

Financial Institutions

MAS to Require Financial Advisers to Implement Enhanced Transaction Safeguards for Selected Retail Clients

On 24 August 2023, the Monetary Authority of Singapore ("**MAS**") issued its Response to feedback received on the "Consultation Paper on Enhancing Pre- and Post-Transaction Safeguards for Retail Clients" ("**Consultation Paper**"). The consultation exercise was conducted from 22 June 2021 to 3 August 2021. The proposals in the Consultation Paper aim to raise industry standards and promote greater consumer trust in the financial advisory ("**FA**") industry in Singapore. These consist of proposed enhanced regulatory safeguards to be imposed on FA firms to protect the interests of retail clients, particularly selected clients ("**SCs**"), who meet any two of the following criteria:

- (a) are 62 years of age or older;
- (b) are not proficient in spoken or written English; and/or
- (c) have below GCE "O" or "N" level certifications (or the equivalent).

Background Information

In 2016, MAS introduced the Balanced Scorecard Framework ("**BSC Framework**") to safeguard the interests of retail clients of FA firms. The requirements and guidance on the BSC Framework are set out in various MAS Notices and Guidelines, such as:

- (a) Notice FAA-N20 Requirements for the Remuneration Framework for Representatives and Supervisors ("Balanced Scorecard Framework") and Independent Sales Audit Unit; and
- (b) Guidelines on the Remuneration Framework for Representatives, and Supervisors ("Balanced Scorecard Framework"), Reference Checks and Pre-Transaction Checks [FAA-G14] ("**BSC Guidelines**").

The proposals in the Consultation Paper address the areas of deficiencies from MAS' review of the effectiveness of the BSC Framework and MAS' findings about undesirable advisory and sales practices of FA representatives which were published in 2021. For more information about the proposals in the Consultation Paper, please click [here](#) for our Legal Update in July 2021.



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Key Enhanced Pre- and Post-transaction Safeguards

MAS stated in its Response that it will proceed to implement the key proposals in the Consultation Paper which are highlighted below. The new requirements will be set out in MAS Notice FAA-N16 Recommendation on Investment Products ("**FAA-N16**"). MAS will consult on the proposed revisions to FAA-N16 in due course. MAS proposes a nine-month transitional period from the time the revised FAA-N16 is published, for the revisions to take effect.

- (a) **Strengthening the requirements to determine and document a client's SC status.** Currently, the requirements to determine whether a client is an SC and to conduct a pre-transaction check for the client's SC status are set out in the BSC Guidelines. MAS will move the requirements from the BSC Guidelines to FAA-N16, a MAS Notice. A breach of MAS Notice would be an offence. In addition, FA representatives will be required to: (i) document their assessment of a client's SC status; and (ii) declare that they have performed such an assessment. The FA representatives should also notify the client of his/her SC status at the end of the fact-find process, and the additional safeguards accorded to SCs (for example, the requirement for a trusted individual ("**TI**") to be present during the sales and advisory process).
- (b) **Requiring a TI to be present for all investment recommendations made to SCs.** MAS will require a TI to be present for the entire sales and advisory process, unless an SC does not identify a TI or is unwilling to be accompanied by a TI. In such situations, FA firms may proceed to make investment recommendations to the SC only if they obtain the SC's written acknowledgement that he/she: (i) does not wish to have a TI present, and (ii) confirms that he/she is fully able to make decisions on his/her own without a TI. If the SC does not have a TI present during the sales and advisory process, FA firms are required to include a specific question in their pre-transaction call-back to confirm that the SC was offered an opportunity to bring along a TI, but had confirmed that he/she did not want to have a TI present and is fully able to make a decision without a TI.
- (c) **Criteria for qualification as a TI.** To qualify as a TI, a person must: (i) be at least aged 21; (ii) possess at least GCE "O" or "N" level certifications or equivalent academic qualifications; (iii) be proficient in spoken and written English; and (iv) be a person whom the SC trusts to be privy to the SC's personal information and be able to assist the SC in understanding the SC's financial decision. To establish criterion (iv), FA firms may obtain written acknowledgment from the SC that the SC agrees to the identified TI becoming aware of the SC's personal information during the course of the sales and advisory process. A TI should not be someone who presents potential conflicts of interests.
- (d) **Enhancing requirements relating to call-backs.** At present, FA firms are expected to perform a pre-transaction call-back to a client who: (i) is an SC; or (ii) purchases an investment product from a Selected Representative ("**SR**"). An SR refers to a FA representative who has been assigned a BSC grade B or worse for two consecutive calendar quarters immediately preceding the measurement quarter. The call-backs should be conducted by the FA representative's supervisor

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or an independent party within the free-look period. To ensure that client call-backs are effective, MAS will stipulate the minimum set of content which the client call-backs must cover in FAA-N16, including: (i) the basis of the recommendation; (ii) the main features and key risks and limitations of the product being recommended; (iii) existence of a free-look period (if any); (iv) whether the representative had been professional and ethical in his or her dealings with the client; and (v) whether a sale was made to an SC without a TI. MAS intends to provide further guidance on the conduct of call-backs and will clarify that the call-backs can be done in audio, video or face-to-face format.

- (e) **Audio recording of call-backs for SCs and clients of SRs.** There will also be a new requirement for FA firms to audio record (and keep such recording for no less than five years) all call-backs performed on SCs and clients of SRs. FA firms will be required to provide a copy of the audio recordings to the clients upon request. Where audio recording is not possible (such as if the client does not consent to recording of the call-back or the call-back was done in a face-to-face meeting), FA firms will be required to at least put in place the following controls: (i) SCs will be asked to have the TI present at the call-back/meeting and their choice on the matter to be documented; (ii) the FA representative's supervisor is to document key points discussed in a summary document (including those prescribed in FAA-N16); (iii) signed acknowledgements by the client and the FA representative's supervisor; and (iv) controls to monitor that FA representatives and their supervisors do not circumvent the requirement for recording of call-backs.
- (f) **Digital advisers (subject to certain conditions) will be exempt from the above requirements.** Digital advisers (subject to certain conditions) will be exempt from the requirements to: (i) determine whether a client is an SC; and (ii) conduct pre-transaction checks on documentary reviews and client call-backs. Digital advisers that operate without any FA representatives providing recommendations or advice directly to clients will be exempt from the requirement for presence of a TI. However, digital advisers are still required to ensure the suitability of their product recommendations.
- (g) **Independent sales audit ("ISA") unit to review product recommendations to SCs.** MAS will require the ISA unit of the FA firms to review product recommendations made to SCs on a post-transaction basis. MAS will conduct a separate consultation exercise on the proposed sampling requirements for SC transactions.

MAS will not proceed with the requirement which had been proposed in the Consultation Paper for call-backs (and audio recordings) to be conducted for retail or other clients (beyond SCs and clients of SRs).

Click on the following link for more information:

- [MAS Response to Feedback Received on "Consultation Paper on Enhancing Pre- and Post-Transaction Safeguards for Retail Clients"](#) (available on the MAS website at www.mas.gov.sg)

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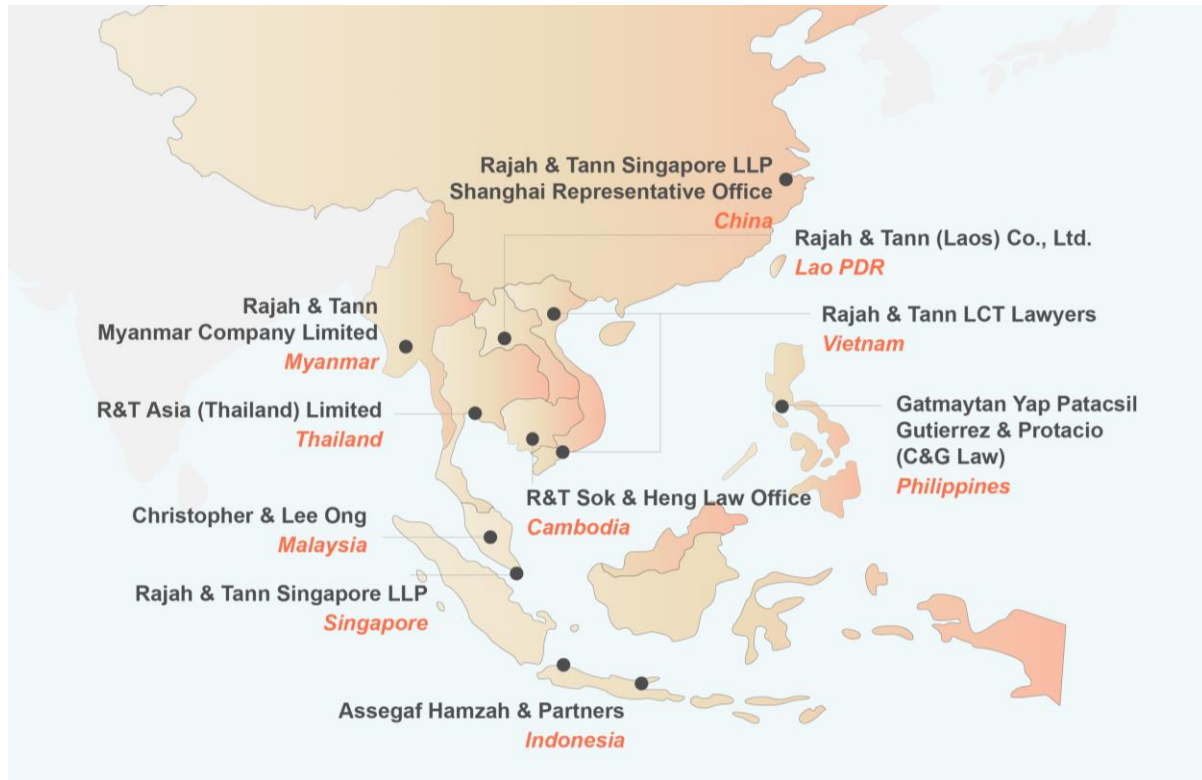
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