

SINGAPORE AMENDS AND LEVELS PLAYING FIELD FOR CROSS-BORDER FINANCIAL BUSINESS ARRANGEMENTS

A new regulatory framework in Singapore has recently been implemented for cross-border financial business arrangements between Singapore financial institutions (FIs) and their overseas offices. Previously, the regulatory framework for such arrangements depended on the type of entity that was delivering the service to customers in Singapore. Foreign branches of Singapore FIs in such arrangements were subject to more stringent conduct and representative requirements, compared to foreign related corporations (FRCs) of Singapore FIs in such arrangements. This has just changed.

PREVIOUS FRAMEWORK

The provision of financial services in Singapore is predominantly regulated under the Securities and Futures Act (Cap. 289) (SFA) and the Financial Advisers Act (Cap. 110) (FAA). Owing to the extra-territorial effect of these two Acts, FIs intending to provide cross-border financial services to customers in Singapore used to do so through a licensing exemption that is known in the industry as the "*para 9 exemption*" (for capital markets services under the SFA) or "*para 11 exemption*" (for financial advisory services under the FAA).

Both licensing exemptions were available to a FRC intending to provide cross-border financial services to customers in Singapore, if it was provided through an arrangement with a Singapore entity (Singapore Entity) which is a related corporation, and such arrangement was approved by the Monetary Authority of Singapore (MAS). The approval of these arrangements was subject to conditions which required the Singapore Entity to implement relevant policies and procedures to mitigate potential risks to customers in Singapore which may arise under cross-border business arrangements.

The "*para 9 exemption*" and "*para 11 exemption*" were not available to Singapore FIs and its overseas branches or head office (Foreign Branches), as Foreign Branches, being the same legal entity as the Singapore FI, would not qualify as FRCs. Foreign Branches providing any capital markets services and/or financial advisory services to customers in Singapore were subject to the applicable conduct requirements under the SFA and/or FAA, and the representatives of the Foreign Branches who conduct such regulated activities

Key issues

- Exemption framework for cross-border business arrangements between Singapore FIs and their overseas offices have been streamlined, and case-by-case approval replaced with an ex-post notification framework, with effect from 9 October 2021.
- Overseas offices can commence the provision of financial services to Singapore customers through an arrangement with their Singapore FI, as long as such arrangement is notified to the MAS and a set of boundary conditions is complied with.
- The boundary conditions relate to, among other things, the regulatory status of the foreign office, permissible clientele and internal controls over the arrangements (which includes requirements on the customer due diligence to be performed on customers of the overseas offices).
- Existing "*para 9*" and "*para 11*" arrangements are to comply with the boundary conditions and submit an initial notification to MAS by 8 October 2022.
- The same deadline applies to existing arrangements with Foreign Branches.
- New cross-border arrangements must be notified to MAS within 14 days after commencement.

were required to be appointed as overseas-based representatives of the Singapore Entity when they served Singapore customers. This entailed the fulfilment of stringent entry and examination requirements by the overseas-based representatives.

This created an unlevel playing field, as FRCs operating under the "*para 9 exemption*" and "*para 11 exemption*" were not subject to applicable conduct requirements under the SFA and/or FAA, and representatives of the FRCs operating under these exemptions were not required to be appointed as overseas-based representatives of the Singapore Entity.

On 9 October 2021, after a period of public consultation, the MAS implemented a new framework to replace the "*para 9 exemption*" and "*para 11 exemption*". This new framework moves away from the ex-ante approval approach outlined above to an ex-post notification approach for FRCs and Foreign Branches (New Framework). The New Framework also levels the playing field for both FRCs and Foreign Branches.

THE NEW FRAMEWORK

Under the New Framework, a Singapore Entity and its FRC or Foreign Branch (as the case may be) may commence the provision of capital markets services and/or financial advisory services in Singapore without the need to seek prior approval from the MAS, provided they comply with a set of boundary conditions.

The Singapore Entity is required to notify the MAS of the arrangement with its FRC or Foreign Branch within 14 days of commencement, and confirm to MAS compliance with a set of boundary conditions. The FRC will be exempt from licensing and conduct requirements when providing capital markets services and/or financial advisory services to customers in Singapore under the New Framework. The Foreign Branch will be exempt from the applicable conduct and representative notification requirements¹ when providing capital markets services and/or financial advisory services to customers in Singapore under the New Framework.

MAS will also require the Singapore Entity to submit annually (i) a certification from an independent assurance function that the boundary conditions have been complied with, and (ii) a report on key metrics in respect of the arrangements.

Boundary conditions

The boundary conditions are mostly similar to the assessment criteria for arrangements submitted for MAS' approval under the previous "*para 9*" and "*para 11*" exemption framework, as well as conditions MAS used to impose for such cross-border business arrangements. Under the New Framework, the boundary conditions have been refined and set out in subsidiary legislation and MAS Notices.

¹ The MAS has clarified that there is no change to the current requirements for individuals based overseas and acting on behalf of the Singapore Entity to be appointed as overseas-based representatives and comply with the relevant requirements. The exemption from the representative notification framework under the New Framework applies only to representatives acting on behalf of the Foreign Branch in carrying out regulated activities under a business arrangement with the Singapore Entity.

The boundary conditions relate to:

- notification requirements – within 14 days upon the commencement of and any material change to, the arrangement;
- regulatory status of the Singapore Entity – subject to a limited exception, the Singapore Entity must have the relevant licence or authorisation to conduct the corresponding financial service that the FRC or Foreign Branch intends to provide to customers in Singapore;
- regulatory status of FRC or Foreign Branch – the FRC or Foreign Branch must be licensed, authorised, regulated or supervised by a regulatory body in the foreign jurisdiction where the FRC or Foreign Branch is operating from. The FRC or Foreign Branch should be from a jurisdiction that is supervised for compliance with anti-money laundering and countering the financing of terrorism (AML/CFT) requirements that are consistent with standards set by the Financial Action Task Force (FATF), and such jurisdiction must not be subject to UN Security Council (UNSC) sanctions. If a jurisdiction, FRC or Foreign Branch becomes subject to sanctions by the UNSC, cross-border arrangements involving such FRC or Foreign Branch or a FRC or Foreign Branch operating from the relevant foreign jurisdiction, are to be discontinued immediately;
- permissible clientele – the clientele will be restricted to accredited investors² (AI), institutional investors and expert investors, and subject to any further clientele restriction which the Singapore Entity is subject to; and
- internal controls over the arrangements – relating to record keeping, maintaining a register of foreign representatives, performing customer due diligence (CDD) in accordance with the relevant MAS notices on AML/CFT (see AML/CFT Requirements below) and MAS regulations made pursuant to UNSC resolutions, having written policies and procedures governing the cross-border arrangement, including on solicitation and handling of complaints, and providing MAS with the relevant records upon request.

The role of the Singapore Entity

The Singapore Entity is expected to play a meaningful role in the cross-border arrangements. It should have substantive business operations in Singapore, and not be a shell company or marketing entity with minimal business presence in Singapore. Where the Singapore Entity's role involves client servicing under the cross-border arrangement, the MAS expects the Singapore Entity to carry out a substantial portion of such client servicing activities.

Eligible entities

The following types of Singapore Entities will be eligible to enter into business arrangements with their FRCs or Foreign Branches under the New Framework:

- capital markets services licence holders, other than licensed venture capital fund managers;

² The MAS has clarified that AI opt-in requirements will apply at the onboarding stage. Customers who have not opted to be treated as an AI by the Singapore Entity or FRC (as the case may be) would have to do so for them to be served under the New Framework. A grace period of two years will be provided to obtain the opt-ins (i.e. by 9 October 2023). Prior to 9 October 2023, FIs would need to ensure that the customers served under the New Framework meet the eligibility criteria of an AI.

- licensed financial advisers;
- most exempt capital markets intermediaries (i.e. those exempt under section 99(1)(a), (b), (c) or (d) of the SFA);
- most exempt financial advisers (i.e. those exempt under section 23(1)(a), (b), (c), (d) and (e) of the FAA); and
- exempt OTC derivatives brokers and exempt futures brokers (i.e. those exempt under paragraphs 3(1)(d) or 3A(1)(d) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (SF(LCB)R).

AML/CFT REQUIREMENTS

The AML/CFT requirements under the New Framework are set out in several new MAS Notices (New AML Notices), and apply specifically to a customer under a cross-border business arrangement who is a "customer" of the FRC or Foreign Branch. Some of the AML/CFT requirements include the following:

- the Singapore Entity is required to keep or cause to be kept, for a period of five years, records relating to any CDD performed on customers (CDD Records);
- the Singapore Entity must ensure that there are adequate internal policies, procedures and controls to ensure that the performance of CDD measures by the FRC or Foreign Branch for AML/CFT purposes is consistent with the requirements set out under the relevant AML/CFT Notice applicable to the Singapore Entity³, in respect of customers of the FRC or Foreign Branch (Framework Policies); and
- upon written request by the MAS, the Singapore Entity must provide MAS with all CDD Records and copies of Framework Policies.

It should be noted that there is no requirement relating to personal data access and correction in the New AML Notices. For customers who are solely customers of the FRC or Foreign Branch (and not a customer of the Singapore Entity) under the New Framework, the personal data access and correction requirements under the Personal Data Protection Act 2012 (where applicable) continue to apply.

TRANSITIONAL ARRANGEMENTS

Existing arrangements

Existing "*para 9*" and "*para 11*" arrangements are required to transition to compliance with the boundary conditions under the New Framework, including submission of an initial notification to MAS of the list of arrangements currently in place. MAS is providing a transition period of 12 months (i.e. by 8 October 2022) for the submission of this notification. Existing approvals pertaining to such arrangements will be invalidated upon notification under the New Framework. Accordingly, the existing conditions imposed on such arrangements will no longer apply, and will be replaced by the requirements

³ The MAS has clarified that standards such as the Correspondent Banking Due Diligence Questionnaire by the Wolfsberg Group or the standards set by the Financial Action Task Force will not be acceptable. The Singapore Entity must ensure that the measures for performing CDD by the FRC or Foreign Branch for customers served under a cross-border business arrangement are consistent with the requirements in the relevant AML/CFT Notice that the Singapore Entity is subject to.

under the New Framework.

Foreign Branches dealing or advising in specified contracts under an arrangement with the Singapore Entity, and relying on the transitional arrangement⁴ which ended on 8 October 2021, will also be provided with a transition period of 12 months to comply with the boundary conditions and submit notifications on such arrangements under the New Framework.

New arrangements

New cross-border arrangements must be notified to MAS within 14 days after commencement. These notification requirements do not apply to cross-border arrangements that have yet to commence, although they may be notified to MAS prior to commencement if the boundary conditions are met.

What this means

Singapore Entities with existing cross-border business arrangements with their FRCs and/or Foreign Branches should conduct a risk assessment and determine if these arrangements can meet the boundary conditions under the New Framework. In particular, an assessment should be undertaken to determine if current policies and procedures on these cross-border business arrangements are robust and sufficient, particularly in the area of AML/CFT, an area which MAS has particular concerns. Any gaps should be addressed expeditiously, with a view to provide the initial notification to the MAS by 8 October 2022.

Moreover, the MAS has emphasised that the responsibility for ensuring compliance with the New Framework cannot be delegated to the FRCs or Foreign Branches. As such, Singapore Entities should familiarise themselves with the rules under the New Framework, take an active role in formulating policies and procedures relating to the cross-border arrangements, and maintain oversight of the arrangement, including the conduct of the FRCs or Foreign Branches and its representatives.

⁴ Under Regulation 60 or 61 of the SF(LCB)R and/or Regulation 40BB or 40BC of the Financial Advisers Regulations

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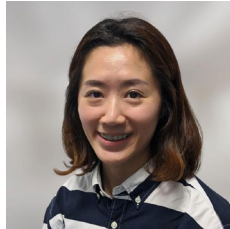
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