

Singapore Regulatory Update – MAS Releases Consultation on Increasing its Investigative Powers (August 2021)

Introduction

Earlier in July this year, the Monetary Authority of Singapore (“MAS”) released a consultation paper on its proposed plans to increase its investigative powers under the various MAS administered acts.

The consultation paper also looks to provide clarity on MAS’ current investigative powers under the relevant acts. The proposed changes and amendments will take the form of additional provisions or updates to current provisions that will include the following relevant acts:

- Banking Act (“BA”)
- Credit Bureau Act
- Financial Advisors Act (“FAA”)
- Insurance Act (“IA”)
- Payment Services Act (“PS Act”)
- Securities and Futures Act (“SFA”)
- Trust Companies Act (“TCA”)
- Upcoming new Omnibus Act for the financial sector (“new Act”)

In this regulatory update we have outlined the proposed changes as well as addressed the areas that the MAS has felt additional clarification was needed.

Enhancements to MAS’ Investigative Powers

To emphasise its ongoing commitment to effectively enforce the laws and regulations under its remit, MAS has proposed the following seven enhancements that they believe will substantially strengthen their investigative powers.

1. Require any person to provide information for the purpose of investigation

To achieve this outcome, the MAS is proposing to introduce in the BA and the new Act and update the other relevant acts to include provisions that will give power to MAS to require information, including information in electronic form, from any person for the purpose of an investigation. The inspection powers that are proposed under the new Act will only apply to FIs that are regulated by MAS and will not apply to employees of the FI.

This additional power will now allow the MAS to request information from ex-employees of the FI under investigation or inspection.

2. Require any person to appear for examination

The ability to conduct an examination should allow MAS investigators the chance to obtain first-hand information from individuals on matters that may not have adequate documentary supporting evidence. As these powers already exist under the SFA and FAA, MAS is therefore proposing to align these powers across all other relevant acts.

3. Recording statement from person at examination

The SFA and the FAA already have existing provisions that allow MAS investigators, upon request, to provide an individual under examination with a copy of a written record of the exam, subject to any conditions that the investigator may impose. These provisions do not specify when MAS must provide the copy of the recorded statement after the request has been made. In practice, MAS typically provide the copy of the recorded statement when they deem it to be appropriate (i.e. when the disclosure will not prejudice ongoing investigations).

To make things abundantly clear, MAS is proposing to amend these provisions and introduce additional provisions to the other relevant acts to address its current practice.

4. Obtaining a court warrant if a person fails to appear for examination with no reasonable excuse

To allow MAS sufficient power to examine a witness effectively if they believe it is important that they can secure an individual's attendance at interviews. To provide further powers, MAS has proposed to include under the relevant acts the ability for MAS to report any failure by a witness to attend an interview to a Magistrate, who may then issue a warrant ordering the individual in question to attend the interview. Failure to comply with the warrant would result in the individual being subject to penalties for contempt of Court as well as non-compliance with MAS requirements.

5. Entering premises without a warrant

In what appears to be the most significant change proposed in the consultation, the proposed change will allow MAS to enter a premises during an investigation without notice or a court warrant should it suspect that evidence is being destroyed or tampered with. MAS is proposing to remove the requirement under the SFA and FAA to provide two days' notice to enter a premise without a warrant and to include new provisions under all other relevant acts to streamline this requirement across the board.

MAS has made it clear that this power will not allow them to use force to gain entry.

6. Obtaining warrants to seize evidence

MAS has proposed several measures related to its ability to seize evidence in the course of an investigation. Previously, the MAS has had the ability to compel FIs to produce evidence, but they were unable to require individuals to provide evidence. This consultation outlines changes that will allow the MAS the ability to compel any individual to provide evidence even if they are no longer employed by the FI, where previously, the MAS would have had no jurisdiction. This includes an extension of the MAS' ability to reprimand individuals for failing to provide evidence when required even when they are no longer licensed.

7. Transferring evidence between MAS and other agencies

Finally, the MAS is proposing to further enable the sharing of evidence between itself, the Police (which includes the Commercial Affairs Department), and the Public Prosecutor. Previously, evidence in relation to Part XII of the SFA (Market Misconduct) could be transferred from the Police to the MAS but not evidence under Part VII (Disclosure of Interests). These proposals would allow for any evidence procured by the police under the commission of Part VII offences to be shared with the MAS so that civil prosecutions may be initiated.

The proposals by the MAS also seek to improve the efficiency of the transfer process. The consultation alludes to previous situations where the MAS has been better placed to lead an



investigation, but current regulations have led to an overly burdensome process with limited sharing leading to duplication of investigation efforts and evidence by the Police and the MAS. The proposals made seek to make that process easier.

Conclusion

Even though it is unlikely that these changes will have a direct impact on your operations, it is important that if you are subject to an investigation or inspection by MAS that you are aware of the powers that they have in place and the enhanced powers that they are looking to implement in the near future.

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