

Singapore: The MAS implements new cross-border exemption frameworks for foreign head offices, branches and related corporations of Singapore financial institutions

In brief

Following a series of consultations,¹ the Monetary Authority of Singapore (MAS) has implemented two new cross-border exemption frameworks, which came into effect on 9 October 2021.

Together the new exemption frameworks exempt foreign related corporations, head offices and branches of Singapore financial institutions from Singapore licensing, representative registration and business conduct rules (as applicable) when such foreign institutions conduct activities regulated under the Securities and Futures Act, Cap 289 (SFA) and the Financial Adviser Act, Cap 110 (FAA) for clients in Singapore, under an arrangement with their related Singapore financial institutions. To qualify under the new framework, certain qualifying conditions and ongoing requirements will need to be met by new or existing arrangements.

Background

With effect from 9 October 2021, the MAS has implemented a new cross-border exemption framework for: (a) foreign related corporations of Singapore financial institutions ("**FRC Framework**"); and (b) foreign head offices or branches of Singapore financial institutions ("**Branch Framework**").

The FRC Framework exempts foreign related corporations (FRCs) of Singapore financial institutions from licensing and representative registration requirements and business conduct rules under the SFA and FAA when the FRCs conduct activities regulated under the SFA and FAA with clients or prospects in Singapore, under an arrangement with their Singapore related financial institutions. The FRC Framework replaces the previous exemptions promulgated under paragraph 9 of the Third Schedule to the SFA and paragraph 11 of the First Schedule to the FAA, commonly known as the "Paragraph 9 Approval" and "Paragraph 11 Approval" respectively.

The Branch Framework is a new framework that seeks to close the gap under the previous Paragraph 9 Approval and Paragraph 11 Approval regimes, which applied only to arrangements between Singapore financial institutions and their FRCs, but not to foreign head offices or branches (collectively "**Foreign Offices**") of Singapore financial institutions. The Branch Framework provides a level playing field by operating in a similar manner to the FRC Framework and exempts Foreign Offices from

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¹ Please refer to the: (i) Consultation Paper on Proposed Exemption Framework for Cross-Border Business Arrangements of Capital Markets Intermediaries Involving Foreign Offices dated 15 March 2021 available at <https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/2021-03-Consultation-Paper-P001-2021/CP-on-proposed-exemption-framework-for-cross-border-biz-of-CMIs-involving-foreign-offices.PDF>; (ii) Consultation Paper on Proposed AML Notices for Cross-Border Business Arrangements of Capital Markets Intermediaries under Proposed Exemption Framework dated 12 May 2021 available at <https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/2021-05-Consultation-Paper-P005-2021/CP-on-Proposed-AML-Notices-for-CrossBorder-Business-Arrangements-of-CMIs-under-Proposed-Exemption-Fr.pdf>; and (iii) the Response to Feedback Received on the Proposed Exemption Framework for Cross-Border Business Arrangements of Capital Markets Intermediaries Involving Foreign Offices dated 8 October 2021 available at <https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/2021-03-Consultation-Paper-P001-2021/Response-to-Consultation-on-Proposed-Exemption-Framework-for-Cross-Border-Business-Arrangements-of-Capital-Markets-Intermediaries-Involving-Foreign-Offices.pdf>.



representative registration and business conduct rules when the Foreign Offices conduct SFA- and FAA-regulated activities with clients or prospects in Singapore, under an arrangement with their related Singapore financial institution(s).

In the context of the frameworks, "Singapore financial institutions" refers to entities, branches or head offices in Singapore that are: (i) capital markets services licence holders under the SFA; (ii) financial advisers licence holders under the FAA; (iii) exempt capital markets intermediaries under Section 99(1)(a), (b), (c) or (d) of the SFA (e.g., licensed banks and merchant banks that are registered with the MAS to conduct SFA-regulated activities); (iv) exempt financial advisers under Section 23 of the FAA (e.g., licensed banks and merchant banks that are registered with the MAS to conduct FAA activities), other than pursuant to subsection 1(ea) and (f); and (v) exempt persons under paragraphs 3(1)(d) or 3A(1)(d) of the Second Schedule to the Securities and Futures (Licensing And Conduct Of Business) Regulations (i.e., exempt brokers).

FRCs and Foreign Offices may only rely on the FRC Framework or Branch Framework respectively if they meet certain qualifying conditions. The Singapore financial institution will need to file a notice of commencement of activities carried out under the FRC Framework or Branch Framework (as applicable) with details of the relevant FRCs or Foreign Offices contained in the prescribed Form FN, and confirm compliance or commitment to comply with the qualifying conditions and ongoing requirements ("**Initial Filing**"). The Initial Filing must be filed within 14 days of commencement of the cross-border arrangements. Unlike the previous Paragraph 9 Approval and Paragraph 11 Approval regimes, prior approval from the MAS is not required under the new FRC Framework and Branch Framework.

The Singapore financial institution is obliged to ensure that the qualifying conditions and other ongoing requirements are met on a continuing basis. We discuss some of the key aspects of each of the qualifying conditions and ongoing requirements further below.

Qualifying conditions

To rely on the FRC Framework or the Branch Framework, as applicable, the following qualifying conditions must be satisfied at the time of commencement of activities and on an ongoing basis:

Conditions	Details
Regulatory status of the Singapore financial institution	<ul style="list-style-type: none"> The Singapore financial institution must be appropriately licensed or exempted to conduct the SFA- or FAA-regulated activities that the FRC or Foreign Office intends to undertake in Singapore as part of the cross-border arrangement. As an exception, the MAS will allow the FRC/Foreign Office to enter into an arrangement with the Singapore financial institution to provide product financing or custodial services (even if the Singapore financial institution is not licensed or exempted to provide such services), provided that the Singapore financial institution is licensed or exempted to deal in the relevant classes of capital markets products, and the FRC/Foreign Office is providing product financing or custodial services as a complement to the dealing activities.
Regulatory status of the FRCs and Foreign Offices	<ul style="list-style-type: none"> The FRC/Foreign Office must be subject to regulatory oversight, in respect of any activity that is carried out by the FRC/Foreign Office, by foreign regulatory authorities in the foreign jurisdiction(s) in which the FRC carries out its activities, or the foreign jurisdiction in which the Foreign Office is established. The FRC/Foreign Office must be subject to anti-money-laundering (AML)/countering the financing of terrorism (CFT) requirements in the foreign jurisdiction(s) that are consistent with the standards set by the Financial Action Task Force (FATF) and must be supervised by the foreign regulatory authority in that foreign jurisdiction for compliance with the AML/CFT requirements. The FRC/Foreign Office and the foreign jurisdiction must not be subject to any sanction imposed pursuant to a resolution of the Security Council of the United Nations.
Permissible clientele and transactions	<ul style="list-style-type: none"> The FRC/Foreign Office may only service non-retail customers, i.e., accredited investors, expert investors and institutional investors under the FRC Framework/Branch Framework. Accredited investors are expected to opt in as accredited investors as well. A two-year transition period until 9 October 2023 will apply to enable opt-ins to be obtained. Any other clientele restrictions imposed by the MAS on a Singapore financial institution will also be applicable to the FRC/Foreign Office.



Conditions	Details
Others	<ul style="list-style-type: none"> • The FRC/Foreign Office cannot conduct the following types of corporate finance advisory activities under the FRC Framework/Branch Framework: (i) transactions that involve the provision of advice in relation to an offer of securities in respect of which a prospectus, a profile statement or an offer information statement, as the case may be, is required under Part XIII of the SFA; (ii) transactions that are subject to the General Principles and Rules in the Singapore Code on Takeovers and Mergers; or (iii) transactions involving the provision of advice to a public company, a corporation listed on the Singapore Exchange Securities Trading Limited (SGX), or a corporation that is a subsidiary of a SGX-listed corporation, where such advice is circulated to the shareholders of these corporations (other than shareholders who are non-retail investors), or is otherwise made known to the public. As an exception, transactions of the aforementioned categories are allowed only if the Singapore financial institution is one of the contractual parties to the transaction, and the Singapore financial institution is liable, whether solely or jointly with the FRC/Foreign Office, for the obligations and liabilities of the transaction. • The MAS has clarified its expectation that the role of a Singapore financial institution in any cross-border business arrangements must be meaningful and it is not the intention to facilitate arrangements where entities in Singapore are shell entities, have minimal business presence or arrangements that could undermine regulatory objectives or pose a risk to financial stability and market confidence.

Internal controls

The Singapore financial institution is required to have in place policies and procedures to oversee the conduct of the FRCs/Foreign Offices and their representatives under the arrangements. The applicable policies and procedures include the following:

- Keeping records relating to the arrangements with the FRCs/Foreign Offices, including records of customers, transactions entered into with or on behalf of customers and copies of contracts or agreements entered into with the customers under the arrangements
- Maintaining a register of every representative of the FRC/Foreign Office
- Conducting customer due diligence in accordance with the relevant MAS Notice on AML/CFT and MAS Regulations made pursuant to UNSC Resolutions
- Maintaining or having access to all records kept overseas by the FRCs/Foreign Offices that relate to the arrangements, and providing the MAS with timely access to these records
- Ensuring there are written policies and procedures governing the cross-border arrangement, including marketing and solicitation of customers in Singapore by the FRC/Foreign Office and its representative
- Handling of customer complaints

AML/CFT requirements

The MAS has issued new AML/CFT Notices (MAS Notice SFA 04-N19,² Notice SFA 04-N20,³ Notice FAA-N24⁴ and Notice FAA-25⁵) setting out the AML/CFT requirements expected under the FRC Framework and Branch Framework.

In essence, Singapore financial institutions are required to do the following:

² <https://www.mas.gov.sg/regulation/notices/notice-sfa-04-n19>

³ <https://www.mas.gov.sg/regulation/notices/notice-sfa-04-n20>

⁴ <https://www.mas.gov.sg/regulation/notices/notice-faa-n24>

⁵ <https://www.mas.gov.sg/regulation/notices/notice-faa-n25>



- Ensure that there are adequate internal policies, procedures and controls to ensure that the performance of customer due diligence measures by the FRC/Foreign Offices to prevent money laundering and financing of terrorism is consistent with the requirements set out under the relevant AML/CFT Notices (i.e., Notice SFA04-N02,⁶ Notice 626,⁷ Notice 1104⁸ and Notice 824,⁹ as applicable) applicable to the Singapore financial institution in respect of the customers of the FRC/Foreign Offices
- Develop and implement adequate internal policies, procedures and controls to monitor on an ongoing basis that the FRC/Foreign Office meets the AML/CFT-related qualifying conditions
- Keep all data, documents and information relating to any customer due diligence performed on customers of the FRCs/Foreign Offices

Reporting and notification requirements

On an ongoing basis, the Singapore financial institution will be required to do the following:

- Notify the MAS of any specified changes to the cross-border arrangement within 14 days of such a change via a prescribed form. These changes include the addition of new FRC(s)/Foreign Office(s) to the arrangement; changes in products/services under the cross-border arrangements; changes in the regulatory status of an FRC/Foreign Office and its representatives; the reduction or substantial change in the role of the Singapore financial institution within the cross-border arrangement; and change in clientele targeted by the FRC/Foreign Office.
- Submit an annual declaration in relation to the cross-border arrangements no later than five months from the end of the financial year. The annual declaration entails a certification by an internal or external auditor, confirming that the Singapore financial institution has ensured compliance with all the qualifying conditions and other ongoing requirements applicable to the cross-border arrangements.
- Notify the MAS of any cessation of the cross-border arrangements no later than 14 days after the date of cessation of the arrangements.

Foreign research house exemptions

The FRC Framework and the Branch Framework do not apply to the financial advisory activity of issuing or promulgating research analyses or research reports. FRCs who wish to conduct such a financial advisory service are expected to rely on the exemption under regulation 32C of the Financial Advisers Regulations¹⁰ instead.

The MAS has clarified that the regulation 32C exemption does not apply to Foreign Offices. To level the playing field, the MAS has introduced a similar exemption set out under Regulations 4(4), 4(6)¹¹ 6(6) and 6(8)¹² of the Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Offices) Regulations 2021¹³ ("**Foreign Offices Cross-Border Regulations**").

Where conditions to the exemptions can be met, the Foreign Offices will be able to issue or promulgate research reports without being subject to the local business conduct rules.

⁶ <https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Securities-Futures-and-Fund-Management/Regulations-Guidance-and-Licensing/Notices/MAS-Notice-SFA-04-N02-June-2021.pdf>

⁷ <https://www.mas.gov.sg/-/media/MAS-Media-Library/regulation/notices/AML/notice-626/MAS-Notice-626--Banks-Tracked.pdf>

⁸ https://www.mas.gov.sg/-/media/MAS/Notices/MAS-1104__28-June-2021-Clean.pdf

⁹ <https://www.mas.gov.sg/-/media/MAS-Media-Library/regulation/notices/AML/notice-824/MAS-Notice-824---Finance-Companies.pdf>

¹⁰ <https://sso.agc.gov.sg/SL/FAA2001-RG2?ProvIds=P1VI-#pr32A->

¹¹ Applicable where the local entity is a licensed financial adviser.

¹² Applicable where the local entity is an exempt financial adviser.

¹³ <https://sso.agc.gov.sg/SL-Supp/S763-2021/Published/20211008?DocDate=20211008#top>



Existing Paragraph 9 Approvals and Paragraph 11 Approvals

There is no grandfathering of existing Paragraph 9 Approval and Paragraph 11 Approval arrangements to the new FRC Framework. Instead, entities with such existing arrangements are given a grace period of one year to transition to the new FRC Framework. Such entities must take the following actions by 8 October 2022:

- Take appropriate measures to ensure that the qualifying conditions and ongoing requirements are or can be met with respect to the existing cross-border arrangements
- File Form FN with the MAS for the existing arrangements

Existing cross-border arrangements on dealing in/advising on specified over-the-counter derivatives and leveraged spot foreign exchange contracts

FRCs and Foreign Offices that have been dealing in/advising on non-securities-based, over-the-counter (OTC) derivatives and leveraged spot FX contracts (as applicable) prior to 8 October 2018 in reliance on transitional exemptions under Regulations 60, 61 or 65 of the Securities and Futures (Licensing and Conduct of Business) Regulations and/or Regulation 40BB, 40BC or 32CA of the Financial Advisers Regulations, will be given a grace period of one year to transition to the new FRC or Branch Framework (as applicable). Such entities must take the following actions by 8 October 2022:

- Take appropriate measures to ensure that the qualifying conditions and ongoing requirements are or can be met with respect to the existing cross-border arrangements
- File Form FN with the MAS for the existing arrangements

Regulations

The full requirements under the FRC Framework and Branch Framework may be found in the following regulations, MAS Notices and FAQ:

For cross-border arrangements under the SFA:

FRC Framework:

- Securities and Futures (Exemption for Cross-Border Arrangements) (Foreign Related Corporations) Regulations 2021¹⁴
- Notice SFA 04-N17 on Requirements in relation to Cross-Border Arrangements under the Securities and Futures (Exemption for Cross-Border Arrangements) (Foreign Related Corporations) Regulations 2021¹⁵
- Notice SFA 04-N19 to Specified Persons in relation to Cross-Border Arrangements under the Securities and Futures (Exemption for Cross-Border Arrangements) (Foreign Related Corporations) Regulations 2021 on Prevention of Money Laundering and Countering the Financing of Terrorism¹⁶

Branch Framework

- Securities and Futures (Exemption for Cross-Border Arrangements) (Foreign Offices) Regulations 2021¹⁷

¹⁴ <https://sso.agc.gov.sg/SL-Supp/S760-2021/Published/20211008?DocDate=20211008#top>

¹⁵ <https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Securities-Futures-and-Fund-Management/Regulations-Guidance-and-Licensing/Notices/SF-FRC-Notice-8-Oct-2021.pdf>

¹⁶ <https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Securities-Futures-and-Fund-Management/Regulations-Guidance-and-Licensing/Notices/SF-FRC-AML-Notice-8-Oct-2021.pdf>

¹⁷ <https://sso.agc.gov.sg/SL-Supp/S760-2021/Published/20211008?DocDate=20211008>



- Notice SFA 04-N18 on Requirements in relation to Cross-Border Arrangements under the Securities and Futures (Exemption for Cross-Border Arrangements) (Foreign Offices) Regulations 2021¹⁸
- Notice SFA 04-N20 to Specified License Holders and Specified Exempt Persons in relation to Cross-Border Arrangements under the Securities and Futures (Exemption for Cross-Border Arrangements) (Foreign Offices) Regulations 2021 on Prevention of Money Laundering and Countering the Financing of Terrorism¹⁹

For cross-border arrangements under the FAA:

FRC Framework:

- Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Related Corporations) Regulations 2021²⁰
- Notice FAA-N22 on Requirements in relation to Cross-Border Arrangements under the Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Related Corporations) Regulations 2021²¹
- Notice FAA-N24 to Specified Financial Advisers in relation to Cross-Border Arrangements under the Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Related Corporations) Regulations 2021 on Prevention of Money Laundering and Countering the Financing of Terrorism²²

Branch Framework

- Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Offices) Regulations 2021²³
- Notice FAA-N23 on Requirements in relation to Cross-Border Arrangements under the Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Offices) Regulations 2021²⁴
- Notice FAA-N25 to Licensed Financial Advisers and Specified Exempt Financial Advisers in relation to Cross-Border Arrangements under the Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Offices) Regulations 2021 on Prevention of Money Laundering and Countering the Financing of Terrorism²⁵

General guidance on the implementation of both frameworks may also be found in the MAS' FAQs on the Exemption Frameworks for Cross-Border Business Arrangements of Capital Markets Intermediaries involving Foreign Related Corporations and Foreign Offices.²⁶

If you have any questions on how the changes may impact your business and activities, please liaise with your usual contact at Baker McKenzie or the lawyers listed in this client alert.

¹⁸ <https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Securities-Futures-and-Fund-Management/Regulations-Guidance-and-Licensing/Notices/SF-FO-Notice-8-Oct-2021.pdf>

¹⁹ <https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Securities-Futures-and-Fund-Management/Regulations-Guidance-and-Licensing/Notices/SF-FO-AML-Notice-8-Oct-2021.pdf>

²⁰ <https://sso.agc.gov.sg/SL/FAA2001-S764-2021?DocDate=20211008&ViewType=Advance&Phrase=company+law&WiAI=1>

²¹ <https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Financial-Advisers/Forms/Notice-FAAN22-on-Requirements-in-relation-to-CrossBorder-Arrangements-under-the-Financial-Advisers-Exemption-for-CrossBorder-Arrangements-Foreign-Related-Corporations-Regulations-2021.pdf>

²² <https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Financial-Advisers/Notices/FA-FRC-AML-Notice-8-Oct-2021.pdf>

²³ <https://sso.agc.gov.sg/SL-Supp/S763-2021/Published/20211008?DocDate=20211008>

²⁴ <https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Financial-Advisers/Forms/Notice-FAAN23-on-Requirements-in-relation-to-CrossBorder-Arrangements-under-the-Financial-Advisers-Exemption-for-CrossBorder-Arrangements-Foreign-Offices-Regulations-2021.pdf>

²⁵ <https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Financial-Advisers/Notices/FA-FO-AML-Notice-8-Oct-2021.pdf>

²⁶ <https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Securities-Futures-and-Fund-Management/Regulations-Guidance-and-Licensing/FAQs/FAQs---FRC-and-Branch-frameworks-8-October-2021.pdf>



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