

Enhancing Powers of Investigation – Protecting Singapore’s Reputation as a Key Finance Hub

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The Monetary Authority of Singapore (MAS) has issued a proposal for a series of amendments as part of the Financial Institutions (Miscellaneous Amendments) Bill (the FI Amendment Bill). The FI Amendment Bill will facilitate amendments to various Acts including the Banking Act (BA), Credit Bureau Act, Financial Advisors Act (FAA), Insurance Act (IA), Payment Services Act (PSA), Securities and Futures Act (SFA), Trust Companies Act (TCA) and a new omnibus Act for the financial sector (the New Act).

While the MAS already has investigative powers under the SFA and the FAA, these proposed amendments seek to (i) enhance the MAS’ investigative powers, and (ii) clarify and expand MAS’ reprimand powers, which will bolster the MAS’ supervisory and enforcement powers.

These proposed amendments reflect the growing complexity of the financial sector and MAS’ efforts to be better empowered to effectively and efficiently conduct investigations, as well as enforce the laws and regulations surrounding financial institutions (FI’s) and finance related companies. This article therefore seeks to summarise the proposed changes that may be of interest to companies in the finance and fintech sectors who can then appreciate the reach and depth of MAS’ proposed enhancements to its investigative powers.

Proposed enhancements to MAS’ investigative powers

As mentioned, the primary intention behind these proposed amendments is to strengthen MAS’ ability to enforce laws and carry out effective investigations. The FI Amendment Bill aims to do this by amending and supplementing existing laws in the following areas:

- Power to require information from any person for the purposes of investigation
 - What is the existing power? – MAS’ powers pursuant to the BA¹ enable it to obtain and collect information from banks and their subsidiaries who are the subject of an inspection or an investigation.
 - What are the proposed amendments? – The amendments propose a new power for MAS to obtain information, including information in electronic form, from any person for the purposes of an investigation. In other words MAS would be able to obtain information from any person (and not just persons working in the FI) for the purposes of their investigations.²
- How will this change/affect the current status quo? – MAS will be able to require information from (i) the FI itself, (ii) any of its employees, and (iii) ex-employees over whom the FI may not have authority over anymore. As such, one may be required to provide information even if they are no longer working in that entity under investigation.

- Provisions relating to examinations of persons
 - What is the existing power? – The SFA and FAA have express powers of examination which allow MAS investigators to carry out examinations and statement-recording.
 - What are the proposed amendments? – The BA, IA, PSA, TCA and the new Act are to be aligned with the SFA and FAA by making explicit that MAS has the power to compel any individual for examination and to record statements. Further, MAS will have the power to report any failure to attend an interview to a Magistrate who may then issue a warrant to procure attendance of the interviewee. Failure to comply with such Magistrate’s order would result in punishment for contempt of court.
 - How will this change/affect the current status quo? – MAS’ power to examine witnesses will be made more effective and this in turn would strengthen MAS’ ability to gather evidence of any misconduct.

- Provisions relating to recording of statements
 - What is the existing power? – The SFA and FAA have express powers which allow MAS investigators to record statements. If requested, an investigator may provide the examinee with a copy of the recorded statement.
 - What are the proposed amendments? – The amendments will now make clear that a copy of the recorded statement will be provided at a time determined appropriate by MAS.
 - How will this change/affect the current status quo? – In practical terms there is no change to the status quo other than legislating what is MAS’ current practice to determine when it is appropriate (and not immediately) to release a copy of the recorded statement to the examinee.

- Power to enter premises without a warrant
 - What is the existing power? – Under the SFA and the FAA, MAS may in certain circumstances enter a premises without a warrant with two days’ notice to the occupier of the premises. ³
 - What are the proposed amendments? – The amendments will allow any MAS investigator or authorised officer to enter the premises of an entity without a warrant if there are reasonable grounds to suspect that the premises are, or have been, used by a person being investigated by MAS. Further, any person on the premises may be required to produce evidence which the officers consider relevant to the investigation or to direct the officers to where evidence can be found. The requirement for MAS to provide two days’ notice to the occupier of the premises before entry can be made without a warrant will also be removed.
 - How will this change/affect the current status quo? – There is now a reduced risk of incriminating evidence being destroyed, concealed or tampered with prior to entry by MAS. It is important to note that while MAS investigators are able to enter a premises without a warrant, they will not have the power to use force to gain entry to these premises.

- Power to obtain a court warrant to seize evidence
 - What is the existing power? – MAS has the ability to obtain a court warrant to seize evidence under the SFA, FAA and TCA.
 - What are the proposed amendments? – Amendments have been proposed to the BA, IA, PSA and the New Act to enable MAS to obtain a warrant from a Magistrate to seize evidence (including electronic evidence) in the event (i) a person has failed to comply with an order to produce evidence, or (ii) if there is a risk that the evidence will be concealed, removed, tampered with or destroyed if an order to produce the same is made. The scope of

the warrant under the TCA will also be aligned with the scope of the warrants under the other relevant Acts.

- How will this change/affect the current status quo? – The proposed amendments significantly reduce the risk of evidence being concealed, removed, tampered with or destroyed. As warrants are obtained with a Magistrate’s approval, warrants will only be given when there are clear grounds to do so, and the scope of the warrant will be calibrated as appropriate to the case at hand (i.e. in specified circumstances).
- Powers relating to transfer of evidence between MAS, the Police and the Public Prosecutor
 - What is the existing power? – The SFA⁴ provides for a two way transfer of evidence for market misconduct offences⁵. MAS can transfer evidence obtained under the SFA to the police or public prosecutor for criminal investigations, and the police can transfer evidence to MAS for civil investigations. The FAA⁶ provides for a one way transfer of evidence collected by MAS to the police or to the public prosecutor for criminal investigations in relation to the FAA.
 - What are the proposed amendments? – Where there is evidence that reveals the commission of any offences under Parts VII and XII of the SFA and it is obtained by the police under the Criminal Procedure Code, this evidence can be transferred to MAS for investigative purposes and for commencing civil actions. Powers under the SFA⁷ will be expanded to enable the transfer of evidence collected by MAS in cases involving any offence under the SFA to the police or the public prosecutor. An equivalent provision will also be introduced in the other relevant Acts (save for the FAA which already has this power).
 - How will this change/affect the current status quo? – Enforcement actions for offences under the SFA will become more efficient through sharing of access to evidence and will remove the need for duplicate investigations by multiple agencies. The transfer of evidence between these agencies will allow for more dynamic and efficient enforcement, along with achieving the most appropriate enforcement action for the case at hand.

Clarification of applicability of MAS’ reprimand powers under the SFA, FAA and TCA

Under existing powers, MAS may reprimand a relevant person where MAS is satisfied that the relevant person is guilty of misconduct. The proposed amendments make clear that MAS may reprimand any persons (and/or their employees, officers, partners, representatives) who was a ‘relevant person’ at the time of the misconduct. This power therefore has been expanded to include individuals who have left the FI or in the case of FI’s even if they are no longer licensed, registered, authorised, approved, recognised or exempted.

This will remove the risk of these ‘relevant persons’ leaving the employment of an FI or an FI itself ceasing its regulatory status to avoid any reprimand or censure by MAS in order to maintain a clean record.

Concluding Remarks

The authors believe that these measures are timely given the growth in size and complexity of operations in financial institutions and finance related entities. It also empowers the regulator to react quickly to any report of commercial crime or money-laundering that may occur and also gain access to ex-employees who may have knowledge of the same. For companies, it would be worth noting that past employees can also be called up for questioning.

It is envisaged that these proposals, when enacted, would give added credence to Singapore’s reputation as an

important finance hub in the global ecosystem and bolster increased confidence amongst investors while providing clarity on the investigative powers of the regulator.

Further details on the consultation paper can be obtained at the following link.

¹Please refer to section 43 to 44A of the BA

²Existing provisions in the IA, PSA, TCA, SFA and FAA will also be updated to include information that exists in electronic form

³Currently under the SFA and FAA, the notice requirement does not apply to breaches under Part XII of the SFA (market misconduct) or Part III of the FAA (conduct of business)

⁴Please refer to Sections 168B and 168C of the SFA

⁵As provided for in Part XII of the SFA

⁶Please refer to Section 76B of the FAA

⁷Please refer to Section 168B of the SFA

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