



Monetary Authority of Singapore

Response to Feedback Received
[P014-2021] – [31 July 2024]

Proposed Amendments to Appeals Regulations



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1. Preface

- 1.1. On 13 October 2021, the Monetary Authority of Singapore (“**MAS**”) issued a Consultation Paper proposing amendments to the regulations under MAS’ purview governing appeals to the Minister, which involve an appeal advisory committee (“**Appeals Regulations**”).¹
- 1.2. As stated in the Consultation Paper, MAS will be revoking the current Appeals Regulations and issuing new Appeals Regulations under the various Acts administered by MAS.² MAS will also be introducing new Appeals Regulations under the Financial Services and Markets Act 2002 (“**FSMA**”) and Credit Bureau Act 2016. The new Appeals Regulations will be substantially similar across all these Acts.
- 1.3. The consultation period closed on 15 December 2021 and MAS would like to thank all respondents for their contributions. The list of respondents is in Annex A.
- 1.4. MAS has carefully considered the feedback received. We set out below the comments that are of wider interest, and MAS’ responses to them.
- 1.5. In the responses below, MAS has referred to specific regulations in the new Appeals Regulations issued under the FSMA (the “**FSMA Appeals Regulations**”). MAS’ responses apply equally to appeals conducted under the remaining Acts mentioned above.

¹ Under the respective Acts administered by MAS, there is provision for persons who are the subject of certain decisions of the MAS to appeal to the Minister. In some of these appeals, the Minister must constitute an appeal advisory committee (“**AAC**”) to study the materials and make recommendations to the Minister. The rules governing the processes in appeals involving an AAC are set out in regulations under the respective Acts i.e. the Appeal Regulations, namely, the Securities and Futures (Appeals) Regulations, Financial Advisers (Appeals) Regulations, Business Trusts (Appeals) Regulations, Insurance (Appeals) Regulations, and Trust Companies (Appeals) Regulations.

² These Acts include the Securities and Futures Act 2001, Financial Advisers Act 2001, Business Trusts Act 2004, Insurance Act 1966 and Trust Companies Act 2005.



2. Filing of the parties' respective cases

Order in which the parties file their cases

- 2.1. MAS sought feedback on its proposal to reverse the order in which the parties file their respective cases in an appeal – MAS will file its detailed reasons for the decision being appealed against ("**MAS' Reasons**") first, and the appellant will file its response ("**Response to MAS' Reasons**") thereafter. After the Response to MAS' Reasons is filed, MAS and/or the appellant must seek leave from the AAC to respond to each other's cases.
- 2.2. MAS' proposal aimed to improve the efficiency of appeals by giving the appellant the opportunity to review and respond fully to MAS' detailed reasons.
- 2.3. One respondent suggested that consistent with Court proceedings, the appellant should always be given the right of last reply.

MAS' Response

- 2.4. MAS is of the view that the appellant should not be given an automatic right of last reply.
- 2.5. Giving either party an automatic right of reply may have the effect of reducing the efficiency of appeal proceedings or prolonging the same. In Court proceedings, hearing dates are typically fixed after accounting for the right of reply, and even if the party does not utilise this right, the hearing date is not brought forward.
- 2.6. To ensure that appeal proceedings are not unnecessarily protracted, MAS' view is that it is preferable for parties to seek leave from the AAC if they wish to respond to each other's case.

Timelines for parties to file their cases

- 2.7. MAS sought feedback on its proposal to extend the amount of time that both parties have to file their respective cases to 28 days. MAS' proposal aimed to ensure that parties have sufficient time to prepare their cases, especially in complex appeals.
- 2.8. One respondent supported the extended timelines but suggested that the appellant be given more time than MAS to file its case. This is because MAS would already have on hand adequate materials / conducted sufficient investigations to prepare its case in a shorter time.



MAS' Response

- 2.9. MAS is of the view that it is fair for both parties to be given the same amount of time to file their respective cases.
- 2.10. The 28-day timeframe is designed to account for the full variety of cases that may pass through the appeal system, including more complex cases which may require extensive preparation. In more straightforward cases, MAS retains the ability to provide its reasons in a shorter timeframe that would allow the appeal process to proceed more quickly.
- 2.11. MAS also highlights that under regulation 14(3) of the FSMA Appeals Regulations, the appellant may ask the AAC for more time to file its case, and the AAC has the power to grant the extension of time.

3. AAC's powers to conduct the appeal

Case management conferences

- 3.1. MAS sought feedback on its proposal to introduce the concept of a case management conference ("CMC"), during which the AAC gives directions, taking into consideration the views of the parties. MAS' proposal aimed to enable the AAC to exercise greater flexibility to accommodate the specific needs of each case.
- 3.2. Four respondents raised the following suggestions / queries:
- (a) The Appeals Regulations should specify the timeframe within which the first CMC ought to be held, unless otherwise agreed by the parties and the AAC;
 - (b) Whether the AAC has the power to issue directions relating to any additional documents that the appellant may require from MAS and vice versa;
 - (c) The Appeals Regulations should provide that if one party requests directions, the AAC will give the other party the opportunity to comment on that request before making a direction; and
 - (d) What are the consequences if persons who are not parties to the appeal fail to comply with an AAC's summon to produce documents and materials?



MAS' Response

- 3.3. First, MAS is of the view that the AAC should be given flexibility to decide when to call the case management conference, instead of having to do so within a specific timeframe.
- 3.4. Every appeal varies in complexity, and in more complex appeals, the AAC may require more time to review the parties' cases before calling for a case management conference. Giving the AAC the necessary time they need would enable them to give informed directions during the case management conference.
- 3.5. Second, under regulation 18(2) of the FSMA Appeals Regulations, the AAC also has the power to give directions on the filing of additional documents which were not furnished as part of MAS' Reasons and/or the Response to MAS' Reasons.
- 3.6. Third, under regulation 19(4) of the FSMA Appeals Regulations, the AAC must give the parties the opportunity to address any intended direction, and respond to any submissions made by the other party on any intended direction.
- 3.7. Fourth, under regulation 21(5) of the FSMA Appeals Regulations, any person who is summoned by an AAC to give evidence or to produce documents, and who intentionally omits to comply, will be guilty of an offence.³

Form of hearing

- 3.8. MAS sought feedback on its proposal to give the AAC the power to conduct a hearing in person or by video conference, or by way of written submissions, or by any other means. MAS' proposal aimed to save time and resources, especially in straightforward appeals.
- 3.9. One respondent made the following suggestions:
- (a) The Appeals Regulations should circumscribe the situations in which the AAC may conduct a hearing by way of written submissions, in order to ensure that the AAC does not abuse its powers when deciding on the form of hearing;
 - (b) The Appeals Regulations should also include a provision which allows for the appellant to object to the AAC's chosen form of the hearing, which the AAC must duly consider; and

³ The person will be liable on conviction to a fine not exceeding \$2,000.



- (c) Conducting hearings by way of written submissions may, in some cases, lengthen the appeal process instead of saving time, as further clarifications on the submissions may be required.

3.10. Another respondent objected to the proposal to conduct hearings by way of written submissions, on the basis that it is necessary for parties to present their arguments verbally in order to work through controversial issues.

MAS' Response

3.11. MAS will be retaining the AAC's power to conduct a hearing by way of written submissions. MAS is of the view that in appropriate cases, parties would still be able to effectively present their arguments on any issues in the appeal by way of written submissions.

3.12. MAS is of the view that the situations in which the AAC may decide to conduct proceedings by way of written submissions should not be circumscribed. Given that each appeal has its own unique facts and circumstances, such circumscription may unduly limit the AAC's ability to conduct proceedings in the most appropriate and efficient manner.

3.13. Under regulations 18 and 19 of the FSMA Appeals Regulations, either party may request that the proceedings be conducted in a particular manner. Hence, if a party is of the view that it is not appropriate or efficient to have the proceedings conducted by way of written submissions, it may request that the proceedings be conducted in another manner, e.g. a hearing in person or by video conference. The AAC will give due consideration to the request and any objections, before determining the most appropriate procedure in an appeal.

4. Miscellaneous matters

Consolidation of appeal proceedings

4.1. MAS sought feedback on its proposal to give the AAC the power to order appeal proceedings to be consolidated and heard together, for example in appeals involving same or similar facts or issues. MAS' proposal aimed to facilitate the efficient and consistent consideration by the AAC of closely connected decisions of MAS.

4.2. Three respondents raised the following suggestions / queries:

- (a) The Appeals Regulations should specify what constitutes same or similar facts or issues, to ensure that nuanced differences in broadly similar cases are taken into account, so as to prevent parties from being prejudiced;



- (b) Parties should have the right to object to a consolidation of appeals. For example, there may be instances where an appellant does not wish to share information with the other appellant, or an appellant may take the view that the two appeals are not sufficiently connected; and
- (c) Whether a party can appeal against a decision of the AAC to consolidate appeals.

MAS' Response

- 4.3. MAS is of the view that specifying what constitutes same or similar facts or issues may unduly limit the circumstances in which consolidation of proceedings can be considered.
- 4.4. As a safeguard against any risk of prejudice to any party, under regulation 16(2) of the FSMA Appeals Regulations, all the parties to the appeals that are the subject of consolidation may make submissions to, and be heard by, the AAC. The AAC will give due consideration to each party's position before deciding whether to consolidate.
- 4.5. Under regulation 16(3) of the FSMA Appeals Regulations, appeal proceedings cannot be consolidated unless every AAC of each appeal agrees to the consolidation.
- 4.6. There is no avenue for an appeal against an AAC's decision to consolidate proceedings. However, a party may make submissions about the consolidation at the close of proceedings, to be put before the Minister.

Confidential treatment of documents or information

- 4.7. MAS sought feedback on its proposal to amend the provisions under the Appeals Regulations which permit MAS to withhold the disclosure of information to an appellant if MAS is of the view that it is not in the public interest to furnish such information to the appellant. MAS' proposal aimed to ensure there is a proper and fair basis for claiming protection from disclosure, and to make provision for the Minister to decide whether and to what extent MAS should disclose / withhold the information.
- 4.8. Three respondents raised the following suggestions / queries:
 - (a) Whether the Minister must provide written reasons for his decision on the treatment of the confidential documents or information;
 - (b) Whether the AAC is entitled to take into account confidential information, which has not been disclosed to the appellant, in making its recommendations to the Minister in an appeal;



- (c) The appellant should be notified that MAS has made a request for confidential treatment of documents or information, as the resolution of MAS' request could impact timelines; and
- (d) The appellant should have the right to make submissions on MAS' requests for confidential treatment of documents or information, or at least, the AAC should have the power to ask the appellant to make submissions on MAS' requests where appropriate.

MAS' Response

- 4.9. First, the Minister is not under a general duty to provide reasons for his decision on the confidential treatment of documents. However, where the Minister is of the view that it would be fair to provide reasons, the Minister may provide reasons for his decision. Whether it would be fair to provide reasons is a fact-sensitive inquiry to be determined on a case-by-case basis, taking into account, among other things, whether disclosure would be injurious to the public interest. Where the Minister decides to provide reasons, the Minister may also limit the scope / depth of his reasons so as to ensure that there is no breach of confidentiality.
- 4.10. Second, under regulation 23 of the FSMA Appeal Regulations, the AAC may take into account confidential information, which has not been disclosed to the appellant, in making its recommendations to the Minister in an appeal.
- 4.11. Third, MAS agrees that the appellant should be notified that MAS has made a request for confidential treatment of documents or information. This is set out in regulation 22(4) of the FSMA Appeals Regulations.
- 4.12. Fourth, the AAC has the power, under regulation 18 of the FSMA Appeals Regulations, to direct an appellant to file submissions in respect of MAS' requests for confidential treatment of documents or information. MAS is of the view that it would be more prudent for the AAC to decide in what circumstances, which do not compromise the sensitivity or confidentiality of the documents in question, such submissions are required. MAS will therefore not give the appellant an automatic *right* to make submissions on MAS' requests for confidential treatment of documents or information.

Summary of parties' arguments

- 4.13. MAS sought feedback on its proposal for parties to submit a summary of their respective arguments to the AAC at the close of an appeal hearing, and that these summaries be included in the AAC's report to the Minister. MAS' proposal aimed to ensure that the AAC and Minister are provided with an overview of the key issues and arguments raised during the appeal.



- 4.14. One respondent suggested that the Appeals Regulations expressly provide that the parties are to prepare the summary of arguments.
- 4.15. Another respondent queried whether the summary would be in addition to or in lieu of closing submissions.

MAS' Response

- 4.16. MAS agrees that the Appeals Regulations should expressly provide that the parties are to prepare the summary of arguments. This is set out in regulations 28 and 29 of the FSMA Appeals Regulations.
- 4.17. Where the AAC directs parties to file detailed closing submissions after the hearing, the summary of arguments would be in addition to those closing submissions. As parties' closing submissions are usually relatively long, MAS is of the view that an additional summary of the parties' respective arguments would be useful to consolidate the key issues and arguments raised during the appeal.
- 4.18. However, where no closing submissions are required by the AAC, the summary of arguments would be the parties' final written submissions after the hearing.

5. Other suggestions and queries

- 5.1. Two respondents raised suggestions and queries on several matters that MAS did not specifically seek feedback on:
- (a) Where an appellant is debarred from taking any further part in proceedings for failure to comply with the AAC's directions, does his appeal fail or will the AAC continue to consider the merits of his appeal;
 - (b) The Appeals Regulations should mandate that personal service be the default mode of service, or that documents be served personally in certain circumstances, instead of by email or fax. For example, a summon to a third party to appear as a witness should be served personally as a failure to comply with the summon is an offence; and
 - (c) The appellant should be allowed to disclose the AAC's report to the Minister in an appeal, to its parent company and/or related entity, for various purposes including compliance and internal investigations.



MAS' Response

- 5.2. First, if an appellant is debarred from taking further part in the proceedings, the AAC may conduct the appeal in a manner that it considers appropriate (see regulation 25 of the FSMA Appeals Regulations which provides for the AAC's discretion to conduct the appeal in a manner that it considers appropriate).
- 5.3. For example, the AAC may, in its discretion, ask MAS for submissions on whether the hearing should proceed in the appellant's absence or whether the appeal should be dismissed. The AAC may then decide to proceed with the appeal notwithstanding that the appellant has been debarred. Alternatively, the AAC may recommend to the Minister to dismiss the appeal.
- 5.4. Second, the Appeals Regulations will not mandate that personal service be the default mode of service, or that documents be served personally in particular circumstances (e.g. when calling someone to be a witness). Service by email or fax is quicker and equally as effective. That said, where a potential witness does not respond to an email, the Secretary has the discretion to effect service personally.
- 5.5. Third, MAS will not permit the AAC's report to the Minister in an appeal to be disclosed to any person apart from the Minister. The AAC's report will also not be provided to MAS.
- 5.6. We highlight that the AAC's report only contains the AAC's *recommendations* on the issues in the appeal. The Minister makes the final decision, and he may agree or disagree with the AAC's recommendations. As an appellant can disclose the Minister's decision to its parent company or related entity, MAS is of the view that it is not necessary for the AAC's report, which only contains recommendations, to be disclosed as well.



Annex A

LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON PROPOSED AMENDMENTS TO APPEALS REGULATIONS

1. Aon Singapore Pte Ltd
2. GE (The Great Eastern Life Assurance Company Limited)
3. Rockfort Advisors Pte Ltd
4. Schroder Investment Management (Singapore) Ltd
5. Standard Chartered Bank (Singapore) Limited
6. Tokio Marine Life Insurance Singapore Ltd

4 respondents requested for confidentiality of identity and submission.

Please refer to Annex B for the submissions.



Annex B

SUBMISSIONS FROM RESPONDENTS TO THE CONSULTATION PAPER ON PROPOSED AMENDMENTS TO APPEALS REGULATIONS

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

S/N	Respondent	Responses from respondent
1	Schroder Investment Management (Singapore) Ltd	Question 1: MAS seeks comments on the proposed amendments to the order in which the parties file their respective cases. No comments
		Question 2: MAS seeks comments on the proposed amendments to the timelines for parties to file their respective cases. No comments
		Question 3: MAS seeks comments on the proposed introduction of a case management conference, and the form or manner in which it should be conducted. We are supportive of the proposed introduction of a case management conference. We proposed that counsel appointed by the appellant be permitted to attend the case management conference on behalf of the appellant.
		Question 4: MAS seeks comments on the proposed amendments to the timeframe to conduct the hearing of an appeal. No comments
		Question 5: MAS seeks comments on the proposal to give the AAC the power to conduct hearings by way of written submissions or video conference.

		No comments
		Question 6: MAS seeks comments on the proposal to give the AAC the power to consolidate appeal proceedings. In general, we are supportive of this proposal but propose that an appellant be permitted to object to consolidated appeal proceedings. For example, an appellant may take the view that his actions were not sufficiently connected with the actions of another appellant and he would be prejudiced if the proceedings are consolidated and heard together.
		Question 7: MAS seeks comments on the proposed amendments to the confidential treatment of documents or information. It appears from 5.4(d) that the appellant will either receive the full document or a redacted version or a summary. If the AAC recommends that the appellant should receive the redacted version of the document or a summary, we suggest that the AAC also recommends what should be included / redacted in the version provided to the appellant so that information is not redacted unnecessarily.
		Question 8: MAS seeks comments on the proposal that each party submits a summary of their respective arguments to the AAC at the close of an appeal hearing. No comments.
2	Tokio Marine Life Insurance Singapore Ltd	General comments: We note MAS' intent to revoke the current regulations under the respective Acts and issue new appeals regulations instead. As the proposed revisions are largely regulation agnostic in essence, it may be better to consider issuing them under a central umbrella, such as the intended Omnibus Act or Financial Services and Markets Act. Question 1: MAS seeks comments on the proposed amendments to the order in which the parties file their respective cases. We are agreeable to MAS' proposal of reversing the order in filing of cases. This will allow the appellant an opportunity to review and respond to MAS' reasons of filing the cases.

	Question 2: MAS seeks comments on the proposed amendments to the timelines for parties to file their respective cases. We agree to the proposed lengthening of timelines. Moreover, there is a provision (Regulation 8(4)) for the AAC to extend it further if required.
	Question 3: MAS seeks comments on the proposed introduction of a case management conference, and the form or manner in which it should be conducted. We are of the view that a case management conference is more practical and appropriate than the current regulations.
	Question 4: MAS seeks comments on the proposed amendments to the timeframe to conduct the hearing of an appeal. We agree with the extended timeframe of 42 days.
	Question 5: MAS seeks comments on the proposal to give the AAC the power to conduct hearings by way of written submissions or video conference. Generally, the proposal is a pragmatic one. However, in the event that an appellant wishes for the hearing to be conducted with presentation of evidence and oral submissions on the merits of the dispute, and the AAC disagrees, the appellant may have little choice but to comply with AAC's preferred hearing format. It may thus be fairer to circumscribe the situations where AAC decides on such matters, such as providing more specific illustrations of cases / elaboration on when a hearing by way of written submissions should be allowed (apart from the quoted example in footnote 6 regarding no witnesses or only involving documents). Otherwise, the AAC may decide unilaterally and be perceived as abusing its powers by not providing the appellant a fair hearing. A suggestion is to include a provision which allows for objections by the appellant and due consideration of such objections before a final decision on the format of hearing is made. We would like to point out that conducting hearings by way of written submissions may, in some cases, lengthen the process instead of saving time, as there may be further clarifications to the documents submitted. In

		addition, parties who are not well versed in writing may not be able to present their case clearly through written submissions and should be given a fair chance to articulate this through video conference or in person instead. Question 6: MAS seeks comments on the proposal to give the AAC the power to consolidate appeal proceedings. In principle, MAS’ proposal for consolidation of proceedings in certain circumstances is sound and appropriate in most instances. However, we are of the view that the consolidation of appeal proceedings on the basis of the general guidelines as presently stipulated in Section 11 of the proposed regulations (“involve the same or similar facts or issues”) may not be desirable. The guideline is very broad and may not take into account the nuanced differences in broadly similar cases. There may be an inherent risk of prejudice to the parties in that they are “tarred with the same brush” in consolidated proceedings. As such, we suggest that greater specificity of what would constitute same or similar facts or issues would be desirable to provide an additional safeguard when considering whether proceedings should be consolidated – for instance, where the alleged offence took place in the same transaction, where the parties are alleged to have committed the identical offence, where the parties are alleged to have committed different offences in the same transaction, etc. In addition, there may be scenarios where the appellant prefers to attend the appeal proceedings on his/her own, rather than to have a consolidated proceeding, as there may be confidential information that the appellant may not wish to share in the presence of the other appellant. A suggestion is thus to have the parties consent to the consolidation of proceedings. Ultimately, any decision to consolidate proceedings must balance procedural efficiency with substantive fairness to the appellants, without undue emphasis on expediency. Question 7: MAS seeks comments on the proposed amendments to the confidential treatment of documents or information. Generally, the proposal is a sound one. However, we have a few clarification questions: - In making the decision whether to release confidential
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	documents, would the Minister have to provide any written reasons to the AAC for his decision? Even if any such confidential information is not disclosed to the appellant, is the AAC (having already seen the documents by virtue of Section 22 of the proposed regulations) nonetheless entitled to take them into account in making any decision on the appeal if such confidential information is beneficial to the appellant’s case? We would like to request that MAS consider permitting disclosure of the AAC report to the parent companies and related entities. The proposed Section 21(3) would exclude the Minister’s decision from the confidentiality provisions. Similarly, the AAC report should also be excluded such that it may be disclosed to parent companies or related entities for various purposes including compliance and internal investigations. If MAS is minded to permit disclosure of the AAC report, it may consider amending the draft Section 23(3) as follows: “The report and any accompanying documents must be kept confidential and a person must not disclose the report and any accompanying documents, or any part thereof, to any other person other than the Minister (or his legal representative) <u>or to a parent company and/or related entity</u>, unless the Minister otherwise directs.” Question 8: MAS seeks comments on the proposal that each party submits a summary of their respective arguments to the AAC at the close of an appeal hearing. We are agreeable to MAS’ proposal. It may be useful to provide a guide to the structure of the summary, for e.g., what to be included, limitation of words etc. This is because some appellants may want to reiterate certain facts or justifications, and if there is no guidance or format provided, the summary may be lengthy and defeat the intended purpose of the proposal.
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