



DREW & NAPIER

The Monetary
Authority of
Singapore's Powers of
Investigation and
Enforcement

13 October 2022

**LEGAL
UPDATE**

In this Update

In this article, we highlight the key aspects and certain limits of the Monetary Authority of Singapore's ("MAS") powers of investigation and enforcement that financial institutions in Singapore should take note of.

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INTRODUCTION

As a regulator, the Monetary Authority of Singapore (“**MAS**”) aims to enhance Singapore’s reputation as a global financial centre, and to maintain domestic financial stability. To support its objectives, the MAS strictly enforces its regulations and guidelines. In April 2022, the MAS published its Enforcement Monograph and Enforcement Report, which outline the MAS’ enforcement achievements for 2020/2021 and the MAS’ enforcement priorities for 2022 and beyond.

This note therefore highlights the key aspects and limits of the MAS’ powers of investigation and enforcement, that all financial institutions (“**FIs**”) in Singapore should take note of.

THE MAS’ REGULATORY ROLE AND ENFORCEMENT PRIORITIES

The MAS exercises supervisory authority in relation to some 20 different statutes, which include the Securities and Futures Act 2001 (“**SFA**”) and the Financial Advisers Act 2001 (“**FAA**”). The MAS seeks to detect and investigate offences under these statutes and their relevant regulations, and thereafter enforce these provisions.

According to the Enforcement Report published by the MAS in April 2022 the MAS’ enforcement priorities for 2022 and 2023 are:

- pursuing corporate disclosure breaches;
- ensuring compliance with business conduct requirements;
- ensuring compliance with anti-money laundering (“**AML**”) / combating the financing of terrorism (“**CFT**”) regulations;
- studying options for investor compensation; and
- a greater focus on senior management accountability.

These enforcement priorities are unsurprising given some high-profile cases involving the MAS in recent years, such as:

- In 2022, the MAS imposed a composition penalty of S\$1.1 million on Vistra Trust (Singapore) Pte. Limited for its failures to comply with the MAS’ AML/CFT requirements.
- In 2020, the MAS commenced joint investigations with the Commercial Affairs Department and the Accounting and Corporate Regulatory Authority (“**ACRA**”) in response to, among other things,

breaches of disclosure requirements under sections 199, 203 and 253 of the SFA by Hyflux Ltd and its current and former directors.

- In 2020, the MAS issued a lifetime prohibition order against Kevin Michael Swampillai, then Head of Wealth Management Services at BSI Bank, for receiving approximately US\$5 million in secret profits while assisting 1MDB with its investments. This follows on from the MAS' continued investigations into 1MDB-related offences and a comprehensive swath of regulatory actions taken against multiple banks and individuals in 2017 and 2018, including ordering BSI Bank Limited and Falcon Private Bank Ltd, Singapore Branch, to shut down, and issuing fines totalling S\$30 million against multiple banks.

THE MAS' POWERS OF INVESTIGATION AND ENFORCEMENT

KEYPOINT

Whilst the MAS has broad powers to investigate and sanction financial institutions, such powers are not unfettered.

As the MAS' enforcement priorities relate primarily to the provisions under the SFA and FAA, we consider below the scope of the MAS' powers of investigation and enforcement under these statutes.

The MAS has a broad range of powers to investigate offences under the SFA and the FAA. These include powers relating to the entry of premises, examination of persons and compelling the production of documents. The statutory provisions relating to the MAS' powers of investigation under the SFA and the FAA are substantially similar and are therefore likely to be interpreted and applied consistently by the Courts.

For example, the MAS has the power to:

- 1) require a person to be examined on oath and to answer questions (section 154(1) of the SFA and section 89(1) of the FAA);
- 2) require any person to provide information or produce books relating to any matter under investigation (section 163 of the SFA and section 96 of the FAA); and,
- 3) enter premises without warrant for the purposes of investigations (section 163A of the SFA and section 97 of the FAA).

Whilst the MAS has broad powers of investigation, they are not unfettered. We set out below some of the statutory limits to the MAS' powers and the recourse to judicial review.

First, while the MAS is empowered under section 163A of the SFA and section 97 of the FAA to enter into premises without a warrant, it must typically give at least 2 working days' notice of the intended entry specifying the subject matter and purpose of the investigation. Such notice may be waived if the investigation relates to an alleged or suspected contravention of Part 12 of the SFA (offences related to market conduct) or Part 3 of the FAA (offences relating to the conduct of business) but even then, the investigator must have reasonable grounds for suspecting that the premises are occupied by a person being investigated in relation to the contravention.

In entering any premises under section 163A of the SFA or section 97 of the FAA, the investigator has the power to require any person on the premises to produce any book which the investigator considers relevant to the investigation and to preserve such books, or to take with him such equipment as appears necessary. However, the plain language of the provision makes clear that such powers are limited by relevance and/or necessity. Thus, the investigator may not require a person to produce a book that is irrelevant to the investigation, take steps which are unnecessary for the purposes of preserving a book, or take with him equipment which are unnecessary.

Second, sections 157 to 158 of the SFA and sections 91 to 92 of the FAA also impose some restrictions on the MAS' powers of examination. For example, the investigator must provide a record of the statements made at the examination if requested by the examinee. At such an examination, the investigator may only ask questions that are relevant to a matter being investigated by the MAS.

Third, the MAS may not seize documents which are covered by legal privilege. Section 153(3) of the SFA and section 79(1)(b) of the FAA expressly provide that the MAS is not authorised to take any privileged document or other material, and that lawyers and in-house legal counsel may not be compelled to disclose or produce a privileged communication, document, or other material containing privileged communications made by him or her in that capacity.

Fourth, an application for judicial review may be a possible avenue for cases where the rules of natural justice are breached. In the case of *Yeap Wai Kong v Singapore Exchange Securities Trading Ltd* [2012] 3 SLR 565 ("*Yeap Wai Kong*"), the Singapore High Court held that the reprimand function of the Singapore Exchange was a public function susceptible to judicial review for minimum compliance with the standards of "*legality, rationality and procedural propriety.*" (at [28]).

The Singapore High Court in *Yeap Wai Kong* also cited with approval the English Court of Appeal judgment of *Re Pergamon Press Ltd* [1970] 3 All

ER 535 where the English Court of Appeal held that inspectors' reports issued by inspectors under the English Companies Act were subject to a limited scope of the fair hearing rule (otherwise known as, *audi alteram partem*).

CONCLUSION

Whilst FIs do not (and should not) typically adopt a confrontational posture vis-à-vis its regulator, it is important for them to understand that there are legal limits to the scope of MAS' powers of investigation. FIs should immediately obtain legal advice the moment it becomes aware of any matter which may be the subject of an investigation by MAS. Obtaining prompt legal advice would ensure that the rights and interests of the FI are properly protected in accordance with the law.

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