



INTEGRUM

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EXEMPTION FRAMEWORK FOR CROSS-BORDER BUSINESS ARRANGEMENTS

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INTRODUCTION

With effect from 9 October 2021, the Monetary Authority of Singapore ("**MAS**") has replaced the prior approval regime under paragraph 9 of the Third Schedule to the Securities and Futures Act ("**SFA**") and paragraph 11 of the First Schedule to the Financial Advisers Act ("**FAA**") for cross-border business arrangements between certain specified financial institutions ("**Specified FIs**") and their foreign related corporations ("**FRCs**") with an automatic exemption regime (the "**FRC Framework**"). MAS has also developed a similar exemption framework for cross-border business arrangements between Singapore and foreign branches and offices ("**FOs**") (the "**Branch Framework**"). FOs or FRCs that were operating existing approved cross-border business arrangements (or relevant exemptions) prior to 9 October 2021 will have until 8 October 2022 to comply with the new requirements.

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WHAT ARE THE EXEMPTIONS?

The primary difference between the Exemption Frameworks and the previous Paragraph 9/11 structure is that Specified FIs do not need prior approval for cross-border agreements. Under the new Branch Framework and revised FRC Framework, an FO or FRC that conducts regulated activities pursuant to an arrangement with its Singapore licensee (the “SGFI”) that satisfies the boundary conditions, and has been notified of such an arrangement to MAS, is exempted from the:

- a) applicable business conduct requirements under the SFA and/or FAA; and
- b) requirement for the representatives of that FO or FRC to be appointed as ‘overseas-based representatives’ of the SGFI when they serve Singapore customers under the applicable arrangement.

APPLICABILITY

To mitigate the risks from such cross-border arrangements, MAS has put in place boundary conditions under the frameworks with respect to these arrangements for (i) the entities that can enter into them and (ii) the activities that are covered under.

For the purposes of the SFA, the Specified FIs must be (i) capital markets services license (“CMSL”) holders (other than venture capital fund managers)¹; (ii) banks, merchant banks, finance companies, or insurers, having exempt status under Part IV of the SFA; (iii) exempt futures brokers; and (iv) exempt over-the-counter derivatives brokers. For the purposes of the FAA, the Specified FIs would be (i) licensed financial advisers and (ii) banks, merchant banks, insurers, CMSL holders, or finance companies having exempt status under Part II of the FAA.

The eligible cross-border business arrangements and financial advisory service (*other than advising by issuing or promulgating research analyses or reports*) would be in respect of the abovementioned Specified FIs on the one hand, and their FRCs, and between the abovementioned Specified FIs and their FOs, provided that:

- a) the activities conducted by the FRCs/FOs are also activities that would be regulated under the SFA/FAA;
- b) the licensing rules of the SFA/FAA would have extended on an extra-territorial² basis to such activities; and
- c) no other exemptions are applicable to the FRCs/FOs.

The MAS also expects the Singapore FIs to have substantive business operations in Singapore, and to play a meaningful role in the cross-border arrangement. The Singapore FIs should not be A) *shell companies* B) *marketing entities with minimal business presence* C) *facilitating business practices or market conduct that could undermine regulatory objectives or pose a risk to financial stability and market confidence*.

¹ Please note that cross-border business arrangements between registered fund management companies (“RFMCs”) and their FRCs/FOs do not fall within the Exemption Framework, as RFMCs are not considered to be CMSL holders.

² Please refer to the [Guidelines on the Application of Section 339 \(Extra-Territoriality\) of the Securities and Futures Act](#) for elaboration on the scope and applicability in relation to cross-border activities.

REQUIREMENTS FOR ARRANGEMENTS

The FRC must carry out all its activities through one or more of its branches or office (including its head office) established in one or more foreign jurisdictions. In respect of any activity that the FRC and FO of Specific FI carry out in the foreign jurisdiction, both FRC and Specific FI must be subject to regulatory monitoring by a foreign regulatory authority.

Both FRC and Specific FI must also be subject to anti-money laundering and countering the financing of terrorism ("**AML/CFT**") requirements in each foreign jurisdiction (In the case of FO, where FO is established), which are consistent with the standards set by the Financial Action Task Force ("**FATF**"), and be supervised by a foreign regulatory authority to that end, not be subject to any United Nations Security Council ("**UNSC**") sanctions, and not operate (including FO) from a jurisdiction that is subject to any UNSC sanctions.

PERMITTED CLIENTELE

All Arrangement clients must be accredited investors, expert investors, and institutional investors. Please note that customers of any arrangement are subject to the opt-in requirements for accredited investors. Clientele and transaction restrictions under cross-border arrangements established by MAS on Singapore FIs would apply to its FOs as well. Singapore FIs/FRCs will be given two years from the effective date of the Exemption Frameworks (i.e., by 9 October 2023), to obtain the opt-ins (if necessary).

NOTIFICATION REQUIREMENT

To commence an arrangement, the SGFI should notify MAS of the Arrangement and certify compliance with the boundary conditions within 14 calendar days of its commencement using Form FN. In doing so, amongst other things, the SGFI must analyse and certify that there are no conflicts of interest emerging from the Arrangement at the time of notice, and it must continue to adopt conflict mitigation procedures.

If there are any changes to the arrangement, the SGFI should notify MAS of the change within 14 calendar days using Form FC, no later than 14 days after the date of any changes in particulars or cessation of the cross-border business arrangement. Relevant modifications to the Arrangement that should be communicated to MAS include changes in the FO/regulatory FRC's status, intended clientele, the discontinuation of the Arrangement, or the addition/destruction of regulated activity under the Arrangement.

INTERNAL CONTROLS

SGFIs that enter into Arrangements must have the following additional internal controls.

- a) **Record Keeping** – Keep records of customers and details of transactions entered into by the Singapore FI through the FOs or records of customers and details of transactions entered into by the FRCs (as the case may be) with or on behalf of customers, as well as copies of contracts or agreements between customers and Singapore FIs through the FOs or between customers and the FRCs (as the case may be) in relation to business conducted under the Arrangement.
- b) **Customer Due Diligence ("CDD")** – Conduct CDD in compliance with the appropriate MAS Notice on AML/CFT, keep or have access to all CDD records stored overseas by the FOs or FRCs, and provide MAS with timely access to these records.

- c) **Register of Foreign Representatives** – Keep a register of foreign representatives of the FOs or FRCs (as the case may be) that includes the names of the foreign representatives, their visits to Singapore and the purpose of such visits, as well as details and descriptions of the activities conducted by the foreign representatives during the visits.
- d) **Safeguards for Customers** – Establish rules and processes in place that regulate the solicitation of consumers in Singapore by foreign representatives of FOs or FRCs (as the case may be), as well as the management of customer complaints against the foreign representatives.
- e) **Annual Reporting Requirements** – An annual declaration on the Specified FI's cross-border business arrangement must be filed with MAS in Form FR no later than 5 months after the end of the fiscal year. An internal or external auditor must also certify this annual declaration. MAS has deferred the due date for the first round of annual reporting to 2023.

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