

MAS to introduce significant changes to cross border exemptions

23 June 2020

MAS is set to introduce significant changes to the exemption framework for cross border arrangements between financial institutions in Singapore and their foreign related corporations ("FRCs"), following the closing of its [December 2018 consultation paper](#) and the [response](#) released on 5 June 2020.

The *Securities and Futures Act* (the "**SFA**") and the *Financial Advisers Act* (the "**FAA**") both set out exemptions which allow FRCs of financial institutions in Singapore (the "**Singapore Entity**") to provide cross border services in regulated activities to customers in Singapore under an arrangement which has to be pre-approved by MAS on a case-by-case basis (the "**Framework**"). MAS will be streamlining the Framework by replacing the case-by-case approval with ex-post notification to MAS.

The revised Framework represents a welcome streamlining and simplification of the previous approval-based framework. With increasing globalisation, centralised booking and follow-the-sun global workflows are becoming common place, which requires financial institutions to closely scrutinise their cross border arrangements and to ensure that these are in compliance with local regulations. This issue is further exacerbated by recent developments such as Brexit, which have seen firms restructuring some of their European-based operations, and the move by Singapore to regulate OTC derivatives, thus bringing cross border arrangements for **OTC derivatives** activities into Singapore's licensing scope.

In this client alert, we evaluate the major changes to the Framework and what this means for new and existing arrangements. If you are a **bank, capital markets services licensee** or **financial adviser**, these developments will significantly impact the way you manage your cross border arrangements.

Do feel free to contact us if you have any queries.

	EXISTING FRAMEWORK	NEW FRAMEWORK
How to obtain the exemption	Financial institutions are required to obtain prior MAS approval on a case-by-case basis for each regulated activity.	Prior approval will no longer be required. Instead, financial institutions are to notify MAS within 14 days upon commencing (or intending to commence) a regulated activity and following material changes to the arrangement.
Entities who can apply	Persons who can apply for licensing exemptions for their FRCs: <u>SFA regulated activities</u> <ul style="list-style-type: none"> Licensed capital markets services licensees Exempt capital markets intermediaries (banks, merchant banks, finance companies and insurers) <u>FAA regulated activities</u> <ul style="list-style-type: none"> Licensed financial advisors Exempt financial advisers (banks, merchant banks, insurers, capital markets services licensees and finance companies) 	The new framework will apply to all existing entity types. In addition, the Framework will extend to exempt persons under paragraph 3(1)(d) (exempt futures brokers) or 3A(1)(d) (exempt OTC Derivatives brokers) of the Securities and Futures (Licensing and Conduct of Business) Regulations (the " SFR ") (together, " Exempt Brokers "). Venture capital fund managers are excluded .
Activities covered	All regulated activities for capital markets services and financial advisers.	All regulated activities will continue to be covered by Framework except for the financial advisory service of issuing research. Instead, FRCs can rely on regulation 32C of the Financial Advisers Regulations (which allows foreign research houses to distribute research reports into Singapore, subject to conditions).
Effect of exemption	The FRC will be exempted from the licensing and other requirements under the SFA / FAA in respect of the approved arrangement . The FRC's representatives are also exempted from the SFA/FAA's notification requirements (subject to any conditions imposed by the MAS).	No change to effect. Furthermore: <ul style="list-style-type: none"> FRCs are not required to comply with the specific conditions of the approved arrangement (such as specific designated roles). However, the Singapore Entity is still expected to play a meaningful role; and FRCs can provide product financing or custodial services as a complement to the Singapore Entity's business of dealing in capital markets products, even if the Singapore Entity does not itself carry out such activities locally.

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Boundary Conditions		
Conditions	Financial institutions need to submit details of the specific arrangements. The MAS assesses the roles of the entities, adequacy of controls and procedures, record keeping and target clientele. Conditions are also imposed on approved arrangements.	MAS will impose standard "boundary conditions" for arrangements. Financial institutions will have to confirm that these conditions are complied with at the time of the notification and provide certification on compliance on an ongoing basis.
FRC's regulatory status	The application requires FRCs/representatives to indicate if they are: <ul style="list-style-type: none"> licensed or authorised in their own jurisdiction for activities under the arrangement; from a jurisdiction that is supervised for compliance with AML/CFT requirements consistent with FATF standards; from a jurisdiction not subject to UN sanctions, and elaborate if not.	The same requirements apply, but in addition, FRCs that are regulated or supervised for the specific activity would also be allowed. Thus, FRCs that are exempted for the specific activity but are generally licensed or authorised would be permitted. Representatives of FRCs from jurisdictions that do not license/authorize individuals can also conduct activities as part of FRC arrangements as long as the FRC itself is so authorized. The MAS further clarified that the requirements on AML/CFT compliance and sanctions apply to the FRC's jurisdiction and not the countries that representatives are nationals or citizens of.
Target clients	Accredited investors, expert investors, or institutional investors	No change.
Keeping of records	A declaration has to be made that the Singapore entity will ensure record keeping relating to the business arrangement with the FRC that is consistent with regulation 39 of the Securities and futures (Licensing and Conduct of Business) Regulations and/or Regulation 25 of the Financial Advisers Regulations as applicable.	No change from the original Framework requirements. MAS in its response paper clarified that the following records are required: <ul style="list-style-type: none"> Records of customers, including KYC and customer due diligence information. Transactions entered into with or on behalf of customers, including details or related documentation. Contracts or agreements entered into with customers under the FRC arrangement.

	EXISTING FRAMEWORK	NEW FRAMEWORK
		Records can be maintained/stored by the FRCs. Singapore entities must assess and ensure adequate policies and procedures are present for storing records, and that timely access is available.
Register of Foreign Representative	Not a current requirement.	Singapore Entities must (themselves or via the FRC) maintain a register of foreign representatives. Required information includes names, dates of visits to Singapore, purpose of visit and details of regulated activities conducted.
Customer Due Diligence	Singapore Entities are required to perform Know-Your-Customer (" KYC ") checks by the Singapore entity in accordance with MAS' notice on Prevention of Money Laundering and Countering the Financing of Terrorism.	MAS response clarifies that the if the target customers are customers of the Singapore entity as defined in the relevant AML notice, requirements under the notice will apply. For non-customers, the Singapore Entity must still ensure that customer due diligence policies for FRC arrangements are as stringent as MAS' requirements.
Access to records	Singapore Entities required to maintain or have access to all relevant records kept by the FRC and provide MAS with access on request.	No change from the original Framework requirements. MAS maintains the position that no exemptions will be granted for this requirement.
Annual Reporting	Annual certification by external auditors on compliance with exemption conditions.	Annual certification can be provided by an independent assurance function , which can be the internal audit functions of the Singapore Entity or a related entity, a service provider, or an external auditor. New reporting requirements on size and type of activities to be introduced.

WHAT ARE THE NEXT STEPS?

MAS has not set a date for the new Framework to come into force. Some of the items that MAS intends to seek further comments on are the specific information to be submitted at commencement of the arrangement as well as on an ongoing basis and types of information to be provided in the annual reports.

The Framework does not apply to overseas **branches** of entities with a Singapore presence. MAS intends to introduce a similar notification framework for branches, and will issue a consultation paper in **Q3 2020**.

WHAT DOES THIS MEAN FOR EXISTING ARRANGEMENTS?

Once the new Framework comes into force, existing business arrangements will have to comply with the boundary conditions as set out in the new Framework after a transition period to be specified by MAS. **This includes providing a complete and updated list of arrangements under the FRC framework to MAS through an initial notification** – a transition period of six months will be provided to submit this notification. At the end of the transition period, existing approvals will expire and the conditions under the current framework will cease to apply. It does not appear that MAS is providing for any grandfathering of existing arrangements. Thus, existing entities that have not transitioned over to the new Framework by filing the initial notification would have to cease business in the regulated activities.

Similarly, arrangements that are currently exempt under the transitional provisions of regulation 65 of the SFR will be subject to the new FRC Framework. Exempt Brokers will be given the same transitional period of six months to comply with the boundary conditions and to submit an initial notification to MAS on the list of FRC arrangements in place.

As the new Framework does not cover the regulated activity of **providing research reports**, FRCs that are currently relying on the Framework to conduct this activity will also have to transition their processes over to complying with regulation 32C of the FAR instead.

CONCLUDING THOUGHTS

The new Framework, while broadly aligned with the existing one, will require financial institutions to re-evaluate their processes for their existing arrangements against the new requirements. Certain areas require further consideration – for instance, financial institutions have to consider how to ensure that the Singapore Entity has adequate oversight over foreign representatives soliciting customers in Singapore. While MAS has clarified that physical chaperoning is not mandatory, it has left it open to financial institutions to institute policies to ensure that applicable regulations are adhered to. Some examples of areas that financial institutions need to consider can include whether Singaporean representatives would need to be copied onto email correspondence or be involved in telephone conversations, and to what extent.

Last but certainly not least, financial institutions should keep an eye out for the further consultations by MAS on the exact information that MAS will prescribe for the commencement notification and annual reports, as well as the upcoming consultation for **branches**. The cross-border regime for branches has long suffered from problems of inconsistency and ambiguity due to the lack of a formalised exemption framework, with market participants taking different approaches to compliance. The movement towards a prescribed notification regime will be an important development for the financial industry. It remains to be seen whether MAS will adopt a lighter touch to the regulation of branches given that they form part of the same legal entity, or whether MAS will require a commensurate level of compliance and supervision.

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