to reference check requests on representatives, as well as setting out the mandatory information that must be provided in a reference.

This Update provides a brief summary of the key and salient points of the proposals in the consultation papers. The consultation paper may be obtained from MAS' website [here](#). The deadline for public feedback on the consultation paper is **6 August 2018**.

We would be pleased to assist with any feedback that your organisation would like to provide MAS on the proposals in the abovementioned consultation paper.

## Proposed changes to misconduct reporting requirements

### *Proposal 1: Scope to include Registered Fund Management Companies*

The requirements on reporting of misconduct ("**misconduct reporting requirements**")

committed by representatives or broking staff (collectively "**representatives**") currently apply only to the following FIs: (a) Capital Markets Services licence holders; (b) Licensed financial advisers; (c) Registered insurance brokers; and (d) Exempt FIs.

These reporting requirements currently do not apply to Registered Fund Management Companies ("**RFMCs**") although they are required to comply with MAS *Guidelines on Fit and Proper Criteria* to satisfy MAS that their shareholders, directors and representatives, as well as the RFMC itself, are fit and proper.

In order to ensure greater consistency in the handling and reporting of misconduct by representatives, and measures to satisfy FIs of the fitness and propriety of potential representative hires, MAS proposes to apply the misconduct reporting requirements to RFMCs as well.

### *Proposal 2: Revisions to the categories of reportable misconduct*

To provide greater clarity on the types of misconduct that should be reported, and to reduce overlap between the different categories of misconduct, MAS proposes to revise the categories of reportable misconduct by providing greater clarity on the intended acts that should be reported to MAS, removing certain categories to reduce overlap, and introducing new categories to capture acts that render a representative unfit to conduct regulated activities (see Table 2 of the Consultation Paper).

*Proposal 3: FIs to update MAS on the outcome of police investigations*

The current misconduct reporting requirements require FIs to lodge a police report and submit a copy of the same to MAS when they have reasons to suspect that their representatives have committed any offence involving cheating, dishonesty, fraud, forgery, misappropriation of monies, or criminal breach of trust.

To ensure timely updating, the proposal is for FIs to update MAS no later than 14 days after they are aware of the outcome of police investigations.

*Proposal 4: FIs to notify representatives when they are under investigation and provide them with a copy of the misconduct report filed with MAS*

FIs are currently expected to conduct investigations into misconduct committed by their representatives, which include conducting interviews with several relevant parties, including the representative. MAS, however, has observed differing practices and standards in the investigations conducted by FIs, particularly with regard to whether the representative under investigation is notified of such investigation, and protecting confidentiality of customers.

MAS, therefore, proposes to require FIs to notify their representatives when they are under investigation and to provide them with a copy of the **misconduct report**, including subsequent updates, except where such disclosure would tip off the representative or compromise the quality of the FI's investigation. Examples include misconduct that relates to money laundering, financing terrorism, or other offences that may require the lodgement of Suspicious Transaction Reports under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act and the Terrorism (Suppression of Financing) Act.

*Proposal 5: Enhanced standards for FIs' investigation processes and requirement for FIs to submit investigation reports to MAS in a prescribed format*

FIs are currently expected to conduct investigations into misconduct committed by their representatives and to keep proper records of such investigations. MAS, however, has observed varying standards in FIs' investigation processes, and as such, intends to provide greater guidance on expectations with regard to the rigour and quality of such investigations.

MAS also proposes to require FIs to submit their investigation reports in a **prescribed format** to ensure that consistent and sufficient information is provided.

**Proposed requirements relating to reference checks**

*Proposal 6: FIs to conduct reference checks on prospective representatives and to share information on their representatives in response to reference check requests*

FIs are currently expected to carry out due diligence on the fitness and propriety (including previous conduct) of representatives, in accordance with MAS *Circular on Due Diligence Checks and Documentation in Respect of the Appointment of Appointed, Provisional and Temporary Representatives*. However, MAS has observed differing standards in FIs' practices when conducting and responding to reference check requests.

MAS, therefore, proposes to make it mandatory for recruiting FIs to conduct reference checks on their prospective representatives, and to require FIs to provide a set of mandatory information on their representatives in response to reference check requests from the representatives' prospective principal companies which are FIs regulated by MAS.

In providing information in the references, FIs should exercise reasonable care to ensure that such information is accurate and objective. To standardise practices in the industry and improve the effectiveness of reference checks, the proposal is to require FIs to provide certain mandatory information (where applicable) no later than 14 days from the date of receipt of a reference check request, which includes, among others: (a) information pertaining to the individual's appointment history with the FI; and (b) compliance records on the individual's fitness and propriety.

It is also the duty of FIs to ensure that their representatives are fit and proper on an ongoing basis. Some regulators mandate FIs to provide updates on prior responses to reference checks when new information on their former representatives surfaces. However, MAS recognises that information on a representative could change after references are provided, and that this may pose a challenge for FIs to track references that they previously provided.

MAS seeks views on the alternative approach of requiring representatives to provide their current or prospective FIs with any misconduct report that has been filed against them, including subsequent updates to such report.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the partner at WongPartnership that you normally deal with or any of the following partners:

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