

NEW OMNIBUS ACT FOR SINGAPORE'S FINANCIAL SECTOR – FINANCIAL SERVICES AND MARKETS ACT 2022

The Financial Services and Markets Bill 2022 (FSM Bill) was passed by Parliament on 5 April 2022. The FSM Bill introduces an omnibus legislation to enhance MAS' agility and effectiveness in addressing financial sector-wide risks in a rapidly changing and increasingly integrated environment.

This briefing will outline key features of the FSM Bill, and its potential impact on financial institutions (FIs) and virtual asset service providers (VASPs) in Singapore.

INTRODUCTION

Recognising the increasing need for a financial sector-wide regulatory approach to address the emerging risks and challenges that impact the financial sector, the MAS proposed, in July 2020, to introduce a new omnibus Act and conducted a public consultation to seek feedback from the industry. The FSM Bill was first read in Parliament in February 2022 and passed on 5 April 2022.

Key features of the FSM Bill and salient points from MAS' response to feedback are set out below.

KEY FEATURES

Harmonised and Expanded Power to Issue Prohibition Orders (POs)

Currently, MAS has the power to issue POs to bar persons from conducting certain activities or from holding key roles in FIs, in cases of serious misconduct in the capital markets, financial advisory and insurance industries. However, this power resides only in certain (and not all) legislation administered by the MAS, which means that MAS is currently unable to issue POs to persons regulated under some Acts administered by it, even in the case of serious misconduct. Further, the existing PO powers only prohibit the subject from carrying out a limited scope of regulated activities, and do not effectively protect an FI's customers, investors and the financial sector from the subject.

The FSM Bill consolidates MAS' powers to issue POs by introducing a harmonised and expanded power to prohibit any person who is not fit and

Key issues

- A new financial-sector wide legislation, the Financial Services and Markets Act 2022, will be introduced in Singapore to enhance the regulator's effectiveness in addressing financial sector-wide risks.
- Key features of the new Act include a harmonised and expanded power for the regulator to issue prohibition orders to any person with a nexus to the financial sector who is not fit and proper. The scope of prohibition covers functions that are critical to the integrity and functioning of FIs.
- The new Act also consolidates the powers of the regulator to impose requirements on technology risk management on any financial institution or classes of financial institution.
- Most notably, the new Act introduces a licensing regime for virtual asset service providers, in compliance with enhanced FATF Standards.
- Persons in Singapore providing any type of digital token service outside Singapore will be subject to licensing and ongoing requirements under the new Act. They will also be regulated for money laundering / terrorism financing risks.
- Details surrounding the new licensing regime will be subject to a further round of public consultation.

proper from engaging in any activity regulated by MAS and performing a prescribed list of key roles and functions in the financial sector. The prescribed list of key roles and functions range from becoming a substantial shareholder of a FI to performing risk management and control functions for a FI. This will enable a consistent sector-wide approach when taking enforcement action against misconduct.

The FSM Bill also broadens the categories of persons who may be subject to POs, rationalises the grounds for issuing POs (from a list of specific criteria into a single fit and proper test) and widens the scope of prohibition to cover functions that are critical to the integrity and functioning of FIs, such as handling of funds and assets. The revised PO powers are broadly aligned with those in Australia, Hong Kong, UK and US.

While such powers are potentially wide, MAS indicated that a PO will generally be issued only if a person has a former, existing or prospective nexus to the financial industry. To ensure that such powers will be exercised judiciously and in a risk-proportionate manner, MAS intends to issue guidelines to provide greater clarity on how these powers will be used.

The new powers will also allow MAS to issue POs to service providers (SPs) of FIs. However, there is a statutory defence available for an FI such that it will not be liable for indirectly engaging a prohibited person through an outsourcing arrangement, if it can show that it took all reasonable steps to ensure compliance with the prohibition, and after doing so, believed on reasonable grounds that it would not be breaching the prohibition. As such, as part of the FI's due diligence checks in engaging SPs, the FI should check that the SP's employees who undertake key functions for or on behalf of the FI have not been issued with POs.

Harmonised Power in relation to Technology Risk Management (TRM)

MAS' powers to impose requirements on TRM are currently spread across various Acts. The FSM Bill consolidates these powers by introducing a centralised power that empowers the MAS to impose requirements on TRM on any FI or classes of FIs in relation to the FI's system(s), irrespective of whether the system(s) supports a regulated activity.

The maximum penalty for breaches of the relevant Regulations and Notices issued is set at S\$1 million in the FSM Bill.

The consolidated powers under the FSM Bill do not impose specific requirements upon FIs. MAS intends to re-issue existing notices on TRM and cyber hygiene under the new powers. Should there be new regulations to be made pursuant to these powers, we expect MAS to subject the proposed new requirements to a public consultation.

Enhanced Regulation of Virtual Asset Service Providers (VASPs)

VASPs

In 2019, the Financial Action Task Force (FATF) enhanced the FATF Standards to require countries to regulate VASPs for money laundering and terrorism financing (ML/TF) risks. Among other things, the enhanced FATF Standards require VASPs to be at least licensed or registered in the jurisdictions(s) where they are created, to mitigate the risk of regulatory

arbitrage (where no single jurisdiction has sufficient regulatory hold over a specific VASP due to the internet and digital nature of the business of a VASP).

Singapore, like other major financial centres such as Hong Kong, is in the process of implementing a licensing regime for VASPs, in order to comply with the enhanced FATF Standards.

Most entities that carry on the business of providing virtual asset (VA) services in Singapore are subject to current legislation, where the VA involved constitute digital payment tokens or DPTs (as defined under the Payment Services Act 2019 (PS Act)) or capital markets products (as defined under the Securities and Futures Act 2001 (SFA)).

To fully align with the enhanced FATF Standards, the FSM Bill will regulate all VASPs created in Singapore that provide VA services outside of Singapore. Such VASPs which provide digital token (DT) services outside of Singapore will be regulated as a new class of FIs, with licensing and ongoing requirements to ensure that MAS has adequate supervisory oversight over them.

The FSM Bill will align the scope of DT services to the enhanced FATF Standards to include:

- a) dealing in DTs;
- b) facilitating the exchange of DTs;
- c) accepting DTs for the purposes of transmitting, or arranging for the transmission of, the DTs;
- d) inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to buying or selling any DTs in exchange for any money or any other DTs (whether of the same or a different type);
- e) safeguarding of a DT or DT instrument, where the service provider has control over the DT or over one or more DTs associated with the DT instrument; and
- f) financial advice relating to the offer or sale of DTs.

MAS generally does not seek to regulate persons that are solely involved in technical activities (e.g. the activity of blockchain mining, or function of validator nodes) or development of software application, and has carved out certain exclusions for persons carrying on such activities.

AML/CFT Supervisory Oversight

MAS considers all transactions relating to DT services to carry higher inherent ML/TF risks due to their anonymity and speed. The FSM Bill will regulate VASPs primarily for ML/TF risks. The FSM Bill will introduce general powers over VASPs, including licensing requirements, powers to conduct AML/CFT inspections and render assistance to domestic authorities and MAS' foreign AML/CFT supervisory counterparts.

AML/CFT requirements imposed on VASPs will be aligned with the requirements imposed on DPT service providers regulated under the PS Act.

Licensing and on-going requirements

The FSM Bill prohibits an individual or a partnership from carrying on, from a place of business in Singapore, a business of providing any type of DT service outside Singapore, unless the individual or the partnership has in force a licence.

Similarly, a Singapore corporation is prohibited from carrying on a business, whether from Singapore or elsewhere, of providing any type of DT service outside Singapore, unless the Singapore corporation has in force a licence.

There are licensing exemptions available to certain persons, including those who are:

- a) regulated or exempted from regulation under the SFA in respect of carrying on a business in a capital markets product regulated activity;
- b) licensed or exempted from such licensing under the Financial Advisers Act 2001 in respect of carrying on a business of providing a financial advisory service; or
- c) licensed or exempted from such licensing under the PS Act in respect of carrying on a business of providing any DPT service.

VASPs intending to apply for a DT service licence are required to have a permanent place of business in Singapore to ensure meaningful presence in Singapore and allow MAS to contact the licensee at that location.

Detailed requirements will be set out in subsidiary legislation, which will be subject to an industry consultation.

MAS will also apply its existing TRM and cyber hygiene requirements to VASPs.

No Transitional Arrangements

Finally, it should be noted that MAS does not intend to provide a transitional arrangement for DT service providers. This means that once the relevant regulatory framework is in force, DT service providers would be required to suspend or cease operations, until they obtain a licence from MAS.

What this means for FIs and VASPs

FIs should be aware of the MAS' expanded powers in relation to the issue of POs and TRM matters and assess their compliance risks in this regard.

In relation to VASPs, given that the details of the regulatory framework have yet to be ironed out, the industry can expect a further round of public consultation by MAS to discuss the finer details before the final regulatory framework comes into force.

Meanwhile, VASPs in Singapore or those intending to set up operations in Singapore (that are not already licensed or applying to be licensed under the existing PS Act) should start to assess if they may be required to be licensed under the new regulatory framework. If so, they should conduct a review on their business plans, operations, policies and procedures, and consider how these would need to be structured or modified in order to comply with the existing PS Act or the new regulatory framework, in the case of the latter in particular, with the AML/CFT requirements imposed on licensed DPT service providers (which will likely be similar to the requirements under the PS Act). VASPs should also be alert to future consultations by MAS which will discuss the detailed regulatory requirements which VASPs in Singapore are likely to be subject to.

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