HONG KONG MONETARY AUTHORITY
香港金融管理局

Consultation Paper on

Implementation of Mandatory Reference Checking Scheme to Address the "Rolling Bad Apples" Phenomenon

8 May 2020

Contents

I. Foreword 3
II. Personal Information Collection Statement 4
III. Introduction 6
1. Background 6
2. Existing Fit and Proper Requirements 7
3. Proposed Approach 8
IV. Mandatory Reference Checking Scheme 9
1. Application 9
2. Proposed Scope of Personnel to be Covered 10
3. Proposed Scope of MRC Information 12
4. Duration of MRC Information 14
5. Obligations of Recruiting AIs 14
6. Obligations of Reference Providing AIs 16
7. Other Operational Requirements 18
V. Implementation Approach 19
Annex 1 Consultation Questions 21
Annex 2 MRC Information Template 23

I. Foreword

1. This consultation paper outlines the framework proposed by the Hong Kong Monetary Authority ("HKMA") for the Mandatory Reference Checking Scheme to be adopted by Authorized Institutions ("AIs") on the employment of specified positions with a view to addressing the "Rolling bad apples" ("RBA") phenomenon, taking into account initial comments from the banking industry.

2. The HKMA invites comments on the proposal of this paper. Full list of the consultation questions can be found at **Annex 1**. Please submit your comments to your industry associations or to the mailbox at "rollingbadapples@hkma.gov.hk" by **7 August 2020**.

3. Persons submitting comments on behalf of an organisation should provide details of the organisation whose views they represent.

4. **Please note that the names of commentators and the contents of their submissions may be published by the HKMA on the website or in other documents to be published by the HKMA. Please read the Personal Information Collection Statement in the following section for details.**

5. **If you do not wish your name or submission to be published by the HKMA, please indicate so when you make your submission.**

II. Personal Information Collection Statement

6. This Personal Information Collection Statement (PICS) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data[1] will be used following collection, what you are agreeing to with respect to the HKMA's use of your Personal Data and your rights under the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO).

Purpose of collection

7. The personal data provided in your submission in response to this consultation paper may be used by the HKMA for one or more of the following purposes –

- to administer the provisions of the Banking Ordinance (Cap. 155) and guidelines published pursuant to the powers vested in the HKMA;
- to perform statutory functions under the provisions of the Banking Ordinance (Cap. 155);
- for research and statistical purposes; or
- for other purposes permitted by law.

Transfer of personal data

8. Personal data may be disclosed by the HKMA to members of the public in Hong Kong and elsewhere as part of this public consultation. The names of persons who submit comments on this consultation paper, together with the whole or any part of their submissions, may be disclosed to members of the public. This will be done by publishing this information on the HKMA website or in documents to be published by the HKMA during the consultation period or at its conclusion.

Access to data

9. You have the right to request access to and correction of your personal

[1] Personal data means personal information as defined in the Personal Data (Privacy) Ordinance (Cap. 486).

data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your personal data provided in your submission on this consultation paper. The HKMA has the right to charge a reasonable fee for processing any data access request.

Retention

10. Personal data provided to the HKMA in response to this consultation paper will be retained for such period as may be necessary for the proper discharge of its functions.

Enquiries

11. Any enquiries regarding the personal data provided in your submission on this consultation paper, requests for access to personal data or correction of personal data should be addressed in writing to –

Personal Data Privacy Officer
Hong Kong Monetary Authority
55/F Two International Finance Centre
8 Finance Street
Central, Hong Kong

III. Introduction

1. Background

12. The RBA phenomenon refers to individuals who engage in misconduct during their employment in the institutions but are able to obtain subsequent employment elsewhere without disclosing their earlier misconduct to the new employer.

13. Individuals who are not held accountable for their misconduct at one firm and surface at another firm could have a higher likelihood of repeating their misconduct. This may give rise to operational, reputational, financial and other risks to the new employer who employs the "bad apples". More broadly, RBA in the banking sector may inflict harm on bank consumers and undermine public confidence in the banking sector, which in turn creates systemic risks. Preventing movements of such "bad apples" is therefore an important subject receiving attentions from regulatory authorities around the world in recent years.

14. The HKMA has been exploring ways to address the issue of the RBA phenomenon in the banking sector in Hong Kong, taking into account relevant work done by international bodies, notably the Financial Stability Board ("FSB"). The FSB has published a paper on 20 April 2018 on "Strengthening Governance Framework to Mitigate Misconduct Risk: A Toolkit for Firms and Supervisors"[2] setting out specific tools to address the RBA phenomenon and practices adopted by overseas authorities.

15. The HKMA has also initiated discussions with AIs to gauge their views on the subject through the Balanced and Responsive Supervision ("BRS") initiative[3]. AIs generally consider that the RBA phenomenon exists in the local banking sector and needs to be addressed.

---

[2] The FSB paper is available at https://www.fsb.org/wp-content/uploads/P200418.pdf

[3] The BRS initiative involves a mechanism for the HKMA to regularly review with banks possible execution issues arising from the supervisory processes, as well as to collect ideas for streamlining supervisory practices and requirements. Through better and ongoing communication with the industry, the HKMA aims to achieve a more optimal and sustainable supervisory outcome in the longer run.

2. Existing Fit and Proper Requirements

16. Under the existing framework of the Banking Ordinance ("BO"), appointments of directors, chief executives ("CEs"), alternate chief executives ("ACEs") and executive officers ("EOs") as defined in the BO are subject to consent of the Monetary Authority ("MA"). AIs are also required to put in place adequate systems of control for appointment of managers under §72B of the BO. There are fit and proper requirements applicable to the above-mentioned individuals under the BO. Meanwhile, certain persons are prohibited from acting as employees of AIs unless with the consent of the MA under §73 of the BO. AIs are required to report to the HKMA incidents involving fraud, deception, theft, forgery, corruption or other illegal activities as well as issues concerning misconduct or fitness and propriety of their staff.

17. For AIs which are registered institutions ("RIs") under the Securities and Futures Ordinance ("SFO"), they are required to report to the HKMA and the Securities and Futures Commission ("SFC") any investigation conducted on an EO within 6 months preceding the cessation of appointment of that individual as an EO. Moreover, employees of RIs who are relevant individuals ("ReIs") as defined under §20(10) of the BO are subject to the fit and proper guidelines issued by the SFC under the SFO. Pursuant to the BO, the HKMA maintains a register of securities staff of RIs (including current and former ReIs) containing records of public disciplinary actions taken by the SFC and the HKMA against the ReIs, subject to a retention period of such records of 5 years.

18. While the above arrangements have been generally effective in ensuring the fitness and propriety of key personnel of AIs, they may not be sufficient to prevent individual staff who engaged in misconduct from obtaining subsequent employment without disclosing their earlier misconduct to the recruiting AI.

19. While some AIs have taken measures to address the RBA issue (such as requiring prospective employees to disclose any previous investigations or disciplinary records by their former and current employers or regulators; and seeking employment reference from these current and former employers of the prospective employees), they generally consider that

there are limitations to their existing tools, including the tendency of prospective employees to conceal misconduct history; as well as reluctance of some former and current employers in sharing misconduct or potential misconduct information concerning their employees.

20. Moreover, given the time lag between the occurrence of misconduct and completion of investigation and disciplinary actions by the AIs and the regulators, information relating to misconduct may not be available in a timely manner. These had made it difficult for the recruiting AIs to fully assess the employment history and suitability of the prospective employees, and hence rendering them vulnerable to RBAs.

3. Proposed Approach

21. In formulating the proposed approach, the HKMA has made reference to the international practice where applicable.

22. Overseas authorities generally adopt two different approaches in addressing the RBA phenomenon, namely mandatory reference checking ("MRC") and centralised register ("CR").

23. Under a typical MRC scheme, recruiting banks are mandated to obtain reference from the applicant's current and former employers using a standard template containing conduct related information. Current and former employer banks are required to respond to MRC request and all banks are required to have internal controls, policies and procedures to support the MRC scheme.

24. For those jurisdictions adopting CR arrangements, CRs are generally established in specific financial sectors and administered by the relevant regulators or industry bodies with varying level of conduct related information ranging from customer complaints to legal proceedings, etc.

25. Based on the preliminary views from the domestic banking industry on the approach for tackling the RBA phenomenon solicited by the HKMA through the BRS initiative, many AIs are supportive to the MRC approach, which is considered to be efficient and effective in addressing the RBA phenomenon, easier to implement and having lower setup cost.

26. Some AIs suggest adopting an open mind to establishing a CR if necessary in the longer term, as a CR could enable faster employment reference checking with more complete information about a prospective employee. However, it is also noted that the implementation of a CR aiming at covering all existing and previous employees of AIs in Hong Kong will be operationally more complex, involving higher cost and more effort by AIs, especially having regard to the arrangements of the centralised database in protecting personal data privacy. In particular, the governance, operational and funding arrangement of the CR will need to be carefully designed and implemented.

27. Taking into account AIs' feedback and the pros and cons of MRC and CR schemes, it is proposed that an MRC scheme be implemented in Hong Kong. The high-level features of the proposed approach are set out in the ensuing paragraphs.

IV. Mandatory Reference Checking Scheme

1. Application

28. The HKMA noted that some overseas MRC schemes would require the recruiting banks to request reference from all current and former employers irrespective of firm types and place of incorporation. In other words, even in cases where the current or former employer is not a bank or is based outside the local jurisdiction, the recruiting bank is still required to take reasonable steps to obtain reference from the employers.

29. Taking into account practical considerations and implementation complexity, it is considered that the proposed MRC scheme to be introduced in Hong Kong should be confined to the local banking sector at the initial stage. Accordingly, the proposed MRC scheme will apply to all AIs which are planning to enter into a new employment relationship with a prospective employee (hereafter called "recruiting AIs") will be required to approach all former and current employers of the prospective employee which are also AIs (hereafter called "reference providing AIs") to conduct reference checking in accordance with the proposed MRC scheme.

2. Proposed Scope of Personnel to be Covered

30. To strike a balance between the benefit of tackling the RBA phenomenon and the operational complexity of AIs in implementing the MRC scheme, it is proposed that the MRC scheme will adopt a proportionate approach and confine to specific categories of employees of AIs whose conduct and integrity are more important and the need for addressing the RBA phenomenon is of relatively higher priority.

31. Specifically, it is proposed that the MRC scheme will be implemented by phases: **Phase 1** will cover directors and bank employees in senior management positions, while **Phase 2** will extend the coverage to bank employees heading key supporting functions, and those who are having client facing or sales responsibilities such that any misconduct behavior (e.g. mis-selling or misrepresentation of investment, insurance and general banking products and services) by them would have direct impact on end customers.

32. Details are as follows:

Phase 1

(i) directors approved under §71 of the BO[4];

(ii) CEs and ACEs approved under §71 of the BO;

(iii) managers notified to the MA under §72B of the BO; and

(iv) EOs approved under §71C of the BO.

Phase 2

(i) heads and deputy heads of key supporting functions (including human resources, risk management, legal, compliance, internal audit

[4] For the purpose of this consultation paper, appointment of a prospective director will be treated as a "prospective employee", even if such appointments, especially those involving non-executive directors, may not be an "employment" per se. In other words, the recruiting AIs should also conduct MRC for prospective directors to be appointed, regardless of whether they are executive or non-executive in nature. By the same token, the reference providing AIs should provide MRC information for former directors who have served in their boards, even if they are non-executive directors.

and other equivalent units);

(ii) staff licensed to carry out securities related regulated activities under the SFO (i.e. ReIs);

(iii) staff licensed to carry out insurance related regulated activities under the Insurance Ordinance ("IO") (i.e. Technical Representatives licensed by the Insurance Authority ("IA") under §64Y or §64ZC of the IO);

(iv) staff registered to carry out regulated activities under the Mandatory Provident Fund Schemes Ordinance ("MPFSO") (i.e. subsidiary intermediaries registered with the Mandatory Provident Fund Schemes Authority ("MPFA") under §34U(4) of the MPFSO);

(v) responsible officers ("ROs") approved by the IA under §64ZE of the IO; and

(vi) staff who are client facing in the provision of general banking products and services (i.e. bank branch managers, tellers and customer relationship representatives).

33. AIs that intend to enter into an employment relationship with a prospective employee for the specified positions as stated in the paragraph above should adopt the MRC requirements in evaluating the fitness and propriety of the prospective employee. For the avoidance of doubt, the MRC scheme will cover all employees irrespective of their employment terms, i.e. including permanent, contract or other temporary or time-limited employment relationship so long as they belong to any of the above-mentioned positions.

34. Taking into account the complexity and the wider coverage of staff in Phase 2, it is proposed that a review on the implementation of Phase 1 will be conducted one year after Phase 1 has been launched, so as to refine the arrangements if necessary. The industry feedback and experience gathered from the implementation of Phase 1 will then provide a basis to determine the implementation approach and arrangements for Phase 2 of the MRC scheme.

Consultation questions:

Q1. Do you have any comments on the proposed phased implementation approach?

Q2. Do you have any comments on the respective scope of personnel proposed to be covered by Phase 1 and Phase 2 of the proposed MRC scheme?

Q3. Do you have any comments on the proposed timeframe for implementation of Phase 2 following the launch of Phase 1?

3. Proposed Scope of MRC Information

35. To ensure consistency of MRC information exchanged and effective referencing under the proposed scheme, it is proposed that a standard MRC Information Template should be developed with contents and format agreed by the banking industry. In this respect, it is proposed that apart from the general employment information such as duration of employment, roles and responsibilities, reason for cessation of employment, etc., the MRC Information Template should also cover conduct specific information concerning the prospective employee as set out below. The proposed MRC Information Template can be found in **Annex 2**.

(i) breach of legal or regulatory requirements relating to the BO, IO, MPFSO and SFO;

(ii) incidents related to honesty, integrity or matters of similar nature;

(iii) misconduct reports filed with the HKMA;

(iv) internal or external disciplinary actions arising from conduct matters; and

(v) any other additional information relevant to the fit and proper assessment.

36. In respect of item (iv) above, it is proposed that **reportable internal disciplinary actions** should include those resulting from misconducts of nature similar to those stipulated in items (i) to (iii) above, as well as other

gross misconducts including frauds and serious criminal offences. It is proposed that reportable internal disciplinary actions should include internal warnings; reduction or claw-back of remunerations including salary, commissions, bonuses, etc.; and suspension and dismissal as a result of such misconducts. Disciplinary actions arising from misconducts of minor nature (e.g. minor breach of internal staff code such as repeated losses of staff card) and performance related matters (e.g. consistently poor performance) need not be included for the purpose of the MRC scheme.

37. Moreover, it is proposed that **reportable external disciplinary actions** should include those taken by industry associations; professional bodies; or regulatory bodies, such as revocation or suspension of licence or registration; revocation or suspension of approval to carry out regulated activities; prohibition of application for licence or registration; imposition of fines, etc.

38. In contemplating the scope of MRC information, consideration has also been given as to whether it should also cover investigations in progress but not yet concluded when the reference providing AI receives the MRC request. While disclosure of such information would help addressing concerns about individual engaged in misconduct activities leaving the AI during the course of investigation with a view to avoiding any consequences arising from the investigation results, care should be taken not to disclose pre-mature or inconclusive investigation information which may otherwise stigmatise a presumed innocent individual. Please refer to Section IV.6 on "Obligations of Reference Providing AIs" below for further elaboration on the handling of investigation results subsequently become available.

<u>Consultation questions:</u>

Q4. Do you have any comments on the proposed scope of MRC information, in particular information relating to investigation in progress but not yet concluded?

Q5. Do you have any comments on the proposed scope of reportable internal and external disciplinary actions to be covered under the MRC scheme?

Q6. Do you have any comments on the proposed MRC Information Template in Annex 2 to this paper?

4. Duration of MRC Information

39. While longer duration of MRC information will facilitate more comprehensive assessment on the prospective employee, the capacity and practicality for AIs to retain employment records, person data privacy perspective as well as consideration on provision of opportunity for correction and rehabilitation will also need to be taken into account in considering the duration of MRC information to be exchanged.

40. To this end, reference is made to the HKMA's existing requirement that 10 years of employment records needs to be disclosed by applicants in their applications to take up positions of directors, CEs, ACEs and EOs. It is proposed that the duration of MRC information should cover the prospective employee's employment records in the past 10 years up to the date of application for employment. Accordingly, for the purpose of the MRC scheme, all AIs should maintain employment records of their employees who have ceased to be employed by the AIs for a period of at least 10 years counting from the date of the employees' departure from the AIs.

Consultation questions:

Q7. Do you have any comments on the proposed duration of MRC information coverage, i.e. 10 years of employment records?

Q8. Do you foresee any difficulties for AIs to maintain 10 years of employment records of their employees for MRC purpose?

5. Obligations of Recruiting AIs

41. It is proposed that during the recruitment process of a prospective employee for an in-scope position, the recruiting AI should, before finalising the employment decision, approach all former and current employers of the prospective employee which are AIs for employment records in the past 10 years to conduct reference checking in accordance

with the proposed MRC scheme. While the specific point in time when the MRC process should commence would largely depend on individual AI's internal processing flow, in practice, recruiting AIs may consider commencing the MRC process by attaching a condition to the offer of employment to the prospective employee to the effect that the offer is subject to the satisfactory completion of the MRC process.

42. It is proposed that written consent should be obtained from the prospective employee to:

(i) authorise the recruiting AI to conduct reference checking with his/her current and former employer AI(s) (hereafter referred as "reference providing AIs") in accordance with the MRC scheme;

(ii) authorise the reference providing AIs to disclose his/her employment records to the recruiting AI according to the MRC scheme; and

(iii) exempt reference providing AIs from any contractual obligations which may limit their abilities to disclose information regarding the prospective employee as required under the MRC scheme.

43. The recruiting AI should then extend written MRC information requests to the reference providing AIs, indicating clearly that it has obtained the candidates' consent to perform the reference checking under the MRC scheme.

44. Upon receiving the MRC information from the reference providing AIs, the recruiting AI can conduct its internal assessment and where necessary, follow up with the reference providing AIs for clarifications and further information to facilitate its consideration. To ensure transparent and fair treatment to the prospective employee, the recruiting AI should provide the prospective employee with an opportunity to be heard in case there is any negative information from the reference providing AIs. All MRC information received including comments and responses made by the prospective employee should be taken into account before an employment decision is made.

45. It is proposed that in case the prospective employee is from the same banking group as the recruiting AI, the recruiting AI may make use of its

group internal records; common human resources functions; or other means for sharing relevant information as long as such internal arrangements can serve the same functions as the MRC scheme.

46. For the avoidance of doubt, the recruiting AI will have full discretion in making any employment decision. In other words, the recruiting AI can still proceed with offering an employment even if there is any negative information about the prospective employee from the reference providing AIs. The recruiting AI will be responsible for such a decision under the MRC scheme (notwithstanding that appointments to some senior positions may also require regulatory approvals).

47. Alongside the implementation of the MRC scheme, the HKMA would consider introducing amendments to the existing application forms for directors, CEs, ACEs and EOs to request the recruiting AI to declare completion of relevant reference checking under the MRC scheme.

Consultation questions:

Q9. Do you have any comments on the requirements to obtain consent from the prospective employee?

Q10. Do you foresee any practical issues in reaching out to existing and former employer AIs of the prospective employee in the past 10 years?

Q11. Do you foresee any practical issues in providing an opportunity to be heard to the prospective employee?

Q12. Do you have any other comments in relation to the obligations of recruiting AIs under the MRC scheme?

6. Obligations of Reference Providing AIs

48. Upon receiving an MRC request, the reference providing AIs should provide the relevant information within a reasonable period of time. Taking into account the processing time required for data retrieval, reconciliation and other administrative tasks in compiling the MRC information, it is proposed that reference providing AIs be given 10 working days commencing from the date of the MRC request to provide information.

49. It is proposed that all information provided under the proposed MRC scheme should be supported by written documents, and to the best knowledge of the reference providing AIs are true, fair, complete, accurate and capable of substantiation. Reference providing AIs should not withhold any information which may otherwise render the reference process unfair, incomplete or inaccurate.

50. Under exceptional circumstances where the reference providing AIs are unable to respond to the MRC request to provide information within 10 working days, they should at least provide an interim reply to the recruiting AI on the reason why it could not respond to the request, and an estimated timeframe that a further response can be made. The recruiting AI may consider whether to wait for the further response in its consideration of the employment decision.

51. For the avoidance of doubt, the recruiting AI would be considered to have discharged its obligations under the proposed MRC scheme after waiting for a response from the reference providing AIs. The reference providing AIs should keep these cases of not being able to provide a reply within 10 working days to a minimum, lest the effectiveness and integrity of the proposed MRC scheme would be severely affected.

52. As mentioned in Section IV.3 on "Proposed Scope of MRC Information" above, there are circumstances where investigation involving the prospective employee were still in progress when the reference providing AI receives the MRC request. To this end, item (v) of the proposed MRC Information Template "any other additional information relevant to the fit and proper assessment" aims to provide flexibility for the reference providing AIs to exercise judgement on the type of investigation information to be provided taking into account circumstances of individual cases.

53. That said, it is proposed that reference providing AIs should provide update to recruiting AIs if the investigation subsequently concludes that the candidate concerned is guilty of misconduct or unveils other conduct issues of the candidate which may cause substantive changes to the reference information previously provided to the recruiting AI.

54. In cases where an investigation or proceeding concerning the candidate

commenced after the candidate has left the reference providing AI, it is proposed that the reference providing AI should update the recruiting AI on the result of investigation or proceeding only if: (i) the investigation or proceeding commenced within 10 years after the candidate has left the reference providing AI; and (ii) the investigation or proceeding concluded that the candidate was guilty of misconduct or has involved in any misconduct incidents.

55. Prior to sharing the above updates with the recruiting AI, the reference providing AI should, on a best effort basis, ascertain from the recruiting AI the employment status of the individual concerned. The reference providing AI is <u>not</u> required to provide update to the recruiting AI if:

    (i) the recruiting AI indicates that it does not intend to enter into any employment relationship with the candidate; or

    (ii) the recruiting AI indicates that it does not have current employment relationship with the candidate.

56. For the avoidance of doubt, the obligation of a reference providing AI to update MRC information provided to a recruiting AI is deemed to be lapsed after 10 years from the date the personnel left the AI.

<u>Consultation questions:</u>

Q13. Do you have any comments on the requirement for the reference providing AIs to respond to MRC requests within 10 working days?

Q14. Do you have any comments on the requirements for reference providing AIs to provide updated MRC information to recruiting AI?

Q15. Do you have any other comments in relation to the obligations of reference providing AIs under the MRC scheme?

7. Other Operational Requirements

57. It is proposed that all AIs (i.e. both recruiting AIs and reference providing AIs) should put in place adequate internal systems and controls, policies and procedures to safeguard integrity and confidentiality of information obtained and processed during the MRC process. All AIs should publish the contact details for other AIs to request for reference on their websites.

Such information should also be made available on their industry platforms such as websites of their industry associations.

58. In the initial stage of MRC scheme implementation, it is proposed that AIs may exchange the MRC Information Template via secure-emails or mail-in of paper-based forms. Going forward, the industry is encouraged to consider developing application programming interface (API) based application or other advanced technology such as blockchain based solution for exchange and maintenance of MRC information. The HKMA stands ready to facilitate industry initiatives in leveraging technologies to further enhance the integrity and efficiency the operation of the MRC scheme.

Consultation questions:

Q16. Do you have any comments or foresee any practical issues in fulfilling the operational requirements?

Q17. Do you have any comments on the proposal for an internal network of an industry association to facilitate the exchange of requests and information under the proposed MRC scheme?

V. Implementation Approach

59. The effectiveness of the proposed MRC scheme would depend on AIs' commitments to safe-keeping of and sharing among themselves complete and accurate MRC information for the benefit of the whole banking industry. Similar to other industry-wide initiatives such as the issuance of the "Code of Banking Practice" and the "Practical Guideline on Barrier-free Banking Services", the HKMA intends that the development and implementation of the MRC scheme should be an industry-led initiative to be endorsed by the HKMA, rather than being imposed as a supervisory requirement upfront.

60. The HKMA is mindful that in order for the proposed MRC scheme to be useful, there may be merits for extending the proposed scheme to cover other non-bank financial sectors (e.g. securities and insurance companies) and other jurisdictions in which talent transfers with Hong Kong are common. However, given the complexity of the project, the project can

be developed to cover the Hong Kong banking sector as a start before extension of the coverage would be explored.

<u>Consultation questions:</u>

Q18. Do you have any comments on implementing the proposed MRC scheme through an industry-led effort with the endorsement of the HKMA, rather than a supervisory requirement upfront?

Q19. Do you have any comments on confining the mandatory reference checking within the Hong Kong banking industry at the beginning?

Q20. Do you have any other comments on the proposed MRC scheme and other suggestions that can help to tackle RBA phenomenon?

Annex 1 Consultation Questions

Proposed Scope of Personnel to be Covered

Q1. Do you have any comments on the proposed phased implementation approach?

Q2. Do you have any comments on the respective scope of personnel proposed to be covered by Phase 1 and Phase 2 of the proposed MRC scheme?

Q3. Do you have any comments on the proposed timeframe for implementation of Phase 2 following the launch of Phase 1?

Proposed Scope of MRC Information

Q4. Do you have any comments on the proposed scope of MRC information, in particular information relating to investigation in progress but not yet concluded?

Q5. Do you have any comments on the proposed scope of reportable internal and external disciplinary actions to be covered under the MRC scheme?

Q6. Do you have any comments on the proposed MRC Information Template in Annex 2 to this paper?

Duration of MRC Information

Q7. Do you have any comments on the proposed duration of MRC information coverage, i.e. 10 years of employment records?

Q8. Do you foresee any difficulties for AIs to maintain 10 years of employment records of their employees for MRC purpose?

Obligations of Recruiting AIs

Q9. Do you have any comments on the requirements to obtain consent from the prospective employee?

Q10. Do you foresee any practical issues in reaching out to existing and former employer AIs of the prospective employee in the past 10 years?

Q11. Do you foresee any practical issues in providing an opportunity to be heard to the prospective employee?

Q12. Do you have any other comments in relation to the obligations of recruiting AIs under the MRC scheme?

Obligations of Reference Providing AIs

Q13. Do you have any comments on the requirement for the reference providing AIs to respond to MRC requests within 10 working days?

Q14. Do you have any comments on the requirements for reference providing AIs to provide updated MRC information to recruiting AI?

Q15. Do you have any other comments in relation to the obligations of reference providing AIs under the MRC scheme?

Other Operational Requirements

Q16. Do you have any comments or foresee any practical issues in fulfilling the operational requirements?

Q17. Do you have any comments on the proposal for an internal network of an industry association to facilitate the exchange of requests and information under the proposed MRC scheme?

Implementation Approach

Q18. Do you have any comments on implementing the proposed MRC scheme through an industry-led effort with the endorsement of the HKMA, rather than a supervisory requirement upfront?

Q19. Do you have any comments on confining the mandatory reference checking within the Hong Kong banking industry at the beginning?

Q20. Do you have any other comments on the proposed MRC scheme and other suggestions that can help to tackle RBA phenomenon?

Annex 2 MRC Information Template

Date: [Date of request to the Reference Providing Authorized Institution]
To: [Name of officer / Reference Providing Authorized Institution]
Subject: Reference Checking – [Individual's name]

We are considering offering employment to the following individual and understand that he/she was/is employed by your institution. Pursuant to the Mandatory Reference Checking (MRC) scheme, please provide us with the following information within 10 working days from the date of receipt of this request. The information should cover the period between [date] and [date]. The written consent of the individual for your institution to disclose his/her information to our institution under the MRC scheme is appended.

Individual's name: _____
Individual's ID/Passport number: _____

Information of employment record

Position held	From (date)	To (date)	Description of role	Reason for the cessation of appointment

1. Are you aware of the individual being involved or have been involved in any of the following? Yes ☐ No ☐ (please proceed to question 2)
   - ☐ (i) Non-compliance with incidents associating with the individual's breach of legal or regulatory requirements relating to the Banking Ordinance (Cap. 155), Securities and Futures Ordinance (Cap. 571), Insurance Ordinance (Cap. 41), and the Mandatory Provident Fund Schemes Ordinance (Cap. 485)
   - ☐ (ii) Incidents related to honesty, integrity or matters of similar nature
   - ☐ (iii) Misconduct report filed with HKMA
   - ☐ (iv) Internal or external disciplinary actions arising from conduct matters

Please provide below a description of the details if you are aware of any of the items listed above, including date of incident/breach, factual description of incident/breach, actions taken (if any).

---

2. Are you aware of any other information that you consider would be relevant to our assessment of whether the individual is fit and proper?
   ☐ Yes
   ☐ No

   If yes, please provide the relevant information below:
   _____

   For clarification or further information, please contact:
   [Name of officer / contact details]

Thank you for your kind assistance and timely reply to our request. Please do not hesitate to contact us for further clarification.

Yours sincerely

Name of officer
Title / Department
Recruiting Authorized Institution
Contact