



Monetary Authority of Singapore

Response to Feedback Received
[P008 - 2021] – 16 February 2024

Proposed Amendments to MAS' Investigative and Other Powers under the Various Acts



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1. PREFACE

- 1.1. On 2 July 2021, MAS issued a consultation paper proposing amendments under the Financial Institutions (Miscellaneous Amendments) Bill (“FIMA Bill”). The FIMA Bill seeks to introduce amendments to various pieces of legislation¹, namely – Financial Advisers Act 2001 (“FAA”), Insurance Act 1966 (“IA”), Payment Services Act 2019 (“PS Act”), Securities and Futures Act 2001 (“SFA”), Trust Companies Act 2005 (“TCA”) and Financial Services and Markets Act 2022 (“FSMA”) (collectively, “the relevant Acts”). The FIMA Bill is necessary to amend the supervision and enforcement powers under the various Acts, as well as to update the various Acts where necessary.
- 1.2. The proposed amendments consulted are:
 - (a) Part A: Proposed enhancements to MAS’ investigative powers;
 - (b) Part B: Clarification of applicability of MAS’ reprimand powers under the SFA, FAA and TCA; and
 - (c) Part C: Proposed expansion of MAS’ powers to issue written directions under the SFA to holders of capital markets services licence (“CMSL holders”) conducting unregulated business.
- 1.3. The consultation period closed on 1 August 2021, and MAS would like to thank all respondents for their contributions. The list of respondents is in ANNEX A.
- 1.4. MAS has considered carefully the feedback received, and has incorporated the majority of them. Comments that are of wider interest, together with MAS’ responses are set out in the subsequent sections.

¹ The consequential amendment to the definition of “merchant bank” in the Credit Bureau Act 2016 which was mentioned in the Consultation Paper has been reflected in the Financial Services and Markets Act 2022. The amendment to the Banking Act 1970 which was mentioned in the Consultation Paper is deferred (see paragraphs 2.53 to 2.55 below).



2. PART A: PROPOSED ENHANCEMENTS TO MAS' INVESTIGATIVE POWERS

- 2.1. MAS sought feedback on the proposed amendments to its investigative powers under the FAA, SFA, PS Act, IA, TCA, FSMA and Banking Act 1970 ("BA"). These amendments seek to enhance MAS' powers to gather evidence, align the investigative powers in non-SFA / FAA Acts with those available under the SFA / FAA, and facilitate greater inter-agency coordination.
- 2.2. The respondents raised queries about the breadth and effect of the proposed power to enter premises without a warrant, and the proposed powers relating to transfer of evidence between MAS and other agencies (for instance, whether there were safeguards in place to ensure these powers would be used in a risk-appropriate manner). The respondents also requested clarification on the effect of several existing powers in the SFA and FAA that were not being substantively amended but extended to the other relevant Acts. We address these and other feedback received below.

Power to require information from any person for the purposes of investigation

- 2.3. MAS proposed introducing in the FSMA the power for MAS to require information from any person for the purposes of an investigation. The proposed power is necessary for MAS to carry out effective investigations, as there may be instances where information relevant to an investigation is in the possession of persons who are outside the reach of MAS' existing powers, such as entities that do not fall within the scope of the powers, or employees and ex-employees of the Financial Institutions ("FIs").

Persons from whom MAS may require information

- 2.4. Four (4) respondents observed that the power to require information from any person could be too wide and suggested that MAS only be allowed to:
 - (a) Require information from ex-employees, ex-officers or regulated persons; or
 - (b) Exercise the power to require information from any person within a certain time period.



MAS' Response

- 2.5. The proposed amendment does not represent a significant expansion of MAS' powers as it is modelled on existing provisions in the IA, PS Act, TCA, SFA and FAA, which already give MAS the power to require information from any person in the course of investigations under those Acts. Like the IA, PS Act, TCA, SFA and FAA, offences under the FSMA also carry significant penalties (e.g. failure to comply with MAS' AML/CFT regulations entails a fine of up to \$1 million under section 16 of the FSMA). MAS aims to be as effective in investigating offences under the FSMA as those under the other relevant Acts, and MAS' powers to require information under the FSMA should therefore be consistent with those in the other relevant Acts.
- 2.6. Accordingly, MAS will not be limiting the scope of the power to ex-employees, ex-officers and regulated persons. Information relevant to an investigation may reside with persons who are not ex-employees / officers of an FI, or regulated persons (e.g. vendors with which an FI has outsourcing arrangements). Such limits may hamper MAS' ability to obtain crucial information relevant to the investigation and take the offender to task.
- 2.7. MAS will also not be imposing a time limit on when we can exercise the power to require information from any person. Wrongdoing is not always uncovered immediately, and MAS must be able to use our investigative powers when offences come to light. Furthermore, it can take time to properly and meticulously complete investigations. Having no time limit on our investigative powers is also in line with the fact that there is no time bar for investigating and prosecuting criminal offences.

Scope of power to require information

- 2.8. Two (2) respondents queried whether MAS can compel local entities / individuals to access and produce information located or in the possession of persons abroad such as foreign affiliated entities and their staff.

MAS' Response

- 2.9. MAS can require a local entity / individual to provide information relating to any matter under investigation so long as that local entity / individual is believed to possess that information, or have the power to access the same. This prevents local entities / individuals from evading investigation simply by storing information in overseas servers or sending such documents to an overseas person.



Power to require any person to appear for examination and to take statements

2.10. MAS proposed to:

- (a) Amend the IA, PS Act, TCA and the FSMA to align them with the SFA and FAA by expressly stating that MAS has the power to examine individuals and take statements, and providing for the manner in which this power is to be exercised, to ensure the efficacy of all investigations conducted by MAS under any of the relevant Acts;
- (b) Include under the relevant Acts the ability for MAS to report any failure by an examinee to attend an interview to a Magistrate, who may then issue a warrant ordering the examinee to attend the interview, to ensure that MAS' power to examine witnesses is effective; and
- (c) Amend existing provisions in the SFA and FAA, and introduce new provisions in the other relevant Acts, to make explicit that an MAS investigator will provide a copy of the written record (i.e. recorded statement) at such time as the investigator determines appropriate, e.g. when the disclosure will not prejudice ongoing investigations, upon the examinee's request.

Necessity for MAS to have power to examine and take statements

2.11. Two (2) respondents queried if MAS' proposed power to examine and take statements would be duplicative of the Commercial Affairs Department's ("CAD") power to do the same. These respondents asked if it would be preferable for the CAD to wield the power to examine and take statements instead of MAS, since CAD also conducts investigations into financial crimes in Singapore.

MAS' Response

2.12. MAS' mission is to promote a sound and progressive financial services sector. To advance this mission, we need to be able to effectively investigate breaches of the various Acts under our purview. We already have and regularly exercise the power to require any person to appear for examination and the recording of statements under the SFA and the FAA. The purpose of the proposed amendment is to ensure that we are equally effective at pursuing offences under the other relevant Acts.



Obtaining a court warrant if examinee fails to appear for examination

- 2.13. The respondents were broadly supportive of MAS' proposed power to apply to the Court for a warrant to secure the attendance of a subject who fails to appear for an examination under the relevant Acts.
- 2.14. However, MAS will not be proceeding with this proposed amendment. MAS has considered that presently, if a person fails to comply with a requirement to appear for examination, MAS may serve a summons on them under the Criminal Procedure Code 2010 ("CPC") requiring them to appear in court, and the court has the power to issue a warrant of arrest if the person fails to appear in court.

Provision of written records to examinee

- 2.15. Three (3) respondents suggested that MAS should provide a copy of the written record to the examinee immediately after the examination, without the examinee having to make a request.
- 2.16. Two (2) respondents suggested that when an officer / employee of an FI is examined, MAS should provide a copy of the written record to the FI as it may be helpful to the FI's internal investigation.

MAS' Response

- 2.17. If requested in writing by the examinee for a copy of a written record of statements made at the examination, MAS will provide the copy of the recorded statement within a reasonable time. MAS will not make it mandatory for the copy of recorded statement to be provided to the examinee immediately after the examination, without the examinee having to request the copy. There is a need to strike a balance between the examinee's interests and maintaining the integrity of the investigation. For instance, providing an examinee with the recorded statement too early in the investigation may be prejudicial to the investigative process if the examinee takes a copy of the statement, and uses it to coordinate the testimonies of the other witnesses and suspects who have yet to give their statements.
- 2.18. MAS also will not provide a copy of the written record to FIs for their internal investigations. Statements recorded by MAS are confidential.



Power to enter premises without a warrant

2.19. MAS proposed to introduce provisions in the IA, PS Act, TCA and the FSMA allowing any MAS investigator or authorised officer to enter any premises without a warrant and without prior notice, if the investigator has reasonable grounds to suspect that the premises are, or have been, used by a person being investigated by MAS. MAS also proposed to remove the requirement in the SFA and the FAA for MAS to provide two days' notice to the occupier of the premises before entry can be made without a warrant (the "Notice Requirement").

Giving notice before entry

2.20. MAS will no longer proceed with the proposed amendment to remove the Notice Requirement in the SFA and FAA. MAS will instead amend the pre-conditions that must be fulfilled in order for the exceptions to the Notice Requirement in the SFA and FAA to apply.

2.21. Presently, under section 163A(3) of the SFA, the exceptions to the Notice Requirement are that (a) the investigation relates to a suspected contravention of Part 12 of the SFA and the investigator has reasonable grounds for suspecting that the premises are or have been occupied by the suspect, or (b) the investigator has taken all reasonably practicable steps to give written notice but has not been able to do so. Under section 163A(4)(b) of the SFA, one of the pre-conditions for these exceptions to apply is that the investigator must produce a document which indicates the nature of offences under section 168 of the SFA, i.e. non-compliance with earlier requirements to produce books or information and similar offences.

2.22. MAS will retain section 163A of the SFA but remove the pre-condition in section 163A(4)(b) of the SFA, such that it will no longer be necessary to show non-compliance with earlier requirements to produce books or information (or other similar requirements) in order for the exceptions to the Notice Requirement to apply. Similar amendments will be made to the existing FAA provision.

2.23. MAS will also make adjustments to the proposed IA, PS Act, TCA and the FSMA amendments, to align the power to enter premises without a warrant under those Acts with that under the SFA and FAA.



When and where MAS may enter without a warrant

- 2.24. Two (2) respondents asked what would constitute good reasons for MAS to exercise its powers to enter premises with no warrant and how MAS will assess when to exercise the said power. 2 other respondents also suggested to include in the provision that MAS will only exercise the power to enter premises without a warrant where it is assessed that there is a real risk of evidence being destroyed or tampered with.
- 2.25. One (1) respondent also asked whether the power would enable MAS to enter only office premises, or also extends to employees' residential premises or premises occupied by unregulated persons.
- 2.26. One (1) respondent queried how MAS would balance the potential disruption that could be caused to an FI against the need to enter the premises without a warrant for purposes of securing evidence.

MAS' Response

- 2.27. First, MAS notes the request for clarification on when the power to enter premises without a warrant will be used. One example is where MAS is of the view that exercising this power would enable it to obtain evidence that would otherwise be tampered with or destroyed. However, it is not possible to exhaustively list down the circumstances where the exercise of the power would be warranted. In each case, MAS will carefully consider whether it is appropriate and in accordance with the law to exercise this power before doing so.
- 2.28. MAS will not expressly state in the provision that the power may be used only when there is a real risk of evidence being tampered with or destroyed. This is consistent with other legislative provisions which give other local regulatory agencies the power to enter premises without a warrant.²
- 2.29. Second, MAS notes the request for clarification as to the types of premises MAS can enter. As an offender may keep documents or other evidence of their misconduct in any premises which they occupy or have occupied, MAS needs to be able to access these premises to ensure the effectiveness of MAS' investigations. Hence, the term "premises" under the provision is not limited to office premises and could extend to other types of premises, including residences. MAS will assess each case

² See, e.g., section 64 of the Competition Act 2004, section 21 of the Consumer Protection (Fair Trading) Act) 2003, section 4A of the Smoking (Prohibition in Certain Places) Act 1992, paragraph 2 of the Ninth Schedule of the Personal Data Protection Act 2012, section 29 of the Housing and Development Act 1959, section 11 of the Endangered Species (Import and Export) Act 2006, section 50 of the Animals and Birds Act 1965 and section 23 of the Fisheries Act 1966.



individually and determine how to utilise our investigative powers in a manner that best suits the specific circumstances.

- 2.30. Third, MAS acknowledges that exercising the power to enter without warrant may potentially cause disruption. However, in situations where the exercise of this power is warranted, the exigencies of the investigation and the public interest in securing evidence for the purpose of an investigation will outweigh any disruption caused to the FI. That said, MAS will carefully consider whether it is appropriate to exercise this power before doing so.

Comparison with criminal investigation powers

- 2.31. One (1) respondent asked how the proposed expansion of MAS' power to enter premises without a warrant would compare with the Police's powers under the CPC.

MAS' Response

- 2.32. As MAS is a regulatory agency, it is more appropriate to compare our proposed powers against other local regulatory agencies. In this regard, our proposed powers to enter premises are in line with that accorded to other local regulatory agencies.
- 2.33. MAS highlights that the proposed power to enter premises does not entail the powers of search and seizure without warrant after entry. In this regard, the Police have the power under the CPC to search for or seize evidence upon entry in appropriate cases. In comparison, MAS will need to apply to a Magistrate for a warrant if we intend to search for or seize evidence after entering any premises.



Power to obtain a court warrant to seize evidence

- 2.34. MAS proposed to introduce provisions in the IA, PS Act and the FSMA to enable MAS to obtain a warrant from the Magistrate to seize evidence, including electronic evidence, from premises when (i) a person has failed to comply with an order to produce such evidence; or (ii) if there is a risk that evidence will be concealed, removed, tampered with or destroyed if an order is made for the same to be produced. MAS also proposed to clarify in the SFA and the FAA that the scope of the warrant which can be issued by the Magistrate includes electronic evidence, and to amend the TCA to align the scope of the warrant with that under the other relevant Acts.
- 2.35. The respondents were supportive of this proposal and MAS did not receive any critical feedback on or objections to this proposal.



Powers relating to transfer of evidence between MAS, the Police and the Public Prosecutor

2.36. MAS proposed the following amendments to facilitate inter-agency cooperation and improve the efficiency of MAS' investigations and enforcement actions:

- (a) Expand section 168C of the SFA to provide for the transfer of evidence obtained by the Police under the CPC to MAS, for the purpose of investigating and commencing civil penalty action in relation to not only Part 12 offences, but also Part 7 offences.
- (b) (i) Expand section 168B of the SFA to enable the transfer of evidence collected by MAS in cases involving any offence under the SFA, and not only Part 12 offences, to the Police or the Public Prosecutor for the purpose of criminal investigations or proceedings; and (ii) include this power in the IA, PS Act, TCA and FSMA (the "MAS-to-Police Provision").
- (c) Introduce in all relevant Acts the ability to transfer evidence obtained by the Police or other law enforcement agencies under the CPC to MAS for the purpose of taking regulatory actions, in the event the evidence reveals that offences under the relevant Acts have been committed (the "Police-to-MAS Provision").

Proposed expansion of section 168C of the SFA

2.37. Section 168C of the SFA will no longer be expanded as mentioned above. Instead, it will be replaced by the Police-to-MAS Provision. This is because the wording of the Police-to-MAS Provision would also allow for the transfer of CPC evidence to MAS for Part 7 and 12 civil penalty actions, and it is not necessary to have both provisions in the SFA.

Transfer of evidence from MAS to the Police

2.38. Three (3) respondents expressed concern that the Police may use the MAS-to-Police Provision to obtain information from MAS that it would otherwise have been unable to obtain using its own investigative powers, since MAS would have broader investigative powers than the Police.³ Some of these respondents also stated that because MAS' investigative powers did not appear to be subject to the same safeguards / limits that apply to Police powers⁴, the MAS-to-Police Provision may result in

³ The respondents cited MAS' proposed power to enter premises without a warrant and without notice for the purpose of investigating offences under the relevant Acts, as well as the issue of whether subjects would have a right against self-incrimination in MAS investigations.

⁴ See footnote 3 above.



disparate treatment of suspects under investigation, depending on whether MAS or the Police first obtained the evidence.

MAS' Response

- 2.39. The MAS-to-Police Provision cannot circumvent limits placed on Police powers under the CPC to investigate Penal Code or other offences not under the relevant Acts. This is because under the proposed MAS-to-Police Provision, evidence collected by MAS may only be transferred to the Police for the purpose of investigations into or criminal proceedings for suspected contraventions of any offence under the relevant Acts. On this note, MAS also highlights that changes have been made to the Police-to-MAS Provision, such that evidence can only be transferred to MAS for the purpose of MAS' investigations if it is in the interest of the public to do so. This will ensure that evidence will also only be transferred from the Police to MAS for appropriate purposes.
- 2.40. The respondents were concerned that MAS' proposed powers will be unduly broad and will override legal professional privilege ("LPP") and the right against self-incrimination. As elaborated in further detail at paragraph 2.48 below, MAS' investigative powers do not override LPP. Further, as set out at paragraph 2.45 below, there are safeguards in place against self-incriminating statements being used as evidence against the suspect. Lastly, as set out at paragraph 2.33 above, MAS' powers to enter premises without a warrant are limited and do not entail the power to search premises and seize items.

Safeguards under the transfer of evidence provisions

- 2.41. Two (2) respondents observed that there should be safeguards put in place to ensure that privileged information and self-incriminating information obtained through MAS' investigative powers (which in the respondents' view, do not afford the right against self-incrimination) are not transferred to the Police.

MAS' Response

- 2.42. MAS clarifies that safeguards already exist for privileged information transferred under the current provisions in the SFA and FAA allowing for the transfer of evidence between MAS and the Police. If a suspect has claimed LPP over material obtained during MAS' investigations, we will ensure that such privileged documents are not transferred to the Police under the MAS-to-Police Provision. Further, the protection against self-incrimination afforded under the relevant Acts (see paragraph 2.45 below) will still apply even if any self-incriminating evidence is transferred to the Police under the MAS-to-Police Provision.



Effect of proposed amendments on right against self-incrimination and legal professional privilege

2.43. Respondents posed questions concerning the effect of MAS' proposed provisions on the right against self-incrimination and LPP in investigations under the relevant Acts. MAS did not specifically seek feedback on these matters, but notes from the comments received that the issue may be important to the industry and thus warrant a response.

Right against self-incrimination

2.44. Four (4) respondents asked if there would be a right against self-incrimination in investigations under the relevant Acts, and commented that they would not be supportive of MAS' proposals if they removed the right against self-incrimination.

MAS' Response

2.45. MAS clarifies that the relevant provisions (see section 4(2) of Annex B of the consultation paper for example) afford the subject of an examination (i.e. interview) the right to state, before making a statement that the statement might tend to incriminate them. The statement would then be inadmissible in criminal proceedings against the subject, unless those proceedings are for providing false information in that statement.

Legal professional privilege

2.46. Under the proposed provisions, a requirement imposed by MAS pursuant to its investigative powers shall have effect despite any "obligations" as to secrecy or other similar restrictions upon the disclosure of information (see section 2(3) of Annex B of the consultation paper for example). Further, a lawyer who refuses to disclose privileged communications or other materials to MAS must nevertheless give MAS the name and address of the person to whom the privileged communication was made (see section 4(5) of Annex B of the consultation paper for example).

2.47. Four (4) respondents raised the following comments and queries regarding LPP, as part of the respondents' feedback on MAS' power to obtain information:

- (a) If MAS' investigative powers override LPP, the respondents would not be supportive of the same.



- (b) Whether MAS is able to circumvent a person’s right to assert LPP over information, by requiring advocates and solicitors to disclose the identity of recipients of privileged communications.
- (c) MAS should expressly state in the relevant Acts that a person is not required to disclose privileged documents when complying with MAS’ requirements for information.
- (d) Whether MAS has in place procedures to resolve disputes when LPP is asserted over documents to be provided to MAS.

MAS’ Response

- 2.48. First, MAS clarifies that the relevant provisions (including section 2(3) of Annex B of the consultation paper and similar provisions in relevant Acts) do not override LPP. Rather, MAS’ powers provide that a requirement imposed by MAS pursuant to its investigative powers shall have effect despite any “obligations” as to secrecy or other similar restrictions upon the disclosure of information. In this regard, LPP is a *right*, and not an obligation of confidentiality or a restriction on the disclosure of information⁵. Moving forward, the relevant Acts will explicitly state that MAS’ exercise of its investigative powers does not require a person to disclose any information subject to legal privilege.
- 2.49. Second, the requirement for lawyers to disclose the identity of recipients of privileged communications does not enable MAS to circumvent LPP. The rationale behind this requirement is to enable MAS to contact the holder of the privilege and seek a waiver from that person.
- 2.50. Third, in cases where LPP is asserted in the course of MAS’ exercise of investigative power to obtain information, the process set out by the High Court in *Ravi s/o Madasamy v AG* [2020] SGHC 221 will apply. A separate team of AGC officers who are not, and will not be, involved in the underlying investigation will carry out a review of any claims of privilege.

⁵ In *ARX v Comptroller of Income Tax* [2016] 5 SLR 590, the Singapore Court of Appeal affirmed LPP as a “*right to resist the compulsory disclosure of information*” (at [51]).



Confidentiality of investigation reports

- 2.51. Section 3 of Annex B of the consultation paper states that the investigation reports are to be kept confidential and may only be disclosed to select persons. Four (4) respondents asked for clarification on the purposes for which and the person with whom the investigation report can be shared.
- 2.52. While feedback was not specifically sought on this provision, MAS notes from the queries received that the issue may be important to the industry and warrants a response. In this regard, sections 3(2)(a) and (b) of Annex B of the consultation paper state that the investigation report may be disclosed (i) by the investigated FI to any officer or auditor of that FI solely for the performance of the duties of the officer or auditor in that FI; and (ii) by any officer or auditor of the investigated FI to any other officer or auditor of that FI, solely for the performance of their duties in that FI. Section 3(2)(c) of Annex B of the consultation paper further provides that the investigation report may be disclosed to such other person as MAS may approve in writing. MAS will decide whether to grant such approval on a case-by-case basis.



Deferment of amendments to the BA

- 2.53. While MAS proposed in the consultation paper to enhance our investigative powers under the BA, MAS will be amending the BA in due course.
- 2.54. This is to enable MAS to further consider the impact of the amendments on existing provisions unique to the BA – such as those concerning the special investigation of banks, investigation of merchant banks and investigation of credit card and charge card licensees – and the proposed enhancements to the investigative powers under the BA.
- 2.55. As such, MAS will only be amending the relevant Acts (i.e. the FAA, IA, PS Act, SFA, TCA and FSMA) at this time.



3. PART B: CLARIFICATION OF APPLICABILITY OF MAS' REPRIMAND POWERS UNDER THE SFA, FAA and TCA

- 3.1. MAS proposed to amend section 334 of the SFA, section 125 (formerly section 97) of the FAA and section 72 of the TCA (collectively, the “Reprimand Provisions”) to make clear our policy intent that MAS may reprimand any person who was a “relevant person” at the time of the misconduct. A “relevant person” includes any FI that is licensed, registered, authorised, approved, recognised or exempted (as applicable) under the SFA, FAA or TCA, as well as any employee, officer, partner or representative (as applicable) of each FI. The amendments clarify that all persons who had been “relevant persons” at the time of the misconduct are subject to the Reprimand Provisions, even if they have left the FI (in the case of individuals) or are no longer licensed, registered, authorised, approved, recognised or exempted (in the case of FIs) when the misconduct is discovered or when the reprimand is issued.
- 3.2. We will proceed with the proposed amendments to the Reprimand Provisions. Respondents supported the amendments, and a few have sought clarifications regarding time limit, notification of private reprimands concerning ex-relevant persons, update of internal records and record retention period.
- 3.3. One (1) respondent proposed that any reprimand must be issued against the relevant person within one (1) year of an alleged misconduct as it would be unfair to the person for the reprimand to hang over the person indefinitely.
- 3.4. One (1) respondent asked if a FI would be informed of private reprimands issued to its ex-employees for misconducts while at the FI. Another respondent commented that FIs would not be able to amend the reason(s) behind ex-employees’ departure even if misconduct was subsequently established and reprimands were issued by MAS.
- 3.5. One (1) respondent queried whether there would be a time limit to the “relevant person” status, such as five (5) years as proposed in a separate MAS consultation on mandatory reference check requirements. The respondent highlighted potential operational implication if FIs were required to keep records of ex-employees for an extended period of time.



MAS' Response

- 3.6. The time period required to review and / or investigate any alleged misconduct will be dependent on when it was first uncovered and the extent as well as complexity of the alleged misconduct. Therefore, it is neither practicable nor appropriate to stipulate a time frame for any regulatory action, including a reprimand to be issued.
- 3.7. MAS will inform FIs if private reprimands are meted out to their ex-relevant persons for misconduct while at the FIs. However, FIs need not retrospectively amend the reason(s) for the ex-relevant person's departure. Instead, FIs should update their records on the ex-relevant persons to reflect the reprimand issued by MAS to facilitate future reference checks by potential employers.
- 3.8. There is no time limit to the status of "relevant person" in the SFA, FAA and TCA in relation to the Reprimand Provisions. FIs should abide by the records retention requirements in the relevant legislations. For clarity, this does not preclude FIs from retaining information for a longer period of time, where necessary (e.g. compliance with FIs' internal policies on records retention).



4. PART C: PROPOSED EXPANSION OF MAS' POWERS TO ISSUE WRITTEN DIRECTIONS UNDER THE SFA TO HOLDERS OF CAPITAL MARKETS SERVICES LICENCE ("CMSL HOLDERS") CONDUCTING UNREGULATED BUSINESS

- 4.1. MAS sought comments on the proposed amendments to the SFA to empower MAS to issue directions to CMSL holders and their representatives⁶ conducting unregulated business. In general, CMSL holders are expected to be primarily engaged in the conduct of regulated activities under the SFA. The conduct of unregulated businesses by CMSL holders may pose contagion risks to regulated activities if these risks are not adequately managed by the CMSL holders' existing risk management and governance processes. The proposed power is intended to allow MAS to issue written directions on the minimum standards and safeguards that should be in place when CMSL holders and their representatives conduct unregulated businesses.
- 4.2. Respondents generally supported the proposed amendments. One (1) respondent raised potential concerns over business certainty given the broad definition of "stipulated product", which would allow MAS to regulate a wide range of activities that would otherwise be unregulated. The respondent suggested that MAS could prescribe the unregulated businesses that it intends to regulate for greater clarity.
- 4.3. One (1) respondent suggested for MAS to issue guidance to the industry instead of directions to specific CMSL holders for a level playing field.
- 4.4. One (1) respondent requested for a sufficient transition period to implement necessary changes to ensure compliance.

⁶ Representatives may be carrying out both regulated and unregulated businesses or carrying out solely unregulated business on behalf of the CMSL holder.



- 4.5. One (1) respondent asked if MAS intended to exercise the new power to issue directions on businesses already regulated by MAS under other statutes (e.g. the PS Act) or by other regulatory bodies (e.g. by Enterprise Singapore under the Commodity Trading Act 1992).

MAS' Response

- 4.6. MAS will proceed with the amendments to the SFA to enable MAS to issue directions to CMSL holders and their representatives conducting unregulated business.
- 4.7. MAS acknowledges the concerns raised on the broad definition of “stipulated products”. MAS will instead prescribe a list of unregulated financial products, which will be subject to the new proposed powers. The initial list will include (i) payment token derivatives that are not traded on an organised market of an Approved Exchange, and (ii) spot foreign exchange contracts for a purpose other than leveraged foreign exchange trading. MAS will continue to monitor developments in the financial markets and may include other unregulated financial products in the list over time.
- 4.8. In exercising the proposed power, MAS will take into consideration the extent of contagion risks arising from the CMSL holders’ conduct of unregulated businesses and the adequacy of CMSL holders’ processes to manage these risks. Whether the proposed power is exercised on a specific CMSL holder or a class of CMSL holders will depend on the facts and circumstances.
- 4.9. In line with our current practice, MAS will consult the industry and provide an appropriate transition period when issuing a new regulatory requirement.
- 4.10. MAS intends to exercise the new power to issue directions on businesses not regulated by MAS. It may thus cover businesses regulated by other regulatory bodies. However, MAS is mindful of the potential for regulatory confusion and the need to avoid creating unnecessary compliance burden for the industry. Hence, MAS does not intend to impose requirements that would overlap with or contradict those required under other statutes.



Clarification on other MAS-administered acts

- 4.11. One (1) respondent sought clarification on whether MAS would adopt a similar power under the FAA.
- 4.12. One (1) respondent sought clarification on whether by virtue of MAS issuing directions on businesses not regulated under SFA, such businesses would then be deemed as financial businesses – the conduct of which is regulated or authorised by MAS under section 30(1)(b) of the BA. If it is not within the scope of section 30(1)(b) of the BA, whether banks will be required to: (i) seek approval from MAS under section 30(1)(e) of the BA before conducting the unregulated businesses; or (ii) be subject to Regulation 23G of the Banking Regulations in respect of prescribed and complementary business.

MAS' Response

- 4.13. There are presently no plans to introduce a similar power under the FAA as there are already provisions restricting licensed financial advisers from conducting non-financial advisory services.⁷
- 4.14. The proposed power to issue directions to CMSL holders conducting unregulated business under the SFA is meant to apply only to CMSL holders and their representatives, and does not apply to banks as exempt persons under the SFA. Accordingly, banks should not consider such unregulated business as a business that falls within section 30(1)(b) of the BA. A bank should continue to assess whether any unregulated business which it proposes to carry on falls within section 30(1)(d) of the BA (e.g. Regulation 23G of the Banking Regulations). Otherwise, the bank should seek MAS' approval under section 30(1)(e) of the BA in order to carry on the unregulated business.

⁷ Refer to Part 4A of the FAA and Part VIA of the Financial Advisers Regulations.



5. OTHERS

Update on proposed amendments regarding failure to exercise reasonable care in submission of information to MAS

- 5.1. On 18 September 2015, MAS issued the Consultation Paper on Proposed Amendments to the Securities and Futures Act, Financial Advisers Act and Trust Companies Act (“2015 Consultation Paper”) on proposed amendments to enhance MAS’ supervisory powers and strengthen business conduct requirements set out under SFA, FAA and TCA. MAS published its responses to the feedback received from the 2015 Consultation Paper on 7 November 2016 and 9 July 2018.
- 5.2. One of the proposed legislative amendments to the SFA, FAA and TCA in the 2015 Consultation Paper related to requiring FIs to take reasonable care to ensure the accuracy of information submitted to MAS. This was aimed at allowing MAS to take action against an FI which persistently furnishes inaccurate information to MAS, even if the information is not material. The submission of material false or misleading information by a person (whether an FI or individual) to MAS is an existing offence under the SFA, FAA and TCA.
- 5.3. Related to this proposal, the legislative drafting in 2015 Consultation Paper provided for differentiated penalties for regulated FIs and individuals who furnished false or misleading information in a material particular to MAS. For individuals, penalties were further differentiated depending on whether the offence was committed by the individual wilfully.
- 5.4. Considering that it is an existing offence under the SFA, FAA and TCA for any person (whether an FI or individual) to submit material false or misleading information to MAS, and that MAS’ views on the severity of provision of material false or misleading information to MAS by individuals has not changed, MAS will not be making amendments in the legislations to provide for differentiated penalties for the provision of material false or misleading information to MAS (i.e. legislative drafting mentioned in paragraph 5.3 will not proceed).
- 5.5. For the avoidance of doubt, MAS will still proceed with requiring FIs to take reasonable care to ensure the accuracy of information submitted to MAS (even for information that is not material).



ANNEX A

LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON PROPOSED AMENDMENTS TO MAS' INVESTIGATIVE AND OTHER POWERS UNDER THE VARIOUS ACTS

1. AAM Advisory Pte Ltd
2. SingCash Pte Ltd
3. Schroder Investment Management (Singapore) Ltd
4. FWD Singapore Pte Ltd
5. AIA Singapore Private Limited
6. Tokio Marine Life Insurance Singapore Ltd
7. Amazon Web Services
8. Asia Internet Coalition
9. AXA Insurance Pte Ltd
10. Respondent A, which requested for confidentiality of identity

Thirteen (13) respondents requested for confidentiality of identity and submission.

Please refer to ANNEX B for the submissions.



ANNEX B

SUBMISSION FROM RESPONDENTS TO THE CONSULTATION PAPER ON PROPOSED AMENDMENTS TO MAS’ INVESTIGATIVE AND OTHER POWERS UNDER THE VARIOUS ACTS

Note: The table below only includes submissions for which respondents did not request confidentiality.

S/N	Respondent	Responses from respondent
1	AAM Advisory Pte Ltd	<p>Question 1: MAS seeks comments on the proposal to allow MAS to require information from any person for the purpose of investigations under the BA and the new Act.</p> <p>AAM Advisory Pte Ltd has no comments.</p> <hr/> <p>Question 2:</p> <p>(a) MAS seeks comments on the proposals to give MAS the power to require any person to appear for examination and the recording of statements under the BA, IA, PS Act, TCA and the new Act;</p> <p>AAM Advisory Pte Ltd has no comments.</p> <p>(b) MAS seeks comments on the proposal to give MAS the power to apply to the Court for a warrant to secure the attendance of a subject who fails to appear for an examination under the relevant Acts;</p> <p>AAM Advisory Pte Ltd has no comments.</p> <p>(c) MAS seeks comments on the proposals to provide explicitly that an MAS investigator will provide a copy of the written record (i.e., recorded statement) at such time he determines, upon the request by an examinee.</p> <p>AAM Advisory Pte Ltd has no comments.</p> <hr/> <p>Question 3:</p> <p>(a) MAS seeks comments on the proposals to allow MAS investigators to enter premises without a warrant in the BA, IA, PS Act, TCA and the new Act;</p> <p>AAM Advisory Pte Ltd has no comments.</p>



	<p>(b) MAS seeks comments on the proposals to remove the current SFA and FAA requirement of a 2-day notice before entry can be made and to mirror this amendment in the proposed provisions for the other relevant Acts.</p> <p>MAS to consider and advice on their approach when entering the premises of FIs without causing any undue concerns to clients.</p>
	<p>Question 4: MAS seeks comments on the proposals to allow MAS to apply to the courts for a warrant to seize evidence in specified circumstances under the BA, IA, PS Act and the new Act, and to align the scope of the warrant that can be issued by the court under the TCA with that under the other relevant Acts.</p> <p>AAM Advisory Pte Ltd has no comments.</p>
	<p>Question 5:</p> <p>(a) MAS seeks comments on the proposals to expand the scope of section 168C(1) of the SFA to allow the transfer of evidence collected under the CPC from the Police to MAS for Part VII civil penalty investigations or proceedings;</p> <p>AAM Advisory Pte Ltd has no comments.</p> <p>(b) MAS seeks comments on the proposals to expand the scope of section 168B(1) of the SFA to allow the transfer of evidence (relating to any offence under the SFA) from MAS to the Police or the Public Prosecutor for the purpose of criminal investigations or proceedings, and to replicate this provision in the other relevant Acts (other than the FAA);</p> <p>AAM Advisory Pte Ltd has no comments.</p> <p>(c) MAS seeks comments on the proposals to enable evidence collected under the CPC to be transferred to MAS for regulatory actions under each relevant Act.</p> <p>AAM Advisory Pte Ltd has no comments.</p>
	<p>Question 6: MAS seeks comments on the proposed amendments to the Reprimand Provisions.</p> <p>AAM Advisory Pte Ltd has no comments.</p>



		<p>Question 7: MAS seeks comments on the draft amendments to the SFA to empower MAS to issue directions to regulated FIs and their representatives conducting unregulated business.</p> <p>AAM Advisory Pte Ltd has no comments.</p> <hr/> <p>Any other comments.</p> <p>AAM Advisory Pte Ltd has no comments.</p>
2	SingCash Pte Ltd	<p>Question 1: MAS seeks comments on the proposal to allow MAS to require information from any person for the purpose of investigations under the BA and the new Act.</p> <p>MAS allows examination of “any person”. This is too wide and can extend to vendors, customers and external counsel, whereas the intention of MAS as stated in the consultation paper at paragraph 2.4 is only to cover ex-employees. This is aggravated by the fact that the FI, if investigated, has no right to receive a written record of the examinee’s statement. The investigations are also not restricted to breaches or suspected breaches. It covers all compliance with the PSA and MAS written directions.</p> <p>We suggest:</p> <ol style="list-style-type: none"> 1. To limit the expansion of the investigative powers to “ex-employees” or even ex-officer, and not so wide so as to touch vendors or customers. 2. If powers expand beyond ex-employees, MAS should give the FI a copy of the record at first instance so that the FI has an opportunity to refute/correct inaccuracies <hr/> <p>Question 2:</p> <p>(a) MAS seeks comments on the proposals to give MAS the power to require any person to appear for examination and the recording of statements under the BA, IA, PS Act, TCA and the new Act;</p> <p>Under Draft Section 4(2), the examinee must claim that the statement might tend to incriminate him before that statement becomes inadmissible against him in a criminal proceeding. However, the examinee may not know that he should make this claim, since he does not have the benefit of legal counsel as the examination shall take place in private per Draft Section 8(1). We suggest that Section 4(2) should require the MAS investigating examiner to inform him of his right to make this claim as part of due process. This is particularly important for his protection since evidence obtained by the MAS may be used in criminal investigations and proceedings pursuant to Draft Section 21 regarding transfer of evidence.</p>



		<p>(b) MAS seeks comments on the proposal to give MAS the power to apply to the Court for a warrant to secure the attendance of a subject who fails to appear for an examination under the relevant Acts;</p> <p>SingCash Pte Ltd has no comments.</p> <p>(c) MAS seeks comments on the proposals to provide explicitly that an MAS investigator will provide a copy of the written record (i.e., recorded statement) at such time he determines, upon the request by an examinee.</p> <p>SingCash Pte Ltd has no comments.</p> <p>Question 3:</p> <p>(a) MAS seeks comments on the proposals to allow MAS investigators to enter premises without a warrant in the BA, IA, PS Act, TCA and the new Act;</p> <p>SingCash Pte Ltd has no comments.</p> <p>(b) MAS seeks comments on the proposals to remove the current SFA and FAA requirement of a 2-day notice before entry can be made and to mirror this amendment in the proposed provisions for the other relevant Acts.</p> <p>SingCash Pte Ltd has no comments.</p> <p>Question 4: MAS seeks comments on the proposals to allow MAS to apply to the courts for a warrant to seize evidence in specified circumstances under the BA, IA, PS Act and the new Act, and to align the scope of the warrant that can be issued by the court under the TCA with that under the other relevant Acts.</p> <p>SingCash Pte Ltd has no comments.</p> <p>Question 5:</p> <p>(a) MAS seeks comments on the proposals to expand the scope of section 168C(1) of the SFA to allow the transfer of evidence collected under the CPC from the Police to MAS for Part VII civil penalty investigations or proceedings;</p> <p>Safeguards should be put in place to ensure that MAS also has independent verification requirements when receiving inter-agency evidence from evidence collected under the CPC to ensure that the evidence is directly relevant to MAS' investigation, true and lawfully obtained. Per our response to Question 2(a), an examinee may not be aware of his legal right to raise the claim of self incrimination before giving the statement. If evidence is</p>
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		<p>transferable from the MAS to law enforcement agencies such as the police, examinees should be told of their right to make this claim.</p> <p>(b) MAS seeks comments on the proposals to expand the scope of section 168B(1) of the SFA to allow the transfer of evidence (relating to any offence under the SFA) from MAS to the Police or the Public Prosecutor for the purpose of criminal investigations or proceedings, and to replicate this provision in the other relevant Acts (other than the FAA);</p> <p>SingCash Pte Ltd has no comments.</p> <p>(c) MAS seeks comments on the proposals to enable evidence collected under the CPC to be transferred to MAS for regulatory actions under each relevant Act.</p> <p>SingCash Pte Ltd has no comments.</p> <hr/> <p>Question 6: MAS seeks comments on the proposed amendments to the Reprimand Provisions.</p> <p>SingCash Pte Ltd has no comments.</p> <hr/> <p>Question 7: MAS seeks comments on the draft amendments to the SFA to empower MAS to issue directions to regulated FIs and their representatives conducting unregulated business.</p> <p>SingCash Pte Ltd has no comments.</p> <hr/> <p>Any other comments.</p> <p>SingCash Pte Ltd has no comments.</p>
3	Schroder Investment Management (Singapore) Ltd	<p>Question 1: MAS seeks comments on the proposal to allow MAS to require information from any person for the purpose of investigations under the BA and the new Act.</p> <p>Given that MAS' concern is with employees or ex-employees of the FIs (i.e. that employees of the FI may not be willing to comply with the directions of the FIs or may have left the employment of the FI by the time investigations commence), MAS may, in relation to natural persons, consider limiting the scope of its powers to persons who are currently employed or were employed by the relevant FIs.</p>



		<p>Question 2:</p> <p>(a) MAS seeks comments on the proposals to give MAS the power to require any person to appear for examination and the recording of statements under the BA, IA, PS Act, TCA and the new Act;</p> <p>See comment to Question 3.</p> <p>(b) MAS seeks comments on the proposal to give MAS the power to apply to the Court for a warrant to secure the attendance of a subject who fails to appear for an examination under the relevant Acts;</p> <p>See comment to Question 3.</p> <p>(c) MAS seeks comments on the proposals to provide explicitly that an MAS investigator will provide a copy of the written record (i.e., recorded statement) at such time he determines, upon the request by an examinee.</p> <p>See comment to Question 3.</p>
		<p>Question 3:</p> <p>(a) MAS seeks comments on the proposals to allow MAS investigators to enter premises without a warrant in the BA, IA, PS Act, TCA and the new Act;</p> <p>Given that there are already provisions making it an offence to destroy or conceal evidence, is it necessary to remove the 2-day notice period? If so, would it be feasible to shorten the 2-day notice period instead of removing it entirely?</p> <p>Noted that the MAS intends to exercise its power to enter premises without warrant where it assesses that there is a real risk of evidence being destroyed or tampered with. This should also be set out in the legislative amendments.</p> <p>(b) MAS seeks comments on the proposals to remove the current SFA and FAA requirement of a 2-day notice before entry can be made and to mirror this amendment in the proposed provisions for the other relevant Acts.</p> <p>See comment to Question 7.</p>
		<p>Question 4: MAS seeks comments on the proposals to allow MAS to apply to the courts for a warrant to seize evidence in specified circumstances under the BA, IA, PS Act and the new Act, and to align the scope of the warrant that can be issued by the court under the TCA with that under the other relevant Acts.</p> <p>Schroder Investment Management (Singapore) Ltd has no comments.</p>



		<p>Question 5:</p> <p>(a) MAS seeks comments on the proposals to expand the scope of section 168C(1) of the SFA to allow the transfer of evidence collected under the CPC from the Police to MAS for Part VII civil penalty investigations or proceedings;</p> <p>Schroder Investment Management (Singapore) Ltd has no comments.</p> <p>(b) MAS seeks comments on the proposals to expand the scope of section 168B(1) of the SFA to allow the transfer of evidence (relating to any offence under the SFA) from MAS to the Police or the Public Prosecutor for the purpose of criminal investigations or proceedings, and to replicate this provision in the other relevant Acts (other than the FAA);</p> <p>Schroder Investment Management (Singapore) Ltd has no comments.</p> <p>(c) MAS seeks comments on the proposals to enable evidence collected under the CPC to be transferred to MAS for regulatory actions under each relevant Act.</p> <p>Schroder Investment Management (Singapore) Ltd has no comments.</p> <hr/> <p>Question 6: MAS seeks comments on the proposed amendments to the Reprimand Provisions.</p> <p>Schroder Investment Management (Singapore) Ltd has no comments.</p> <hr/> <p>Question 7: MAS seeks comments on the draft amendments to the SFA to empower MAS to issue directions to regulated FIs and their representatives conducting unregulated business.</p> <p>Schroder Investment Management (Singapore) Ltd has no comments.</p> <hr/> <p>Any other comments.</p> <p>Schroder Investment Management (Singapore) Ltd has no comments.</p>
4	FWD Singapore Pte Ltd	<p>Question 1: MAS seeks comments on the proposal to allow MAS to require information from any person for the purpose of investigations under the BA and the new Act.</p> <p>FWD Singapore Pte Ltd has no comments.</p>



		<p>Question 2:</p> <p>(a) MAS seeks comments on the proposals to give MAS the power to require any person to appear for examination and the recording of statements under the BA, IA, PS Act, TCA and the new Act;</p> <p>FWD Singapore Pte Ltd has no comments.</p> <p>(b) MAS seeks comments on the proposal to give MAS the power to apply to the Court for a warrant to secure the attendance of a subject who fails to appear for an examination under the relevant Acts;</p> <p>FWD Singapore Pte Ltd has no comments.</p> <p>(c) MAS seeks comments on the proposals to provide explicitly that an MAS investigator will provide a copy of the written record (i.e., recorded statement) at such time he determines, upon the request by an examinee.</p> <p>FWD Singapore Pte Ltd has no comments.</p> <hr/> <p>Question 3:</p> <p>(a) MAS seeks comments on the proposals to allow MAS investigators to enter premises without a warrant in the BA, IA, PS Act, TCA and the new Act;</p> <p>FWD Singapore Pte Ltd has no comments.</p> <p>(b) MAS seeks comments on the proposals to remove the current SFA and FAA requirement of a 2-day notice before entry can be made and to mirror this amendment in the proposed provisions for the other relevant Acts.</p> <p>FWD Singapore Pte Ltd has no comments.</p> <hr/> <p>Question 4: MAS seeks comments on the proposals to allow MAS to apply to the courts for a warrant to seize evidence in specified circumstances under the BA, IA, PS Act and the new Act, and to align the scope of the warrant that can be issued by the court under the TCA with that under the other relevant Acts.</p> <p>FWD Singapore Pte Ltd has no comments.</p>
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		<p>Question 5:</p> <p>(a) MAS seeks comments on the proposals to expand the scope of section 168C(1) of the SFA to allow the transfer of evidence collected under the CPC from the Police to MAS for Part VII civil penalty investigations or proceedings;</p> <p>FWD Singapore Pte Ltd has no comments.</p> <p>(b) MAS seeks comments on the proposals to expand the scope of section 168B(1) of the SFA to allow the transfer of evidence (relating to any offence under the SFA) from MAS to the Police or the Public Prosecutor for the purpose of criminal investigations or proceedings, and to replicate this provision in the other relevant Acts (other than the FAA);</p> <p>FWD Singapore Pte Ltd has no comments.</p> <p>(c) MAS seeks comments on the proposals to enable evidence collected under the CPC to be transferred to MAS for regulatory actions under each relevant Act.</p> <p>FWD Singapore Pte Ltd has no comments.</p> <hr/> <p>Question 6: MAS seeks comments on the proposed amendments to the Reprimand Provisions.</p> <p>FWD Singapore Pte Ltd has no comments.</p> <hr/> <p>Question 7: MAS seeks comments on the draft amendments to the SFA to empower MAS to issue directions to regulated FIs and their representatives conducting unregulated business.</p> <p>FWD Singapore Pte Ltd has no comments.</p> <hr/> <p>Any other comments.</p> <p>FWD Singapore Pte Ltd has no comments.</p>
5	AIA Singapore Private Limited	<p>Question 1: MAS seeks comments on the proposal to allow MAS to require information from any person for the purpose of investigations under the BA and the new Act.</p> <p>In respect of its investigative powers to require information from any person under Part VI of the FAA (and where applicable equivalent provisions in the other acts which are the subject of the consultation paper), MAS should make it clear that a person is not required to disclose information and/or documents that are protected by legal professional privilege.</p>



	<p>If there is a dispute over whether information and/or documents are protected by legal professional privilege, there should be an independent process in place to resolve the dispute over the nature of the information and/or documents before they are released to MAS (or, specifically, to the team within MAS which is conducting the investigation). Similarly, if MAS seizes documents and/or electronic resources under s 73 of the FAA and there is a reasonable basis to think that those documents and/or electronic resources contain information which is protected by legal professional privilege, there should be an independent process in place for MAS to return the privileged information and/or protect the privileged information from being disclosed to the investigators who are conducting the investigation.</p> <p>MAS should not require disclosure of information and/or documents protected by legal professional privilege.</p> <p>The provisions of the FAA (and equivalent provisions in the other Acts) which empower MAS to require information and/or documents from any person for the purposes of an investigation are expressed in mandatory language. There is currently no express exception to make it clear that a person is not compelled to produce information and/or documents which are protected by legal professional privilege.</p> <p>Singapore law recognises that protections from disclosure should be afforded to information and/or documents which fall within the scope of legal professional privilege. As held by the High Court in <i>Ravi s/o Madasamy v Attorney-General</i> [2020] SGHC 221 (“<i>Madasamy v AG</i>”) at [75]: “[L]egal professional privilege is a long-established part of our legal system and tradition. It exists under the EA and the common law and it applies with equal force to both civil and criminal cases.”</p> <p>In respect of legal professional privilege in the common law, the High Court in <i>Yap Sing Lee v MCST</i> No 1267 [2011] 2 SLR 998 held at [15] that legal professional privilege is not “merely a rule of evidence, restricted to judicial or quasi-judicial proceedings, but is now considered a substantive legal right that may be claimed outside these areas (emphasis added)”.</p> <p>The underlying rationale for the two types of legal professional privilege – legal advice privilege and litigation privilege – was set out by the Court of Appeal in <i>Skandinaviska Enskilda Banken AB v Asia Pacific Breweries (Singapore) Pte Ltd</i> [2007] 2 SLR(R) 367 at [26]:</p> <p>“[Legal advice privilege] recognizes that the justice system depends for its vitality on full, free and frank communication between those who need legal advice and those who are best able to provide it. Society has entrusted to lawyers the task of advancing their clients’ cases with the skill and expertise available only to those who are trained in the law. They alone can discharge these duties effectively, but only if those who depend on them for counsel may consult with them in confidence. The resulting confidential relationship</p>
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	<p>between solicitor and client is a necessary and essential condition of the effective administration of justice.</p> <p>Litigation privilege, on the other hand, is not directed at, still less, restricted to communications between solicitor and client. It contemplates, as well, communications between a solicitor and third parties or, in the case of an unrepresented litigant, between the litigant and third parties. Its object is to ensure the efficacy of the adversarial process and not to promote the solicitor–client relationship. And to achieve this purpose, parties to litigation, represented or not, must be left to prepare their contending positions in private, without adversarial interference and fear of premature disclosure.” [Emphasis added.]</p> <p>Section 69 of the FAA (and equivalent provisions in the other Acts) expressly provides that an advocate and solicitor is not obliged to disclose or produce information and/or documents that are privileged. However, the FAA is silent on whether any other persons, including a person under investigation pursuant to the FAA, may refuse to disclose information and/or documents if they are protected by legal professional privilege.</p> <p>The boundaries of legal professional privilege are acknowledged and upheld in section 69(1) of the FAA, which explicitly acknowledges that an advocate and solicitor cannot be compelled to disclose privileged information and/or documents for an investigation.</p> <p>However, section 69(2) of the FAA requires an advocate and solicitor to give the name and address of the counterparty to the privileged communication. The purpose of section 69(2) is ambiguous and debatable. On one reading, this enables the MAS to verify and cross-check that the information and documents in the hands of the counterparty is actually privileged. Another possible, although unlikely, view of section 69(2) is that legal professional privilege can be circumvented if the MAS were to seek production of the privileged information and documents from the counterparty (rather than directly from the lawyer). The latter is difficult to justify because (i) legal professional privilege is a fundamental and necessary part of the administration of justice in Singapore, (ii) legal professional privilege has never depended upon the privileged information and documents being retained in a lawyer’s hands, and (iii) there is no enabling provision in the FAA which expressly allows MAS to compel the production of privileged information and documents by non-lawyers.</p> <p>The above uncertainty is currently present in the FAA and gives rise to unnecessary confusion. We would ask MAS to clarify the position under section 69(2). The absence of clear provisions on whether a non-lawyer can refuse to disclose information and/or documents which are privileged in nature means that a person who receives a production notice from MAS is inevitably confronted by two risks:</p>
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	<p>(a) if the person does not disclose privileged information and/or documents, the person may be at risk of inadvertently breaching the disclosure obligations under the Act (assuming the disclosure obligations do extend to information and/or documents which are privileged); and</p> <p>(b) if the person provides disclosure of privileged information and/or documents, the person may be at risk of inadvertently prejudicing and/or waiving the person’s rights to legal professional privilege in relation to the information and/or documents.</p> <p>Considering that the risk at (a) carries possible exposure to criminal liability, the position should not be left ambiguous. It would be beneficial for MAS to clarify the position in respect of privileged information and/or documents and make it clear that the disclosure of privileged information and/or documents is not required under the Acts.</p> <p>MAS could consider adopting an approach similar to the Australian Securities & Investment Commission (“ASIC”), which has provided express guidance in its information sheet (INFO 165) on claims of legal professional privilege⁸. The ASIC stated that a person responding to ASIC’s compulsory information-gathering powers has three options in relation to privileged information:</p> <p>(a) the person may “waive privilege and provide the information to ASIC in response to the compulsory notice”;</p> <p>(b) if the person is the privilege holder, the person may provide the [privileged] information to ASIC on a limited and confidential basis intended to preserve privilege”; or</p> <p>(c) the person may “withhold the information from ASIC”.</p> <p>It would greatly improve certainty for MAS to make it clear that a person who receives a production notice has the above options to choose from. In addition, it would also benefit the investigative process by encouraging and facilitating more disclosure of privileged documents to MAS under option (b).</p> <p>In particular, as things currently stand, the practical effect of the uncertainty with regard to the position on privileged documents often means that privilege holders have to act conservatively when responding to production notices. Privilege holders would be greatly reassured if it was acknowledged and made clear by MAS that option (b) exists, and can provide a valid route to give maximum co-operation to MAS without sacrificing or endangering the privilege holder’s general rights to assert privilege.</p> <p>MAS should create independent processes for handling information and/or documents where (i) it is disputed whether the information and/or documents are privileged, and (ii) there is a reasonable suspicion that documents or electronic resources which have been seized contain privileged information and/or documents</p>
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⁸ <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/claims-of-legal-professional-privilege/>



	<p>As protection should be provided to privileged information and/or documents, there should be independent processes in place for handling information and/or documents when (i) it is disputed whether the information and/or documents are privileged, and/or (ii) there is a reasonable basis to believe that documents or electronic resources which have been seized contain privileged information and/or documents. Critically, the investigators who are conducting the investigation should not be permitted to review and/or access such information and/or documents until it has been determined whether or not they are protected by legal professional privilege.</p> <p>In the recent High Court decision in <i>Madasamy v AG</i>, the High Court was faced with the issue of how legal professional privilege should be protected when documents are seized for a police investigation from a criminal defense attorney.</p> <p>The High Court recognized at [76] that there would be a reasonable concern about the “appearance of justice” where the investigative authority responsible for prosecution is also responsible for reviewing the privileged documents to determine if they are protected by privilege. The High Court emphasized at [72] that the review of seized materials – to determine if they are protected by legal professional privilege – should be conducted by “a team of AGC officers who are not, and will not be, involved in the underlying investigation (emphasis added)”.</p> <p>The High Court further held at [78] that “should the holder of the privilege subsequently apply to the court to challenge the AGC privilege team’s determination that certain documents are not privileged, these documents in dispute should not be handed to the investigation or prosecutorial team until after the challenge has been determined by the Court (emphasis added)”.</p> <p>It is respectfully submitted that the reasoning underlying the decision in <i>Madasamy v AG</i> in relation to investigations by the AGC applies with equal force to investigations by MAS. There should be an independent process in place for the handling of information and/or documents, including information and/or documents which have been seized by MAS, to ensure that privileged materials are not handed to the investigators who are conducting the investigation.</p> <p>Question 2: (a) MAS seeks comments on the proposals to give MAS the power to require any person to appear for examination and the recording of statements under the BA, IA, PS Act, TCA and the new Act;</p> <p>Safeguards should be put included in the FAA (and where relevant the other Acts) to protect the rights of examinees and the person under investigation in respect of the examination process.</p>
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	<p>(b) MAS seeks comments on the proposal to give MAS the power to apply to the Court for a warrant to secure the attendance of a subject who fails to appear for an examination under the relevant Acts;</p> <p>The proposed amendments to the FAA strengthen MAS’ powers to compel the attendance of a person for examination and to withhold the record of the examination until such a time as the MAS investigator determines. However, no corresponding safeguards have been proposed to protect the rights of the examinee and/or the person under investigation.</p> <p>First, examinees should be permitted to have their legal counsel present during the examination to advise them of their rights and obligations under the relevant Acts.</p> <p>Legal counsel should be present so that they may advise the examinee on their rights and obligations under the FAA (and the other relevant Acts) including their obligation to answer questions asked by the investigators, their rights under section 68 of the FAA in relation to incriminating statements, their right to make amendments to a written statement before signing it, their rights in respect of privileged information and so forth. The role of legal counsel would not be to interfere with the examination and/or to comment on the substantive answers given by the examinee. Legal counsel should be present strictly to ensure that the examinee is fully aware of their rights and obligations during the examination.</p> <p>It is a common practice in other common law jurisdictions to allow legal counsel to be present during an investigation by a regulatory authority. For example, ACIS and the Financial Conduct Authority (FCA) in the UK both expressly recognise that a person being interviewed by the investigative authority is entitled to have legal counsel present during the interview (see section 23 of the Australian Securities and Investments Commission Act and the FCA’s Enforcement Guide, Chapter 4 at [4.11.4]⁹).</p> <p>Specific provisions can be included in the FAA to define and limit the scope of legal counsel’s participation during the examination to ensure that the presence of legal counsel does not inhibit the investigation and is allowed strictly to protect the interviewee’s rights. For example, section 23 of the Australian Securities and Investments Commission Act provides:</p> <p>“(1) The examinee’s lawyer may be present at the examination and may, at such times during it as the inspector determines:</p> <ul style="list-style-type: none">(a) address the inspector; and(b) examine the examinee; <p>about matters about which the inspector has examined the examinee.</p> <p>(2) If, in the inspector’s opinion, a person is trying to obstruct the examination by exercising rights under subsection (1), the inspector may require the person to stop addressing the inspector, or examining the examinee, as the case requires.</p> <p>Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).”</p>
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⁹ <https://www.handbook.fca.org.uk/handbook/EG/4.pdf>



		<p>Has MAS considered adopting similar provisions specifying that the legal counsel may address the investigator and/or examine the examinee? This has the benefit of affording the investigated person some protection and guidance, and also enables MAS to carry out “effective investigations” if legislation includes express provision that this is done in a manner that does not obstruct the investigation.</p> <p>Secondly, even if the MAS is not minded to provide for or allow legal counsel to give advice and/or participate during examinations (as suggested above), it would be beneficial for a representative of a company under investigation (eg. internal or external legal counsel) to be allowed to be present during the examinations of the company’s officers and employees, or for the lawyer of an individual under investigation to be present during his or her interview. This would be akin to conducting a watching brief.</p> <p>(c) MAS seeks comments on the proposals to provide explicitly that an MAS investigator will provide a copy of the written record (i.e., recorded statement) at such time he determines, upon the request by an examinee.</p> <p>In particular, interviewees who are representatives of a company often do not have the company’s full records available to them during the interviews, and factual errors may inadvertently arise. By allowing a representative of the company to be present, the company can separately check and verify facts against its records and inform MAS if the company believes that there were any inaccuracies. This would facilitate the investigation and ensure that MAS is provided with more accurate and complete information from the early stages of the investigation.</p> <p>Question 3:</p> <p>(a) MAS seeks comments on the proposals to allow MAS investigators to enter premises without a warrant in the BA, IA, PS Act, TCA and the new Act;</p> <p>MAS should not enter premises without a warrant and/or without notice except where there is a real risk of evidence being destroyed or tampered with</p> <p>Paragraph 2.11 of the Consultation Paper states that MAS generally intends to exercise the power to enter premises without a warrant only where MAS assesses that there is a real risk of evidence being destroyed or tampered with. Given MAS’ own position, there is no reason that the amendments to the relevant Acts should not expressly state that the power to enter premises without a warrant will only be exercised in exceptional circumstances, such as where there is a real risk of evidence being destroyed or tampered with. The absence of this stipulation in the proposed amendments and the proposed removal of the requirement that 2 days’ notice be given currently in the FAA and SFA will open the door to the possibility that the power to enter premises without a warrant may be abused.</p>
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	<p>Respectfully, the power to enter a premise without a warrant is intrusive and should only be exercised where it is absolutely necessary in the interests of justice. In all other circumstances, MAS should first obtain a warrant.</p> <p>The rationale for obtaining a warrant is clearly to protect both the interests of MAS in conducting the investigation and the interests of the person who occupies the premises as it requires that an independent Magistrate assess and determine that there are reasonable grounds (as required under section 73 of the FAA) for MAS to enter a premises. The process of applying for and obtaining a warrant is not time-consuming and/or cumbersome and it is reasonable for the FAA to require MAS to follow the process of obtaining a warrant before it enters any premises. Further we are of view that obtaining a warrant would not prejudice the investigation process since such application for a warrant can be done confidentially and would not be known to the investigated person or person whose premises are to be searched.</p> <p>In this respect, MAS should take into consideration that under the CPC, there are limited circumstances in which the Police may conduct a search of a premises without first obtaining a search warrant. We wish to clarify if the scope of MAS' powers to enter a premises without a warrant could effectively exceed those exercised by the Police? We respectfully submit that it should not, especially given the fact that information may be shared by the MAS to the Police and vis-versa under the proposed amendments.</p> <p>(b) MAS seeks comments on the proposals to remove the current SFA and FAA requirement of a 2-day notice before entry can be made and to mirror this amendment in the proposed provisions for the other relevant Acts.</p> <p>See comments on Question 1 regarding the need for independent processes in place for handling information and/or documents which have been seized and contain privileged information and/or documents.</p> <p>The FAA should provide for a person's entitlement to obtain copies of seized materials</p> <p>Additionally, the practical consequence of the proposal to remove the current FAA requirement of 2-day notice before entry can made by MAS investigators for the purposes of inter alia seizing materials for an investigation is that the relevant person or organisation will not have the time or opportunity to make its own copies and/or duplicates of the seized materials. If the seized materials are critical for the purposes of a person or organisation's ongoing business operations and activities, the seizure of these documents without notice could have severe and adverse disruptions and/or effects on the business of the person or organisation.</p> <p>It has been established by the Singapore Court of Appeal that where documents have been seized by an investigative authority, a person's</p>
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		<p>ownership or legal custody of or legal right to control the documents so seized at common law gives that person a right to access and to make copies of the documents while they are in the possession of the investigative authority (see <i>PP v Goldring Timothy Nicholas</i> [2014] 1 SLR 586 at 88]; see also the High Court decision in <i>Goldring Timothy Nicholas v PP</i> [2013] SGHC 88 at [24] and [42]).</p> <p>In the circumstances, the FAA should allow a person or organisation whose materials have been seized by MAS to obtain copies of the seized materials. MAS may also consider providing guidelines regarding its standard processes/ timeframes for copies of seized materials to be taken, for example, whether the person or organisation should appoint an independent third party expert who will be given supervised access to the seized materials in order to clone electronic devices seized, etc.</p> <p>Having a clear process by which a person may access and make copies of materials seized will assist in the efficient administration of the investigative process and will minimize the prejudice to a person or organization caused by a seizure of its materials without notice.</p> <p>Question 4: MAS seeks comments on the proposals to allow MAS to apply to the courts for a warrant to seize evidence in specified circumstances under the BA, IA, PS Act and the new Act, and to align the scope of the warrant that can be issued by the court under the TCA with that under the other relevant Acts.</p> <p>See comments on:</p> <ul style="list-style-type: none">(a) Question 1 regarding the need for independent processes in place for handling information and/or documents which have been seized and contain privileged information and/or documents, and(b) Question 3 regarding the need to provide for a person or organisation’s right to take copies of the seized documents, and having guidelines for this process. <p>Question 5:</p> <ul style="list-style-type: none">(a) MAS seeks comments on the proposals to expand the scope of section 168C(1) of the SFA to allow the transfer of evidence collected under the CPC from the Police to MAS for Part VII civil penalty investigations or proceedings; <p>See comments on:</p> <ul style="list-style-type: none">(a) Question 1 regarding the protection of privileged information.(b) Question 3 regarding the limitations on when MAS should be permitted to enter a premises without a warrant. <p>As the intention under the relevant Acts is for information to be freely transferred between MAS and the Police, it is important that the same minimum restrictions and safeguards on the collection and handling of evidence should apply under both the relevant Acts and the CPC. In particular:</p>
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	<p>(a) there should be clear restrictions on collecting and handling privileged information and/or documents which ensure that privileged information and/or documents do not fall into the hands of the MAS and/or Police investigators; and</p> <p>(b) MAS' investigative powers to enter premises, seize materials, and conduct examinations should not exceed the corresponding investigative powers exercised by the Police.</p> <p>It would be contrary to the fair administration of justice if either MAS or the Police could use the process for the transfer of evidence under the relevant Acts for the purpose of obtaining access to evidence which the Police or MAS would not otherwise have been able to obtain and/or which the Police or MAS would otherwise have been restricted from taking by exercising its own investigative powers.</p> <p>(b) MAS seeks comments on the proposals to expand the scope of section 168B(1) of the SFA to allow the transfer of evidence (relating to any offence under the SFA) from MAS to the Police or the Public Prosecutor for the purpose of criminal investigations or proceedings, and to replicate this provision in the other relevant Acts (other than the FAA);</p> <p>See on comments under Question 5(a)</p> <p>(c) MAS seeks comments on the proposals to enable evidence collected under the CPC to be transferred to MAS for regulatory actions under each relevant Act.</p> <p>See on comments under Question 5(a)</p> <hr/> <p>Question 6: MAS seeks comments on the proposed amendments to the Reprimand Provisions.</p> <p>AIA Singapore Private Limited has no comments.</p> <hr/> <p>Question 7: MAS seeks comments on the draft amendments to the SFA to empower MAS to issue directions to regulated FIs and their representatives conducting unregulated business.</p> <p>AIA Singapore Private Limited has no comments.</p> <hr/> <p>Any other comments.</p> <p>It would be helpful for there to be express provisions giving greater clarity in respect of what information may be disclosed and to whom in respect of an ongoing MAS investigation.</p> <p>There should be guidance on whether and to what extent the information regarding an investigation may be disclosed to and/or discussed with:</p>
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		<p>(a) officers, employees and/or internal legal counsel of a company involved in the investigation;</p> <p>(b) external counsel of the company and/or external counsel of the company’s employees or officers;</p> <p>(c) the company’s auditors;</p> <p>(d) related entities, such as the parent company and/or subsidiary and/or where the company is part of a group of companies, the group’s holding company; and</p> <p>(e) other persons or entities who may have a legitimate interest in being aware of the investigation.</p> <p>With regard to (c) above, sections 70A and 71A of the FAA currently provide some guidance on the extent to which an inspection report or an investigation report may be disclosed to a company’s auditors. However, these provisions do not state that a company’s auditors may be informed about a pending investigation. In this respect, please note that auditors typically require written confirmation from a company as part of their annual audit that there are no ongoing investigations into the company. Would MAS consider providing guidance so that a company (especially where investigations may stretch over years) may meet its disclosure obligations to its auditors while also maintaining confidentiality of investigation proceedings.</p> <p>MAS should consider providing a set of FAQs and/or guidelines to provide clarity on what information about an ongoing investigation may be disclosed and to whom. In this respect, MAS may wish to consider the FAQs¹⁰ and the Explanatory Note on Section 121¹¹ provided by the Hong Kong Insurance Authority (HKIA) in relation to what non-disclosure obligations apply where there is an investigation. For example, HKIA states that where non-disclosure obligations are imposed on a corporation, “internal disclosure amongst the officers and employees within that corporation is not prohibited”.</p>
6	Tokio Marine Life Insurance Singapore Ltd	<p>Question 1: MAS seeks comments on the proposal to allow MAS to require information from any person for the purpose of investigations under the BA and the new Act.</p> <p>We agree in principle the proposal to allow MAS to require information from any person for the purpose of investigations under the BA and the new Act. We would like to seek clarification from MAS if the intention is to align the term “person” with the mandatory reference check period of 5 years for relevant individuals (in a separate MAS consultation paper). There should also be clarity provided on the record retention period, especially if the person has left the Company, as there will be an operational impact if the records are to be kept for an extended period of time. Similarly, there should be clarity if</p>

¹⁰ https://www.ia.org.hk/en/enforcement/faqs/faqs_14.html

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https://www.ia.org.hk/en/legislative_framework/files/Explanatory_Note_on_Section_121_of_the_Insurance_Ordinance.pdf



		<p>information is to include emails of the person, office computer hard drives, hardcopy materials, audio recordings, etc.</p> <p>We would also like to seek clarification as to whether the proposal will apply to overseas subsidiaries and branches and if so, the extent of such investigative powers, given the cross-jurisdictional issues involved. As financial institutions may also outsource certain functions, do the investigative powers extend to persons in such outsourced entities? MAS should note that contracts with outsourced entities may need to be revised to factor the proposal, and such entities may not be agreeable to such requests and wish to renegotiate the arrangements. MAS should also note that an unintended outcome of the expanded powers is that it may have an impact on recruiting talents outside of the financial sector too.</p> <p>We would like to seek clarification on the term “rule of professional conduct”. There may be certain professions where there are specified rules e.g. lawyers, accountants, etc. However, within financial industry, some roles, such as compliance, risk management, etc, may have unspoken or unwritten “rules”. It would thus be useful for MAS to provide clarity if the intention is only on formal rules.</p> <p>Question 2:</p> <p>(a) MAS seeks comments on the proposals to give MAS the power to require any person to appear for examination and the recording of statements under the BA, IA, PS Act, TCA and the new Act;</p> <p>We would like to seek clarification if it is MAS’ intention to allow lawyers to represent person(s) called upon by the Authority for examination purposes if the person for any reason is unable to appear in person for the examination or prefer to have a lawyer represent him/her instead. In addition, whether there are any circumstances where MAS will not allow a lawyer to represent the person called upon for examination. It may be useful for MAS to provide more clarity on this aspect.</p> <p>Secondly, will there be any exceptional circumstances where MAS may allow alternatives if circumstances do not allow the person to appear in person for examination? Under such circumstances, will phone or video examination suffice?</p> <p>Lastly, we would like to check whether will there be any direct implication on the Company if the staff fails to comply with the requirement by his/her volition.</p> <p>(b) MAS seeks comments on the proposal to give MAS the power to apply to the Court for a warrant to secure the attendance of a subject who fails to appear for an examination under the relevant Acts;</p> <p>Our responses are similar to (a).</p>
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		<p>(c) MAS seeks comments on the proposals to provide explicitly that an MAS investigator will provide a copy of the written record (i.e., recorded statement) at such time he determines, upon the request by an examinee.</p> <p>We are of the view that the written record be provided right after the statement is taken, upon request by the examinee. This is to serve as form of assurance that the examinee has a copy of what he/she has responded to.</p> <hr/> <p>Question 3:</p> <p>(a) MAS seeks comments on the proposals to allow MAS investigators to enter premises without a warrant in the BA, IA, PS Act, TCA and the new Act;</p> <p>Although we fully understand MAS’ intent on entering premises without a warrant, there should be a recourse within the law for the Company should it be subsequently found that there were no reasonable grounds for such an investigation. This is because the act of entering premises without a warrant itself may cause reputational damage to the Company and it would need to clear its name properly if the Company was not guilty of any transgression. Due to the current COVID-19 work arrangements and the new norm going forward, staff and representatives may permanently work from home. As such, does the term “premises” extend to their homes as well , given that business transactions and documents may no longer be carried out or located in the office? If so, we are of the view that there should be limitations to the regulations to protect the individual’s privacy.</p> <p>(b) MAS seeks comments on the proposals to remove the current SFA and FAA requirement of a 2-day notice before entry can be made and to mirror this amendment in the proposed provisions for the other relevant Acts.</p> <p>Tokio Marine Life Insurance Singapore Ltd has no comments.</p> <hr/> <p>Question 4: MAS seeks comments on the proposals to allow MAS to apply to the courts for a warrant to seize evidence in specified circumstances under the BA, IA, PS Act and the new Act, and to align the scope of the warrant that can be issued by the court under the TCA with that under the other relevant Acts.</p> <p>We are generally agreeable to the proposal. However, we would like to clarify whether this extends to personal devices that staff also use for work purposes.</p>
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	<p>Question 5:</p> <p>(a) MAS seeks comments on the proposals to expand the scope of section 168C(1) of the SFA to allow the transfer of evidence collected under the CPC from the Police to MAS for Part VII civil penalty investigations or proceedings;</p> <p>Tokio Marine Life Insurance Singapore Ltd has no comments.</p> <p>(b) MAS seeks comments on the proposals to expand the scope of section 168B(1) of the SFA to allow the transfer of evidence (relating to any offence under the SFA) from MAS to the Police or the Public Prosecutor for the purpose of criminal investigations or proceedings, and to replicate this provision in the other relevant Acts (other than the FAA);</p> <p>Tokio Marine Life Insurance Singapore Ltd has no comments.</p> <p>(c) MAS seeks comments on the proposals to enable evidence collected under the CPC to be transferred to MAS for regulatory actions under each relevant Act.</p> <p>Tokio Marine Life Insurance Singapore Ltd has no comments.</p> <hr/> <p>Question 6: MAS seeks comments on the proposed amendments to the Reprimand Provisions.</p> <p>We agree with the proposal. We would like to clarify whether there would be a time limit to the status of this “relevant person”, i.e. would we be aligning this to the mandatory reference check requirement of 5 years, similar to our query in question (1)?</p> <hr/> <p>Question 7: MAS seeks comments on the draft amendments to the SFA to empower MAS to issue directions to regulated FIs and their representatives conducting unregulated business.</p> <p>Tokio Marine Life Insurance Singapore Ltd has no comments.</p> <hr/> <p>Any other comments.</p> <p>Other comments on The New Act (Annex B):</p> <ol style="list-style-type: none">Under Section 3(2) of The New Act, should the provisions also cater for extension of the investigation report to the regional and head offices of the investigated person?Under Sections 7 and 8, what safeguards would be put in place where during the course of examination questions are put to the examinee? Section 8 should allow the lawyer representing the examinee (if one is engaged) to sit in during the examination.
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		<p>3. Where “proceedings” is mentioned in Section 10, can MAS help to clarify the nature of the proceedings intended?</p> <p>Other comments under Annex C: Is the general staff of the company also contemplated under the definition of “officer” as the term is proposed to be defined under the SFA, FAA and TCA?</p>
7	Amazon Web Services	<p>Question 1: MAS seeks comments on the proposal to allow MAS to require information from any person for the purpose of investigations under the BA and the new Act.</p> <p>Recommendation 1: The scope of persons that MAS can require information from should be limited to persons that are regulated by MAS, and employees and ex-employees of such regulated persons.</p> <p>The scope of MAS’ expanded investigation powers in the proposed New Act could potentially cover persons that are not regulated by MAS (“Unregulated Persons”). This is because the term “person” is an undefined term in the proposed New Act and can be interpreted to mean any person, including cloud service providers (CSPs).</p> <p>AWS recommends defining the term “person” in the proposed New Act as Covered Persons so that the exercise of MAS’ powers to require information, and ability to impose sanctions against non-compliant persons, is targeted at those who are directly relevant to MAS’ supervisory role. MAS can consider taking a similar approach as its proposed amendments to the definition of a “relevant person” under the Securities Futures Act (“SFA”), Banking Act (“BA”) and Trust Companies Act (“TCA”), respectively, as set out in Annex C of the Consultation Paper, which limits the MAS’ reprimand powers to MAS-regulated entities, and employees and ex-employees of 2 such MAS-regulated entities. This approach would be consistent with MAS’ objective to incrementally expand its existing investigation powers over MAS-regulated entities to employees and ex-employees of such MAS-regulated entities.</p> <p>Recommendation 2: All requests for information/data should be made directly to Covered Persons who have possession and control over such information/data.</p> <p>The term “power” is an undefined term under the proposed Act that lends itself to a very broad interpretation around what it means for a person to have “power” over, or “power” to access, information/data.</p> <p>In the context of cloud services (e.g. AWS), Covered Persons who use AWS maintain and do not release effective control over their content within the AWS environment as they can:</p>



	<ul style="list-style-type: none"> • Determine where their content will be located, for example the type of storage they use on AWS and the geographic location (by Region) of that storage • Control the format, structure and security of their content, including whether it is masked, anonymized or encrypted. AWS offers customers options to implement strong encryption for their customer content in transit or at rest, and also provide customers with the option to manage their own encryption keys or use third party encryption mechanisms of their choice • Manage other access controls, such as identity, access management, permissions and security credentials. This allows AWS customers to control the entire life-cycle of their content on AWS, and manage their content in accordance with their own specific needs, including content classification, access control, retention and deletion. <p>Covered Persons (and not CSPs) have effective control over their information/data and are therefore in the best position to provide MAS with access to meaningful, unencrypted, and complete datasets that will enable MAS to effectively carry out its investigations.</p> <p>AWS thus recommends that the term “power” in the proposed New Act be replaced with the term “control” and that all requests for information be made directly to Covered Persons who have “possession and control” over the relevant information. By requesting information directly from these Covered Persons, the MAS will be able to obtain relevant information faster, more efficiently (e.g. because data may be encrypted with keys managed by the Covered Person), and without needing to obtain and serve a valid and binding court order or warrant. Of course, the MAS will still be able to request information from Unregulated Persons, including offshore CSPs, under existing legal procedures.</p> <p>Question 2:</p> <p>(a) MAS seeks comments on the proposals to give MAS the power to require any person to appear for examination and the recording of statements under the BA, IA, PS Act, TCA and the new Act;</p> <p>(b) MAS seeks comments on the proposal to give MAS the power to apply to the Court for a warrant to secure the attendance of a subject who fails to appear for an examination under the relevant Acts;</p> <p>(c) MAS seeks comments on the proposals to provide explicitly that an MAS investigator will provide a copy of the written record (i.e., recorded statement) at such time he determines, upon the request by an examinee.</p> <p>Please refer to AWS’ comments made regarding limiting the scope of any “person” to Covered Persons under Recommendation 1 above.</p>
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	<p>Question 3: (a) MAS seeks comments on the proposals to allow MAS investigators to enter premises without a warrant in the BA, IA, PS Act, TCA and the new Act;</p> <p>Recommendation 3: The scope of premises that MAS can enter without a warrant, including its ability to take any equipment and require any person to produce any books or data upon entering such premises, should be limited to Covered Persons.</p> <p>The scope of premises in the proposed New Act that MAS can enter without a warrant includes any premises that are, or have been, used by a person under investigation. The term “used” is an undefined term in the proposed New Act that can be interpreted broadly to cover premises of Unregulated Persons, including data centers of CSPs, that are “used” by a Covered Person under investigation.</p> <p>We submit that an overly broad interpretation of the term “used” in the exercise of MAS’ powers to enter premises without a warrant, including MAS’ ability to take any equipment and/or require any person to produce books or data upon entering such premises, would be an overreach of its investigation powers on Unregulated Persons and inconsistent with international norms.</p> <p>We would also like to highlight that in the context of cloud services, the power to physically access and seize physical evidence from data centers would not be meaningful to MAS’ investigation. CSPs’ business models rely on a multi-tenanted environment, where multiple customers’ applications and data reside on the same physical infrastructure. It will not be possible to identify specific hardware or servers that a particular customer’s workload resides on. Seizure of hardware related to a specific customer would not be possible and would in fact compromise the security of other CSP customers. This also raises practical challenges about the scope and relevance of data accessed for multi-national financial institutions, who may not have separated MAS-regulated data from other data, including that of affiliates in other geographies, creating a significant risk that direct access by MAS would be overbroad. It would be impossible for a CSP to ensure that the appropriate scope of records is produced to the MAS without working with the Covered Person.</p> <p>Further, customers (and not the CSP) retain control over their data and their data security controls at all times, and MAS would need logical access to such data from the customer in order to prevent digital evidence from being concealed, removed, tampered with or destroyed. As such, MAS should make all requests for 4 information/data directly to Covered Persons who have possession and control over such information/data, because CSPs do not have visibility into or effective control of customers’ content.</p> <p>As such, in addition to Recommendation 1 (to narrow the scope of persons in the proposed New Act to Covered Persons), AWS recommends replacing the</p>
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	<p>term “used” in the proposed New Act with the term “control” in order to limit the scope of premises that the MAS can enter (including its ability to take any equipment and/or require any person to produce books or data upon entering such premises) without a warrant to premises that are owned, occupied or controlled by a Covered Person. This will help to ensure that the exercise of these intrusive powers, and the ability to impose sanctions on non-compliant persons, are targeted at Covered Persons who are directly relevant to MAS’ supervisory role. This suggested approach does not, in any case, preclude the MAS from entering the premises of, or collecting information from, Unregulated Persons, including offshore CSPs, under existing legal procedures.</p> <p>(b) MAS seeks comments on the proposals to remove the current SFA and FAA requirement of a 2-day notice before entry can be made and to mirror this amendment in the proposed provisions for the other relevant Acts.</p> <p>Please refer to Recommendation 3, as similar concerns apply.</p> <hr/> <p>Question 4: MAS seeks comments on the proposals to allow MAS to apply to the courts for a warrant to seize evidence in specified circumstances under the BA, IA, PS Act and the new Act, and to align the scope of the warrant that can be issued by the court under the TCA with that under the other relevant Acts.</p> <p>Please refer to Recommendation 3, as similar concerns apply.</p> <hr/> <p>Question 5:</p> <p>(a) MAS seeks comments on the proposals to expand the scope of section 168C(1) of the SFA to allow the transfer of evidence collected under the CPC from the Police to MAS for Part VII civil penalty investigations or proceedings;</p> <p>Amazon Web Services has no comments.</p> <p>(b) MAS seeks comments on the proposals to expand the scope of section 168B(1) of the SFA to allow the transfer of evidence (relating to any offence under the SFA) from MAS to the Police or the Public Prosecutor for the purpose of criminal investigations or proceedings, and to replicate this provision in the other relevant Acts (other than the FAA);</p> <p>Amazon Web Services has no comments.</p> <p>(c) MAS seeks comments on the proposals to enable evidence collected under the CPC to be transferred to MAS for regulatory actions under each relevant Act.</p> <p>Amazon Web Services has no comments.</p>
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		<p>Question 6: MAS seeks comments on the proposed amendments to the Reprimand Provisions.</p> <p>Amazon Web Services has no comments.</p> <hr/> <p>Question 7: MAS seeks comments on the draft amendments to the SFA to empower MAS to issue directions to regulated FIs and their representatives conducting unregulated business.</p> <p>Amazon Web Services has no comments.</p> <hr/> <p>Any other comments.</p> <p>AWS thanks MAS for the opportunity to submit our comments on the proposed amendments to the MAS’ Investigative and Other Powers under the Financial Institutions (Miscellaneous Amendments) Bill and various Acts. We appreciate MAS’ decision to collect suggestions and comments from interested parties, including AWS, in preparing the amendment Bill.</p> <p>We have summarized our recommendations below:</p> <ol style="list-style-type: none"> 1. Limit overly broad and undefined terms that can potentially expand MAS’ investigative powers to Unregulated Persons: We understand MAS’ policy intent of incrementally expanding its investigation powers to employees and ex-employees of MAS regulated entities, but urge the MAS to narrow the scope of overly broad and undefined terms such as “any person” and “any premises” so that the MAS can target the exercise of its investigative powers at those who are directly relevant to MAS’ supervisory role. This will also help bring the scope of MAS’ investigative powers under the proposed New Act in line with MAS’ objectives outlined in the Consultation Paper. 2. Requests for information/data should be made directly to Covered Persons, who have possession and control over such data/information: In the context of cloud services, Covered Persons (and not the CSPs themselves) have effective control over their data/information. It would hence be more effective for the MAS to make all requests for data/information directly to Covered Persons who are in the best position to provide the MAS with access to meaningful, unencrypted, and complete datasets that will enable the MAS to effectively carry out its investigations. 3. Ensure requests for physical access to premises and for seizing physical evidence are fit-for-purpose: Having the investigative power to physically access premises and seize physical evidence from such premises would not be meaningful in the context of digital data/information stored on cloud services. The multi-tenanted environment of public cloud services (e.g. AWS) means that it would not be possible to physically identify or obtain the relevant data/information of a Covered Person under investigation. Further, the logical access required to prevent digital evidence from being concealed, removed,
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		<p>tampered with or destroyed, would be most effectively obtained from the Covered Person under investigation (and not the CSP) because such Covered Person retains control over their data and their data security controls at all times.</p> <p>We continue to support MAS’ commitment to the digital transformation of the financial services industry in Singapore and innovative approach to regulation and technology adoption. Again, we wish to thank MAS for considering our suggestions to the amendment Bill, and would also welcome the opportunity to discuss the contents of our submission in more detail.</p>
8	Asia Internet Coalition	<p>Question 1: MAS seeks comments on the proposal to allow MAS to require information from any person for the purpose of investigations under the BA and the new Act.</p> <p>Recommendation 1: The scope of persons that MAS can require information from should be limited to persons that are regulated by MAS, and employees and ex-employees of such regulated persons.</p> <p>The scope of MAS’ expanded investigation powers in the proposed New Act could potentially cover persons that are not regulated by MAS (“Unregulated Persons”). This is because the term “person” is an undefined term in the proposed New Act and can be interpreted to mean any person, including cloud service providers (CSPs). We recommend defining the term “person” in the proposed New Act as Covered Persons so that the exercise of MAS’ powers to require information, and ability to impose sanctions against non-compliant persons, is targeted at those who are directly relevant to MAS’ supervisory role. MAS can consider taking a similar approach as its proposed amendments to the definition of a “relevant person” under the Securities Futures Act (“SFA”), Banking Act (“BA”) and Trust Companies Act (“TCA”), respectively, as set out in Annex C of the Consultation Paper, which limits the MAS’ reprimand powers to MAS-regulated entities, and employees and ex-employees of such MAS-regulated entities. This approach would be consistent with MAS’ objective to incrementally expand its existing investigation powers over MAS-regulated entities to employees and ex-employees of such MAS-regulated entities.</p> <p>Recommendation 2: All requests for information/data should be made directly to Covered Persons who have possession and control over such information/data.</p> <p>The term “power” is an undefined term under the proposed Act that lends itself to a very broad interpretation around what it means for a person to have “power” over, or “power” to access, information/data. In the context of cloud services, Covered Persons who use cloud service providers (CSPs) maintain and do not release effective control over their content within the cloud environment as they can:</p>



	<ul style="list-style-type: none"> ● Determine where their content will be located, for example the type of storage they use on cloud and the geographic location (by Region) of that storage ● Control the format, structure and security of their content, including whether it is masked, anonymized or encrypted. CSPs offers customers options to implement strong encryption for their customer content in transit or at rest, and also provide customers with the option to manage their own encryption keys or use third party encryption mechanisms of their choice 3 <ul style="list-style-type: none"> ● Manage other access controls, such as identity, access management, permissions and security credentials. This allows cloud customers to control the entire life-cycle of their content on cloud, and manage their content in accordance with their own specific needs, including content classification, access control, retention and deletion. <p>Covered Persons (and not CSPs) have effective control over their information/data and are therefore in the best position to provide MAS with access to meaningful, unencrypted, and complete datasets that will enable MAS to effectively carry out its investigations.</p> <p>We therefor recommend that the term “power” in the proposed New Act be replaced with the term “control” and that all requests for information be made directly to Covered Persons who have “possession and control” over the relevant information. By requesting information directly from these Covered Persons, the MAS will be able to obtain relevant information faster, more efficiently (e.g. because data may be encrypted with keys managed by the Covered Person), and without needing to obtain and serve a valid and binding court order or warrant. Of course, the MAS will still be able to request information from Unregulated Persons, including offshore CSPs, under existing legal procedures.</p> <p>Question 2:</p> <p>(a) MAS seeks comments on the proposals to give MAS the power to require any person to appear for examination and the recording of statements under the BA, IA, PS Act, TCA and the new Act;</p> <p>Please refer to the comments made regarding limiting the scope of any “person” to Covered Persons under Section A - Recommendation 1 (bookmarked) above.</p> <p>(b) MAS seeks comments on the proposal to give MAS the power to apply to the Court for a warrant to secure the attendance of a subject who fails to appear for an examination under the relevant Acts;</p> <p>Asia Internet Coalition has no comments.</p>
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	<p>(c) MAS seeks comments on the proposals to provide explicitly that an MAS investigator will provide a copy of the written record (i.e., recorded statement) at such time he determines, upon the request by an examinee.</p> <p>Asia Internet Coalition has no comments.</p> <hr/> <p>Question 3:</p> <p>(a) MAS seeks comments on the proposals to allow MAS investigators to enter premises without a warrant in the BA, IA, PS Act, TCA and the new Act;</p> <p>Recommendation 3: The scope of premises that MAS can enter without a warrant, including its ability to take any equipment and require any person to produce any books or data upon entering such premises, should be limited to Covered Persons.</p> <p>The scope of premises in the proposed New Act that MAS can enter without a warrant includes any premises that are, or have been, used by a person under investigation. The term “used” is an undefined term in the proposed New Act that can be interpreted broadly to cover premises of Unregulated Persons, including data centers of CSPs, that are “used” by a Covered Person under investigation.</p> <p>We submit that an overly broad interpretation of the term “used” in the exercise of MAS’ powers to enter premises without a warrant, including MAS’ ability to take any equipment and/or require any person to produce books or data upon entering such premises, would be an overreach of its investigation powers on Unregulated Persons and inconsistent with international norms.</p> <p>We would also like to highlight that in the context of cloud services, the power to physically access and seize physical evidence from data centers would not be meaningful to MAS’ investigation. CSPs’ business 4 models rely on a multi-tenanted environment, where multiple customers’ applications and data reside on the same physical infrastructure. It will not be possible to identify specific hardware or servers that a particular customer’s workload resides on. Seizure of hardware related to a specific customer would not be possible and would in fact compromise the security of other CSP customers. This also raises practical challenges about the scope and relevance of data accessed for multinational financial institutions, who may not have separated MAS-regulated data from other data, including that of affiliates in other geographies, creating a significant risk that direct access by MAS would be overbroad. It would be impossible for a CSP to ensure that the appropriate scope of records is produced to the MAS without working with the Covered Person.</p> <p>Further, customers (and not the CSP) retain control over their data and their data security controls at all times, and MAS would need logical access to such data from the customer in order to prevent digital evidence from being concealed, removed, tampered with or destroyed. As such, MAS should make</p>
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		<p>all requests for information/data directly to Covered Persons who have possession and control over such information/data, because CSPs do not have visibility into or effective control of customers’ content.</p> <p>As such, in addition to Section A - Recommendation 1 (bookmarked) (to narrow the scope of persons in the proposed New Act to Covered Persons), we recommend replacing the term “used” in the proposed New Act with the term “control” in order to limit the scope of premises that the MAS can enter (including its ability to take any equipment and/or require any person to produce books or data upon entering such premises) without a warrant to premises that are owned, occupied or controlled by a Covered Person. This will help to ensure that the exercise of these intrusive powers, and the ability to impose sanctions on non-compliant persons, are targeted at Covered Persons who are directly relevant to MAS’ supervisory role. This suggested approach does not, in any case, preclude the MAS from entering the premises of, or collecting information from, Unregulated Persons, including offshore CSPs, under existing legal procedures.</p> <p>(b) MAS seeks comments on the proposals to remove the current SFA and FAA requirement of a 2-day notice before entry can be made and to mirror this amendment in the proposed provisions for the other relevant Acts.</p> <p>Please refer to Recommendation 3 (bookmarked), as similar concerns apply.</p> <hr/> <p>Question 4: MAS seeks comments on the proposals to allow MAS to apply to the courts for a warrant to seize evidence in specified circumstances under the BA, IA, PS Act and the new Act, and to align the scope of the warrant that can be issued by the court under the TCA with that under the other relevant Acts.</p> <p>Please refer to Recommendation 3 (bookmarked), as similar concerns apply.</p> <hr/> <p>Question 5:</p> <p>(a) MAS seeks comments on the proposals to expand the scope of section 168C(1) of the SFA to allow the transfer of evidence collected under the CPC from the Police to MAS for Part VII civil penalty investigations or proceedings;</p> <p>Asia Internet Coalition has no comments.</p>
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	<p>(b) MAS seeks comments on the proposals to expand the scope of section 168B(1) of the SFA to allow the transfer of evidence (relating to any offence under the SFA) from MAS to the Police or the Public Prosecutor for the purpose of criminal investigations or proceedings, and to replicate this provision in the other relevant Acts (other than the FAA);</p> <p>Asia Internet Coalition has no comments.</p> <p>(c) MAS seeks comments on the proposals to enable evidence collected under the CPC to be transferred to MAS for regulatory actions under each relevant Act.</p> <p>Asia Internet Coalition has no comments.</p> <hr/> <p>Question 6: MAS seeks comments on the proposed amendments to the Reprimand Provisions.</p> <p>Asia Internet Coalition has no comments.</p> <hr/> <p>Question 7: MAS seeks comments on the draft amendments to the SFA to empower MAS to issue directions to regulated FIs and their representatives conducting unregulated business.</p> <p>Asia Internet Coalition has no comments.</p> <hr/> <p>Any other comments.</p> <p>We thank MAS for the opportunity to submit our comments on the proposed amendments to the MAS’ Investigative and Other Powers under the Financial Institutions (Miscellaneous Amendments) Bill and 5 various Acts. We appreciate MAS’ decision to collect suggestions and comments from interested parties, in preparing the amendment Bill.</p> <p>We have summarized our recommendations below:</p> <ol style="list-style-type: none"> 1. Limit overly broad and undefined terms that can potentially expand MAS’ investigative powers to Unregulated Persons: We understand MAS’ policy intent of incrementally expanding its investigation powers to employees and ex-employees of MAS regulated entities, but urge the MAS to narrow the scope of overly broad and undefined terms such as “any person” and “any premises” so that the MAS can target the exercise of its investigative powers at those who are directly relevant to MAS’ supervisory role. This will also help bring the scope of MAS’ investigative powers under the proposed New Act in line with MAS’ objectives outlined in the Consultation Paper. 2. Requests for information/data should be made directly to Covered Persons, who have possession and control over such data/information: In the context of cloud services, Covered Persons (and not the CSPs themselves) have
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		<p>effective control over their data/information. It would hence be more effective for the MAS to make all requests for data/information directly to Covered Persons who are in the best position to provide the MAS with access to meaningful, unencrypted, and complete datasets that will enable the MAS to effectively carry out its investigations.</p> <p>3. Ensure requests for physical access to premises and for seizing physical evidence are fit-for-purpose: Having the investigative power to physically access premises and seize physical evidence from such premises would not be meaningful in the context of digital data/information stored on cloud services. The multi-tenanted environment of public cloud services means that it would not be possible to physically identify or obtain the relevant data/information of a Covered Person under investigation. Further, the logical access required to prevent digital evidence from being concealed, removed, tampered with or destroyed, would be most effectively obtained from the Covered Person under investigation (and not the CSP) because such Covered Person retains control over their data and their data security controls at all times.</p> <p>Conclusion We continue to support MAS' commitment to the digital transformation of the financial services industry in Singapore and innovative approach to regulation and technology adoption. Again, we wish to thank MAS for considering our suggestions to the amendment Bill, and would also welcome the opportunity to discuss the contents of our submission in more detail.</p>
9	AXA Insurance Pte Ltd	<p>Question 1: MAS seeks comments on the proposal to allow MAS to require information from any person for the purpose of investigations under the BA and the new Act.</p> <p>1. We take it that the MAS will institute appropriate protocols and processes that will objectively determine and document when an investigation is initiated and also the purpose and intent behind any such investigation. We believe this will ensure accountability and mitigate against inappropriate use of power.</p> <p>2. We would be interested to understand how the proposed process will work and, in particular, the extent of the FI's involvement/ participation in any such investigation. For example:</p> <ul style="list-style-type: none"> a. Will the MAS only approach such persons for information when it is satisfied that the relevant information is not in the possession of the FI, or will the MAS have the discretion to determine who and when to approach? b. Will the FI be informed that the MAS is procuring information from such persons? c. Will the FI be required to validate or provide comment on any such information procured, if only to ensure authenticity of evidence?



	<p>Question 2:</p> <p>(a) MAS seeks comments on the proposals to give MAS the power to require any person to appear for examination and the recording of statements under the BA, IA, PS Act, TCA and the new Act;</p> <p>(b) MAS seeks comments on the proposal to give MAS the power to apply to the Court for a warrant to secure the attendance of a subject who fails to appear for an examination under the relevant Acts;</p> <p>(c) MAS seeks comments on the proposals to provide explicitly that an MAS investigator will provide a copy of the written record (i.e., recorded statement) at such time he determines, upon the request by an examinee.</p> <p>1. Please can the MAS clarify if the failure of any person to appear before the MAS to provide a statement will result in the imposition of any penalty on that person and, if so, what this penalty may be, the basis upon which such penalty will be levied, the right to appeal, etc. This is presently not clearly set out in the Consultation Paper.</p> <p>2. Given the gravity underlying an application to Court for a warrant to secure attendance, we take it that the MAS will implement appropriate protocols and procedures to guard against abuse or inappropriate exercise of authority,</p> <p>3. We disagree with the proposal to delay the provision of any recorded statement at the discretion of the investigator and to only provide such statements upon request.</p> <p>a. Individuals who attend before the MAS to provide statements provide such statements to the best of their ability and the best of their knowledge based on their recollection at the time of statement taking.</p> <p>b. They are afforded the opportunity to review the statement, make such revisions as they deem appropriate, insert such qualifiers as they deem necessary etc, following which they are required to append their signature onto each page of the printed statement presented before them to bind them to the content of these pages.</p> <p>c. They are cautioned against the provision of false evidence and the consequences of lying (which can easily be evidenced in a final paragraph of the statement presented before them for their signature).</p> <p>d. Not everyone will have the presence of mind to request a copy of their signed statement.</p> <p>e. It is entirely possible that some individuals may, after reviewing their signed statement, subsequently return with clarifications, qualifiers, revisions, etc.</p> <p>(i) This is par for the course and no different from what we have to deal with when conducting investigations of our own although, from our experience, such instances are few and far in between.</p> <p>(ii) The MAS will always retain the prerogative whether to take any post-statement comments received into consideration after reviewing such input in accordance with relevant guidelines/ SOPs.</p> <p>(iii) This will provide assurance that any concerns about natural justice are met.</p> <p>f. If the concern is with tipping-off and possible collusion:</p>
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	<p>(i) The retention or delayed provision of the statement provided will not prevent individuals from individually sharing their inputs with others.</p> <p>(ii) From our experience, a fairer and more practical approach would be to take statements concurrently from different suspects/ witnesses or in quick succession in circumstances where the risk of tipping-off is significantly reduced, if not altogether removed.</p> <p>4. Should the MAS nonetheless decide to allow the investigator the discretion to determine when a copy of the statement provided will be furnished to the individual, we expect the MAS to have in place appropriate protocols and procedures to ensure adequate transparency for the protection of the investigator as well as the investigated.</p> <p>Question 3:</p> <p>(a) MAS seeks comments on the proposals to allow MAS investigators to enter premises without a warrant in the BA, IA, PS Act, TCA and the new Act;</p> <p>(b) MAS seeks comments on the proposals to remove the current SFA and FAA requirement of a 2-day notice before entry can be made and to mirror this amendment in the proposed provisions for the other relevant Acts.</p> <p>1. We take it that this particular power will only be exercised in very limited circumstances but nonetheless caution against inappropriate use, given the inevitable cause for alarm/ concern to the occupants, and the risk of (likely) social media propagation and inevitable reputational risk exposure.</p> <p>2. The MAS may wish to consider (and weigh) the potential impact of the exercise of this particular power on third parties unrelated to the investigation in question, given there is no proposal to limit the use of this power to office premises, eg. family members and others (landlord, tenant, neighbours, visitors, etc) in the event of entry into residential premises.</p> <p>3. We take it that the MAS will institute appropriate protocols and processes that will objectively determine and document the approval for this particular power to be exercised. We believe this is necessary to ensure accountability and mitigate against inappropriate use of power. Also: Will these protocols and processes be consistent with those in use by the police (being the organisation that comes most readily to mind when this power is raised)?</p> <p>4. Please can the MAS clarify the consequences, if any, of non-compliance with any such order by the MAS to grant entry/ access to the MAS, as this is not set out in the Consultation Paper.</p>
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		<p>Question 4: MAS seeks comments on the proposals to allow MAS to apply to the courts for a warrant to seize evidence in specified circumstances under the BA, IA, PS Act and the new Act, and to align the scope of the warrant that can be issued by the court under the TCA with that under the other relevant Acts.</p> <p>1. Please can the MAS clarify if the intention is to apply for warrant to seize evidence ahead of entering premises, in which case, would it not make more sense for the proposed entry into premises be covered in the same warrant?</p> <p>2. If the concern is with admissibility of evidence in subsequent proceedings, any observations made/ evidence collected upon entry into premises will be tainted in the absence of any Court warrant.</p> <p>3. Applying for a Court warrant to gain entry into premises will also protect the MAS and those involved, as the Court will provide adequate check-and-balance.</p> <p>Question 5:</p> <p>(a) MAS seeks comments on the proposals to expand the scope of section 168C(1) of the SFA to allow the transfer of evidence collected under the CPC from the Police to MAS for Part VII civil penalty investigations or proceedings;</p> <p>(b) MAS seeks comments on the proposals to expand the scope of section 168B(1) of the SFA to allow the transfer of evidence (relating to any offence under the SFA) from MAS to the Police or the Public Prosecutor for the purpose of criminal investigations or proceedings, and to replicate this provision in the other relevant Acts (other than the FAA);</p> <p>(c) MAS seeks comments on the proposals to enable evidence collected under the CPC to be transferred to MAS for regulatory actions under each relevant Act.</p> <p>1. The rules governing admissibility of evidence in legal and criminal proceedings are complex and beyond the realm of most non-practitioners.</p> <p>2. We suggest the MAS procure such legal advices as it deems necessary to ensure that evidence that is shared as proposed is not at risk of being tainted and those involved in evidence collection afforded adequate protection from legal action.</p> <p>Question 6: MAS seeks comments on the proposed amendments to the Reprimand Provisions.</p> <p>AXA Insurance Pte Ltd has no comments.</p>
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		<p>Question 7: MAS seeks comments on the draft amendments to the SFA to empower MAS to issue directions to regulated FIs and their representatives conducting unregulated business.</p> <p>AXA Insurance Pte Ltd has no comments.</p>
		<p>Any other comments.</p> <p>AXA Insurance Pte Ltd has no comments.</p>
10	Respondent A	<p>Question 1: MAS seeks comments on the proposal to allow MAS to require information from any person for the purpose of investigations under the BA and the new Act.</p> <p>Respondent A has no comments.</p> <hr/> <p>Question 2:</p> <p>(a) MAS seeks comments on the proposals to give MAS the power to require any person to appear for examination and the recording of statements under the BA, IA, PS Act, TCA and the new Act;</p> <p>Respondent A has no comments.</p> <p>(b) MAS seeks comments on the proposal to give MAS the power to apply to the Court for a warrant to secure the attendance of a subject who fails to appear for an examination under the relevant Acts;</p> <p>Respondent A has no comments.</p> <p>(c) MAS seeks comments on the proposals to provide explicitly that an MAS investigator will provide a copy of the written record (i.e., recorded statement) at such time he determines, upon the request by an examinee.</p> <p>Please also consider if a copy of the written record may be extended to the affected FIs, as misconduct may often involve our policyholders or potential customers. MAS may wish to consider providing such records upon the FI's application, with guidelines on when the FI may make such an application and when the application may be approved.</p> <hr/> <p>Question 3:</p> <p>(a) MAS seeks comments on the proposals to allow MAS investigators to enter premises without a warrant in the BA, IA, PS Act, TCA and the new Act;</p> <p>Respondent A has no comments.</p>



	<p>(b) MAS seeks comments on the proposals to remove the current SFA and FAA requirement of a 2-day notice before entry can be made and to mirror this amendment in the proposed provisions for the other relevant Acts.</p> <p>Respondent A has no comments.</p>
	<p>Question 4: MAS seeks comments on the proposals to allow MAS to apply to the courts for a warrant to seize evidence in specified circumstances under the BA, IA, PS Act and the new Act, and to align the scope of the warrant that can be issued by the court under the TCA with that under the other relevant Acts.</p> <p>Respondent A has no comments.</p>
	<p>Question 5:</p> <p>(a) MAS seeks comments on the proposals to expand the scope of section 168C(1) of the SFA to allow the transfer of evidence collected under the CPC from the Police to MAS for Part VII civil penalty investigations or proceedings;</p> <p>Respondent A has no comments.</p> <p>(b) MAS seeks comments on the proposals to expand the scope of section 168B(1) of the SFA to allow the transfer of evidence (relating to any offence under the SFA) from MAS to the Police or the Public Prosecutor for the purpose of criminal investigations or proceedings, and to replicate this provision in the other relevant Acts (other than the FAA);</p> <p>Respondent A has no comments.</p> <p>(c) MAS seeks comments on the proposals to enable evidence collected under the CPC to be transferred to MAS for regulatory actions under each relevant Act.</p> <p>Respondent A has no comments.</p>
	<p>Question 6: MAS seeks comments on the proposed amendments to the Reprimand Provisions.</p> <p>Respondent A has no comments.</p>
	<p>Question 7: MAS seeks comments on the draft amendments to the SFA to empower MAS to issue directions to regulated FIs and their representatives conducting unregulated business.</p> <p>Respondent A has no comments.</p>



		<p>Any other comments.</p> <p>Annex B, Part [X] Investigative Powers of Authority, Division 2 - General Section 4(5) requires, among others, a solicitor/legal counsel to provide name and address of the person receiving privileged communication. It is not clear from the consultation paper the purpose of such a requirement. When compared with sections 128/128A of Evidence Act (Cap. 97), there is no corresponding requirement. Any inroad into litigation privilege and/or legal advice privilege, even limited to investigation, may hinder the entity/individual under scrutiny from telling its solicitor/counsel the whole truth. Unless the proposed changes have been a subject of deliberation by a law reform committee, it would be prudent not to tilt a fine balance that has withstood the test of time.</p>
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