

Singapore: MAS finalises changes to misconduct reporting regime for representatives

To provide greater clarity on the existing misconduct reporting requirements for representatives and broking staff, and enhance standards of investigations on misconduct, MAS will be revising the misconduct reporting regime. Further, to standardise industry practices on due diligence conducted on prospective representatives and broking staff, MAS will be mandating financial institutions to perform and respond to reference check requests, with a list of baseline mandatory information that must be obtained or provided in the reference check.

June 2021

In brief

The Monetary Authority of Singapore (MAS) has recently issued its [response to the feedback received](#)¹ on its previous consultation dated 6 July 2018² ("**Response**"). In the Response, MAS confirmed changes that will be made to the misconduct reporting regime, and the introduction of a new requirement mandating relevant financial institutions (FIs) to perform and respond to reference checks in accordance with a common baseline standard. In summary:

- (a) There will be changes to the list of reportable misconduct of representatives and broking staff (collectively, "**Representatives**") under the relevant MAS Notices.³
- (b) MAS will expand on its expectations on the rigour and quality of FIs' investigations into misconduct committed by Representatives.
- (c) There will be changes to the reporting forms, comprising a misconduct report and an investigation report, as well as the reporting timelines.
- (c) FIs will be required to extend copies of misconduct reports filed with the MAS to the Representatives.
- (d) FIs will be mandated to carry out and respond to reference checks on proposed Representatives, with their previous or current employers, under a common standard framework.

Further details on the above changes, and other related changes, are set out below.

The new requirements follow a series of proposals aimed at enhancing fitness and propriety and individual accountability. These include the new [Guidelines on Individual Accountability and Conduct](#),⁴ which will come into effect on 10 September 2021.

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¹ Please see: <https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/2021/Response-to-Revisions-to-Misconduct-Reporting-and-Reference-Checks-Requirements.pdf>

² Please see our earlier Alert: [MAS proposes to standardise misconduct reporting and reference check details for a summary of these proposals](#).

³ Notice SFA 04-N11 under the Securities and Futures Act, Notice FAA-N14 under the Financial Advisers Act, and Notice 504 under the Insurance Act

⁴ Please see: <https://www.mas.gov.sg/regulation/guidelines/guidelines-on-individual-accountability-and-conduct>



Further, on 14 May 2021, MAS also issued a [Consultation Paper on Proposals to Mandate Reference Checks](#),⁵ proposing to extend the mandatory reference check to a broader segment of the financial industry, and on a broader segment of employees. This consultation closes on 25 June 2021. A summary of this Consultation may be found in our client alert [Singapore: MAS consults on proposals to mandate reference checks](#).

A. Recommended actions

FIs should take note of the following key actions in preparation for the revised misconduct reporting and new mandatory reference checks framework:

- Take note of the changes to the list of reportable misconduct under the relevant Misconduct Notices and update your internal policies where relevant. The Response provides further guidance on examples of misconduct that would fall under the list of reportable misconduct, which may be useful.
- Assess your current misconduct investigation policy or other consequence management policy, and enhance the policy where necessary to comply with the enhanced standards on investigation process.
- Take note of the new reporting formats, which will comprise a misconduct report and an investigation report. FIs will also be required to share a copy of the misconduct report filed with MAS with the Representatives.
- Take note of the new reporting timelines (broadly from 14 days to 21 days).
- Perform mandatory reference checks on prospective Representatives with their current or past employers, by requesting for certain baseline mandatory information. FIs which receive reference checks will be mandated to respond within 21 days.
- FIs should consider updating their record keeping policies and responding to reference check requests, so that FIs have accurate mandatory information readily available and can respond to requesting FIs within the statutory deadline. FIs should also consider implementing appropriate policies and standards to ensure the accuracy, completeness and integrity of information shared with other FIs, not only to comply with statutory requirements but also to mitigate risks of other potential legal challenges (e.g., defamation lawsuits).

B. Summary of changes to the misconduct reporting regime and new mandatory reference check requirements

Proposed changes to misconduct reporting requirements	
Proposal 1: Scope to include Registered Fund Management Companies (RFMC)	<p>Taking the view that misconduct reporting requirements will complement the Guidelines on Fit and Proper Criteria applicable to RFMCs and their representatives, MAS will proceed with this proposal to apply the misconduct reporting requirements to RFMCs.</p> <p>The misconduct notice for RFMCs, when issued, will provide RFMCs clarity on the information and details that MAS will expect them to provide when they uncover incidents or misconduct which could impact their representatives' fitness and propriety.</p>

⁵ Please see: <https://www.mas.gov.sg/publications/consultations/2021/consultation-paper-on-proposals-to-mandate-reference-checks#:~:text=This%20consultation%20seeks%20view%20on,a%20specified%20period%20of%20time.>



<p>Proposal 2: Revisions to the categories of reportable misconduct in:</p> <p>(a) Notice SFA 04-N11 Reporting of Misconduct of Representatives by Holders of Capital Markets Services Licence and Exempt Financial Institutions under the Securities and Futures Act (SFA);</p> <p>(b) Notice FAA-N14 Reporting of Misconduct of Representatives by Financial Advisers under the Financial Advisers Act (FAA); and</p> <p>(c) Notice 504 Reporting of Misconduct of Broking Staff by Insurance Brokers under the Insurance Act (IA),</p> <p>(collectively "Misconduct Notices").</p>	<p>The list of reportable misconduct will be amended as follows:</p> <table border="1"> <thead> <tr> <th data-bbox="518 347 869 425">Current Categories of Reportable Misconduct</th> <th data-bbox="869 347 1233 425">New Categories of Reportable Misconduct</th> </tr> </thead> <tbody> <tr> <td data-bbox="518 425 869 806"> <p>Acts involving fraud, dishonesty or other offences of a similar nature (e.g., cheating, fraud, forgery, misappropriation of monies or criminal breach of trust)</p> </td> <td data-bbox="869 425 1233 806"> <p>This will be expanded to acts involving fraud, dishonesty, illegal monetary gains, or other offences of a similar nature (e.g., cheating, forgery, misappropriation of monies, criminal breach of trust, bribery, money laundering or tax evasion).</p> </td> </tr> <tr> <td data-bbox="518 806 869 1265"> <p>Acts relating to market conduct provisions under Part XII of the SFA (e.g., prohibited conduct or insider trading as set out in Part XII of the SFA).</p> </td> <td data-bbox="869 806 1233 1265"> <p>Additional examples of market conduct will be added to this category, such as securities market manipulation and financial benchmarks manipulation, to align with the expanded market conduct provisions under Part XII of the SFA.</p> <p>No change in substance.</p> </td> </tr> <tr> <td data-bbox="518 1265 869 2049"> <p>Acts involving inappropriate advice, misrepresentation, or inadequate disclosure of information while performing acts regulated under the FAA.</p> </td> <td data-bbox="869 1265 1233 2049"> <p>This will be amended to acts involving inappropriate advice or recommendation, misrepresentation, gross negligence, or inadequate disclosure of information which has material adverse impact on the interests of the client or impinges on the fitness and propriety of the Representative.</p> <p>The revisions seek to align with the classification of Category 1 infractions under the Notice on Requirements for the Remuneration Framework for Representatives and Supervisors and</p> </td> </tr> </tbody> </table>	Current Categories of Reportable Misconduct	New Categories of Reportable Misconduct	<p>Acts involving fraud, dishonesty or other offences of a similar nature (e.g., cheating, fraud, forgery, misappropriation of monies or criminal breach of trust)</p>	<p>This will be expanded to acts involving fraud, dishonesty, illegal monetary gains, or other offences of a similar nature (e.g., cheating, forgery, misappropriation of monies, criminal breach of trust, bribery, money laundering or tax evasion).</p>	<p>Acts relating to market conduct provisions under Part XII of the SFA (e.g., prohibited conduct or insider trading as set out in Part XII of the SFA).</p>	<p>Additional examples of market conduct will be added to this category, such as securities market manipulation and financial benchmarks manipulation, to align with the expanded market conduct provisions under Part XII of the SFA.</p> <p>No change in substance.</p>	<p>Acts involving inappropriate advice, misrepresentation, or inadequate disclosure of information while performing acts regulated under the FAA.</p>	<p>This will be amended to acts involving inappropriate advice or recommendation, misrepresentation, gross negligence, or inadequate disclosure of information which has material adverse impact on the interests of the client or impinges on the fitness and propriety of the Representative.</p> <p>The revisions seek to align with the classification of Category 1 infractions under the Notice on Requirements for the Remuneration Framework for Representatives and Supervisors and</p>
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		<p>Independent Sales Audit Unit.⁶ As a corollary to this, any misconduct reported under this category should therefore be assessed as a Category 1 infraction under the balanced scorecard framework.</p>
	<p>Acts involving failure to exercise due care and diligence, misrepresentation or inadequate disclosure of information for insurance broking activities</p>	<p>This will be amended to acts involving inappropriate advice or recommendation, misrepresentation, gross negligence, or inadequate disclosure of information which has material adverse impact on the interests of the client or impinges on the fitness and propriety of the broking staff.</p>
	<p>Failure to satisfy the Guidelines on Fit and Proper Criteria</p>	<p>This will be removed.</p>
	<p>Any type of misconduct other than those set out above, resulting in non-compliance with regulatory requirement relating to the provision of any regulated activity, or serious breach of the FI's internal policy or code of conduct which would render the Representatives liable to demotion, suspension or termination of the Representative's employment or arrangement with the FI.</p>	<p>This will be removed.</p>
<p>To provide industry guidance, MAS has published a list of non-exhaustive examples⁷ to illustrate the factors that FIs</p>		

⁶ Please see: <https://www.mas.gov.sg/regulation/notices/notice-faa-n20>

⁷ See Annex 1 pages 36 to 38 at: <https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/2021/Response-to-Revisions-to-Misconduct-Reporting-and-Reference-Checks-Requirements.pdf#page=36&zoom=100,116,118>



	should take into account when determining if an act constitutes a reportable misconduct.								
Proposal 3: Enhanced standards for FIs' investigation processes and requirement for FIs to submit investigation reports to MAS in a prescribed format	MAS will expand on the current guidance set out in the Misconduct Notices with regard to MAS' expectations on the rigour and quality of FIs' investigations into misconduct committed by their Representatives. MAS expects FIs to put in place an investigation process to ensure a holistic and fair assessment of misconduct committed by their Representatives, and consider various sources of available information to establish reasonable grounds that a misconduct has been committed.								
Proposal 4: Amendments to reporting forms and reporting timelines	<p>MAS will require FIs to submit a misconduct report and an investigation report to the MAS, using the prescribed Misconduct Report and Investigation Report Template.⁸</p> <p>MAS will extend the reporting timeline for FIs to lodge a misconduct report with MAS from 14 days to 21 days. The timeline will start running from the time the FI has reasonable grounds to believe that a misconduct has been committed, as opposed to upon discovery of the misconduct.</p> <p>MAS will no longer require FIs to submit an annual nil declaration when no misconduct is reportable in the calendar year.</p> <p>The new reporting timelines are as follows:</p> <table border="1"> <thead> <tr> <th>Event</th> <th>Timeline</th> </tr> </thead> <tbody> <tr> <td>When FI has reasonable grounds to believe that a misconduct has been committed</td> <td>T-date</td> </tr> <tr> <td>Deadline for FI to file a misconduct report with MAS: The misconduct report would typically be accompanied with an investigation report for cases where an investigation was conducted and concluded.</td> <td>T + 21 days</td> </tr> <tr> <td>The occurrence of a significant development subsequent to FIs' original submission, such as the following: <ul style="list-style-type: none"> • FI has lodged a police report on the misconduct. • FI has completed its internal investigations on the misconduct. • FI has decided on and meted out disciplinary action against the Representative. </td> <td>D-date</td> </tr> </tbody> </table>	Event	Timeline	When FI has reasonable grounds to believe that a misconduct has been committed	T-date	Deadline for FI to file a misconduct report with MAS: The misconduct report would typically be accompanied with an investigation report for cases where an investigation was conducted and concluded.	T + 21 days	The occurrence of a significant development subsequent to FIs' original submission, such as the following: <ul style="list-style-type: none"> • FI has lodged a police report on the misconduct. • FI has completed its internal investigations on the misconduct. • FI has decided on and meted out disciplinary action against the Representative. 	D-date
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⁸ See Annex 1 pages 36 to 38 at: <https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/Annex-C--Investigation-Report-Template.pdf>



	<ul style="list-style-type: none"> • There has been a change in disciplinary action taken against the Representative, e.g., new investigation outcome following the receipt of new evidence or successful appeals by the Representative. • FI is made aware of the outcome of police investigations. • FI has put in place new control measures to prevent recurrence of similar misconduct. 	
	<p>Deadline for FIs to update MAS (through lodgement of an update to the misconduct report, investigation report or update to investigation report, whichever is applicable)</p>	<p>D + 21 days</p>
<p>Proposal 5: FIs to provide Representatives with a copy of the misconduct report filed with MAS.</p> <p>Representatives to provide their current or recruiting FIs with misconduct reports.</p>	<p>FIs will be mandated to provide the Representatives concerned with a copy of the misconduct report that was filed against them (including any subsequent updates to the report), within 21 calendar days from the date of submission to the MAS.</p> <p>Where relevant, FIs will be required to take reasonable steps to contact former Representatives to provide them with a copy of the misconduct report.</p> <p>Copies of reports provided to the Representatives should not contain confidential client information.</p> <p>Details of investigation should be set out in a separate investigation report submitted to the MAS, but need not be provided to the Representatives.</p> <p>Representatives will also be required to provide their current or recruiting FIs with any misconduct report that has been filed against them, including subsequent updates to the misconduct report.</p>	
<p>Proposal 6: FIs to update MAS on the outcome of police investigations.</p>	<p>For misconduct that has been reported to the police, MAS will require FIs to update MAS within 21 days following the receipt of information from the police or other sources on the conclusion of the investigation, and whether further action will be taken.</p>	
<p>Proposed requirements relating to mandatory reference checks</p>		
<p>Proposal 7: FIs to conduct mandatory reference checks on their prospective Representatives.</p> <p>FIs to respond to reference checks upon request.</p>	<p>MAS will mandate FIs which are hiring or appointing Representatives to conduct reference checks on prospective Representatives with their current/past employer(s) during the last five years.</p> <p>The requirement to conduct reference checks is already contained in the Circular on Due Diligence Checks and</p>	



Documentation in Respect of the Appointment of Appointed, Provisional and Temporary Representatives.⁹

However, under the new proposals, the requirement to conduct reference checks will extend to RFMCs and venture capital fund managers, as well as broking staff for insurance brokers.

MAS will also prescribe a list of baseline mandatory information (where applicable) to be requested in the reference check, which includes:

(a) the Representatives' appointment history with the FI (appointment, roles and job function and reason for cessation), and

(b) compliance records relating to the individual's fitness and propriety. A non-exhaustive list of compliance records will be provided by MAS.

FIs who receive a reference check request will also have a duty to respond no later than 21 calendar days from the date of receipt of a request, unless with respect to compliance records, there is a risk of tipping off the individual which may compromise the integrity of the investigation.

MAS will not provide legal immunity to FIs to absolve them of liability arising from their responses to reference check requests, but has advised FIs, when responding to reference check requests, to comply with the following:

(a) Provide true and accurate information and not act with malice.

(b) Exercise reasonable care in preparing and communicating references that are accurate, objective, clear, balanced and based on verifiable facts.

(c) Avoid selectively disclosing information, if withholding certain information will render the reference incomplete, inaccurate or unfair.

Please see our earlier Alert: [The Singapore Court of Appeal Clarifies the Standard of Care Owed by Employers to Former Employees When Providing References](#). This case provides valuable guidance to employers in respect of the exercise of adequate care when providing references in respect of former employees, and demonstrates the stringent standard of care against which employers will be held.

⁹ Please see: <https://www.mas.gov.sg/regulation/circulars/cmi-012011-due-diligence-checks-and-documentation-in-respect-of-the-appointment-of-appointed-provisional-and-temporary-representatives>