

## Singapore: MAS consults on proposals to mandate reference checks

To limit “rolling bad apples” across the broader segment of the financial industry, MAS is consulting on its proposal to introduce mandatory reference checks to a broader segment of the financial industry, beyond representatives and insurance broking staff to include senior management.

June 2021

### In brief

Currently, capital markets services licence holders, exempt financial institutions, licensed financial advisers and exempt financial advisers are expected to conduct reference checks on representatives that they intend to appoint under the Securities and Futures Act (SFA) and Financial Advisers Act (FAA). The Monetary Authority of Singapore (MAS) has recently confirmed that it will introduce a new framework, mandating these financial institutions, as well as insurance brokers, registered fund management companies and venture capital fund managers, to perform reference checks with current and previous employers of proposed representatives or broking staff (as the case may be), based on a set of minimum mandatory information. Financial institutions will also be mandated to respond to reference check request within a specified timeline. Please refer to our client alert [Singapore: MAS finalises changes to misconduct reporting regime for representatives](#) for further details.

On 14 May 2021, MAS issued the [Consultation Paper on Proposals to Mandate Reference Checks](#).<sup>1</sup> MAS proposes to introduce similar mandatory reference check requirements to a broader segment of the financial industry, requiring financial institutions (FIs) to perform and respond to reference checks on senior managers and other employees, based on a set of minimum mandatory information and within a specified period of time. This consultation closes on 25 June 2021.

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<sup>1</sup> Please see: <https://www.mas.gov.sg/publications/consultations/2021/consultation-paper-on-proposals-to-mandate-reference-checks>



## A. Recommended actions

The proposals, if and when implemented, will have an impact on an FI's recruitment process, record keeping requirements, and investigation and disciplinary action policies across a wide range of employees. FIs will also likely need to consider implementing appropriate internal standards and processes for responding to reference checks, not only to comply with the regulatory requirements but also to mitigate the risk of other potential legal challenges (e.g., defamation law suits).

FIs should consider the proposals and the potential impact of the mandatory reference checks requirements. Any feedback on the consultation should be submitted to the MAS by 25 June 2021. Please feel free to contact us if you would like assistance with submission of feedback.

## B. Summary of MAS' proposed extension of the mandatory reference check requirements

### 1. Proposed in-scope FIs

MAS proposes to apply the requirements to conduct mandatory reference checks and respond to reference check requests to the following FIs:

- (i) any bank licensed under the Banking Act;
- (ii) any person licensed under the BA to carry on the business of issuing credit cards or charge cards in Singapore;
- (iii) any merchant bank approved under section 28 of the Monetary Authority of Singapore Act ("**MAS Act**");
- (iv) any finance company licensed under the Finance Companies;
- (v) any insurer licensed under the Insurance Act (IA);
- (vi) any foreign insurer operating in Singapore under a foreign insurer scheme established under the IA;
- (vii) any designated financial holding company approved under section 28 of the MAS Act;
- (viii) any holder of a capital markets services licence under the SFA;
- (ix) any financial adviser licensed under the FAA;
- (x) any person exempted from holding a financial adviser's licence under regulation 27(1)(d) of the Financial Advisers Regulations;
- (xi) any registered insurance broker under the IA;
- (xii) any person exempted from the requirement to hold 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 (Licencing and Conduct of Business) Regulations;
- (xiii) any trust company licensed under the Trust Companies Act;
- (xiv) any person approved under the SFA to act as a trustee of a collective investment scheme which is authorised under section 286 of the SFA and constituted as a unit trust;
- (xv) any approved exchange or recognised market operator under the SFA that is incorporated in Singapore;
- (xvi) any licensed trade repository under the SFA;
- (xvii) any approved clearing house or recognised clearing house under the SFA that is incorporated in Singapore;
- (xviii) the "Depository" under the SFA;
- (xix) any approved holding company under the SFA;



- (xx) any authorised benchmark administrator or exempt benchmark administrator under the SFA;
- (xxi) any authorised benchmark submitter or designated benchmark submitter under the SFA;
- (xxii) any operator of a designated payment system under the Payment Services Act 2019 (**PS Act**);
- (xxiii) any settlement institution of a designated payment system under the PS Act;
- (xxiv) any holder of a standard payment institution licence under the PS Act;
- (xxv) any holder of a major payment institution licence under the PS Act; and
- (xxvi) any licensed credit bureau under the Credit Bureau Act 2016.

## 2. Proposed in-scope employees

In addition to representatives under the SFA and FAA, and broking staff under the IA, MAS is proposing for FIs to perform and respond to reference checks on senior managers.

MAS defines senior managers as those who the FI employs in an executive capacity, and are principally responsible for the day-to-day management of the FI. A list of senior managers is set out in Annex A to the consultation. They include:

- chief executive officer;
- deputy chief executive officer and/or resident manager;
- chief financial officer or head of finance;
- chief risk officer or head of risk;
- chief operating officer or head of operations;
- chief information officer;
- chief technology officer, or head of information technology;
- chief information security officer or head of information security;
- chief data officer;
- head of business function relevant to the FI;
- head of actuarial, appointed actuary or certifying actuary;
- head of human resources;
- head of compliance;
- head of financial crime prevention;
- head of internal audit; and
- chief regulatory officer.

MAS is also considering and inviting feedback on extending the reference check requirements to a third group of employees. For this group, MAS is considering two options:

(a) Option 1: with some exception, this option aligns with scope of functions which are critical to the integrity and functioning of FIs under MAS' proposed use of Harmonised and Expanded Power to issue Prohibition Orders to bar persons from conducting certain activities or from holding key roles in FIs for a period of time<sup>2</sup>; or

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<sup>2</sup> Part of the new omnibus Act for the financial sector proposed by MAS on 21 July 2020 please see: [https://www.mas.gov.sg/-/media/MAS/New s-and-Publications/Consultation- Papers/2020-July-Consultation-on- FSMA/Consultation- Paper-on-a New -Omnibus-Act- for-the-Financial-Sector.pdf](https://www.mas.gov.sg/-/media/MAS/New%20s-and-Publications/Consultation-Papers/2020-July-Consultation-on-FSMA/Consultation-Paper-on-a-New-Omnibus-Act-for-the-Financial-Sector.pdf)



(b) Option 2: this option excludes certain employees under Option 1, by focusing only on functions that can directly cause or result in financial risks to FIs or customers:

Option 1:	Option 2:
<p>Under this option, the group of employees covered are as follow s:</p> <p>(i) <b>Individuals in risk-taking functions</b>, i.e., individuals responsible for taking actions that result in an FI undertaking any specified risk. Specified risk refers to credit risk, asset risk, liquidity risk, market risk, operational risk, technology risk, market conduct risk, money laundering/terrorism financing risk, legal risk, reputational risk, regulatory risk.</p> <p>(ii) <b>Individuals in risk management and control functions</b>, i.e. individuals who are responsible for:</p> <p>(a) the identification, assessment, monitoring and reporting of specified risks arising from the FI's operations;</p> <p>(b) the development and implementation of policies and procedures intended to ensure compliance by the FI with the relevant legal and regulatory requirements in the jurisdictions where it conducts business; or</p> <p>(c) the monitoring of, auditing of and/or reporting on compliance with policies and procedures intended to ensure compliance by the FI with the relevant legal and regulatory requirements in the jurisdictions where it conducts business.</p> <p>(iii) <b>Individuals performing maintenance or operation of a critical system</b> who have been granted privileged access to the critical systems; and</p> <p>(iv) <b>Individuals who can authorise or approve payments (excluding small payments)</b>, i.e., individuals with mandate to authorise or approve the release of funds or transmission of digital payment tokens, to facilitate payments by an FI or a customer of the FI, regardless of the counterparty to which the payment is made.</p>	<p>Under this option, the group of employees covered will be as set out under Option 1, with the following exclusions:</p> <p>(i) Individuals in risk-taking functions who take actions that result in an FI undertaking operational, technology, legal, regulatory or reputation risk will be excluded from in-scope employees.</p> <p>(ii) Individuals in risk management and control functions will exclude those who are responsible for auditing the FI's compliance with policies and procedures.</p>

Examples of in-scope employees are provided in the consultation paper.

### 3. Proposed lookback period and right to view



MAS proposes that the reference checks conducted or provided must cover certain mandatory information for a lookback period of the past five calendar years (and not the years of employment even if there are gaps in the individual's employment history during this five-year period.)

FIs receiving a reference check request must respond no later than 21 calendar days from the date of receipt of a reference check request.

MAS also proposes the right for individuals to view the references prepared, and is specifically seeking feedback on potential challenges in operationalising such a requirement as well as any suggestions on how this requirement could be implemented.

#### **4. Mandatory minimum information in reference checks**

MAS proposes that FIs provide the following mandatory information for reference checks:

1. Information pertaining to the individual's employment history with the FI, including:

- (a) the duration of employment;
- (b) the roles and job functions of the individual (including last position held); and
- (c) the reason for cessation of appointment.

2. 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 the investigation, including but not limited to records concerning the following:

- (a) concluded investigations with reasonable grounds to believe that a wrongdoing has been committed and the extent of consumer detriment (where applicable) resulting from the wrongdoing;
- (b) ongoing investigations and the extent of consumer detriment (where applicable) resulting from the wrongdoing if substantiated;
- (c) incidents where the FI has knowledge of, or reasonable grounds to believe that the individual has or may have been in breach of legal or regulatory requirements administered by MAS or any other law, if those breaches relate to the individual's conduct of MAS-regulated activities, and the extent of consumer detriment (where applicable) resulting from the incident;
- (d) disciplinary actions taken against the individual or would have been taken against the individual if the individual was still with the FI (where applicable); and
- (e) whether misconduct reports were filed with MAS against the individual and, if so, details on the nature of the misconduct committed and the extent of consumer detriment (where applicable) resulting from the misconduct.
- (f) last four balanced scorecard grades assigned to the individual (where applicable); and
- (g) persistency ratio of insurance policies sold by the individual and the methodology used in computing the persistency ratio (where applicable and available).

FIs should ensure that information provided in response to reference checks is accurate, objective, clear, balanced and based on verifiable facts. References should not be based on unsubstantiated allegations or mere suspicions which are not based on reasonable grounds. To support this objective and accord fairness to the process, MAS proposes to require FIs to provide the individuals with the right to view the references prepared upon the individual's request. FIs should put in place an arrangement to allow such requests to be made by individuals and for the references prepared to be shared upon request.

#### **5. Reference checks from employers not covered under the in-scope FIs**

FIs are expected to take reasonable steps to request relevant information from current or past employers who are located outside Singapore, from non-financial sectors, or FIs in Singapore who are out of scope and therefore not subject to the mandatory requirement to provide reference check information. An FI can proceed with the recruitment if it has requested for reference checks and has deemed prospective employees to be suitable for the position based on its other due diligence checks.



## 6. Record keeping

MAS proposes that FIs maintain records of information specified under [para 4 above](#) (mandatory minimum information in reference checks) for all employees (with the exception of ancillary service personnel) and not just in-scope employees under Option 1 or 2 above, for a minimum period of five years. This proposal is to facilitate the implementation of proposed reference check requirements, as employees who are not in-scope may be hired by another FI for a role that is in-scope.

## 7. Investigation and disciplinary process

MAS proposes that FIs establish a strong investigation and disciplinary action framework. FIs are expected to:

- (a) establish policies and procedures governing their investigation and disciplinary process;
- (b) communicate the policies and procedures to all employees upon employment, and make the information accessible on an ongoing basis;
- (c) conduct a fair and objective internal investigation and disciplinary proceeding in a prompt manner, where there are reasonable grounds to believe that an employee has breached the FI's internal policies and procedures or laws and regulations applicable to the FI or individuals (in relation to their duties and responsibilities in the FI); and
- (d) ensure proper documentation of the investigation and disciplinary proceedings, including evidence collected, interviews conducted and grounds of decisions.

The employee should also be given the opportunity to explain or defend against the allegations during the investigation and disciplinary process.

## 8. Mode of implementation and transitional period

The new requirements will be imposed in the form of MAS Notices issued under the relevant legislation. Therefore, non-compliance would be a breach of legal requirements.

MAS proposes a transitional period of six months from the issuance of these Notices, for FIs to implement the requirements.

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