

OMNIBUS BILL/ACT

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The Financial Services and Markets Bill

This is an update to our [previous article](#). On 5 April 2022, The Financial Services and Markets Bill 2022 (the “FSM Bill”) that consolidates and broadens the regulatory powers of the Monetary Authority of Singapore (MAS) was passed in Parliament. The passing into law of the FSM Bill is aligned with the approach of the MAS in having legal and regulatory oversight of the current financial services and industry landscape that is continually moving towards the inexorable digitalisation of financial services, especially with the growing prevalence of digital token (including cryptocurrencies and other digital payment tokens) and other digital asset services. The FSM Bill seeks to enhance the current regulatory regime associated with financial services by pushing for a financial-sector wide regulation and greater exercise of control over financial services and markets, as well over financial institutions and their related entities. This is predominantly achieved by the consolidations of several separate pieces of legislation (from the Banking Act 1970, Financial Advisers Act 2001, Insurance Act 1996 and Securities and Futures Act 2001) into one piece of legislation of the various powers of the MAS. The FSM Bill also specifically regulates digital token service providers for money laundering and terrorist financing risks by covering digital token service providers outside of Singapore, so long as their businesses are created in or operate from Singapore.

Harmonised and Expanded Powers to Issue Prohibition Orders

The FSM Bill gives MAS greater power to issue prohibition orders to bar persons who have a nexus to the financial sector from conducting certain activities or from holding key roles in financial institutions where such individuals have shown themselves to be improper, such as individuals who have been involved in

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serious misconduct. Currently, MAS is only entitled to issue prohibition orders against some persons specified under specific MAS-administered Acts. The present regulatory gap is that MAS is unable to issue prohibition orders to individuals who have committed serious misconduct in the financial sector if such serious misconduct falls outside the scope of the said MAS-administered Acts. With the FSM Bill introducing a harmonised and expanded power for MAS, it also broadens the categories of persons who may be subject to Protection Orders and standardises the grounds throughout the financial services sector for issuing prohibition orders. This enables a consistent sector-wide approach when taking enforcement action against misconduct, thereby enabling MAS to provide better protection of investors, customers and financial institutions.

Requirements on Technology Risk Management

The FSM Bill allows MAS to impose technology risk management requirements by introducing centralised powers that may apply to any financial institution. This serves to require financial institutions to better uphold the safety and soundness of their technological systems used to deliver their financial services to customers. To ensure strict compliance by financial institutions with the technology risk management requirements, the FSM Bill allows MAS to raise the maximum penalty for any single breach to S\$1 million which is significantly higher than the other penalties under the various Acts administered by MAS. Thus, the potential quantum of fine faced by a financial institution that is in breach could extend significantly beyond S\$1 million as cyberattacks or disruptions to essential financial services often involve multiple breaches of technology risk management requirements. The quantum was derived after considering comparable existing penalty regimes of other Singapore government agencies and the need to signal the importance of technology risk management.

Statutory Protection from liability for Mediators, Adjudicators and Employees of Operator of Approved Dispute Resolution Scheme

Currently, a mediator, an adjudicator, employee, officer or representative of the Financial Industry Disputes Resolution Centre Ltd (“FIDReC”) is given certain contractual protection from claims by a complainant or a financial institution. The FSM Bill gives statutory protection to mediators, adjudicators and employees of approved dispute resolution schemes, so long as they act with reasonable care and in good faith. This protection will boost the confidence of such persons in discharging their duties and more evenly align their levels of protection with that of other public dispute resolution bodies in Singapore and internationally. It bears noting that this statutory protection does not extend to acts involving wilful misconduct, negligence, fraud or corruption.

Enhanced Regulation of Virtual Asset Service Providers for Money Laundering and Terrorist Financing Risks

Virtual asset service providers (“VASPs”) are currently subject to legislation where the virtual assets involved constitute digital payment tokens or capital markets products. To mitigate the risk of regulatory arbitrage (where no single jurisdiction can gain sufficient regulatory control over a specific VASP due to its

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digital nature, which is anonymous, quickly transacted and which will invariably cross borders and legal jurisdictions thus having a higher level of inherent money laundering and terrorist financing (“ML/TF”) risks), the enhanced Financial Action Task Force (“FATF”) standards in 2019 require VASPs to be at least licensed or registered in their originating jurisdictions. To fully align with the enhanced FATF standards and to mitigate ML/TF risks, the FSM Bill will regulate all VASPs created in Singapore, including those providing digital token services outside of Singapore. MAS will impose licensing requirements and conduct inspections of such VASPs to ensure adequate supervisory oversight.

Given the enhanced and broader powers of the MAS, financial institutions should shore up their financial risk management strategy and their legal risk management processes to observe active compliance whilst VASPs should start calibrating their business activities to be better aligned with the new regulatory framework. With enhanced robustness of the legal regime and regulatory environment overseen by the MAS to monitor and manage financial institutions, VASPs and persons involved in providing financial and financial advisory services, Singapore continues to strengthen its stellar reputation as a business and financial hub of choice for financial services providers and investors.

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