

Client Update: Singapore

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MAS Proposes Exemption Framework for Foreign Offices of Singapore Financial Institutions

Introduction

The Monetary Authority of Singapore ("**MAS**") is proposing an exemption framework to exempt the foreign head offices or branches (collectively, "**Foreign Offices**") of financial institutions in Singapore ("**Singapore FIs**") from applicable business conduct and representative notification requirements when they serve Singapore customers, subject to boundary and notification conditions ("**Branch Framework**"). The proposal is set out in the MAS consultation paper on "[Proposed Exemption Framework for Cross-Border Business Arrangements of Capital Markets Intermediaries Involving Foreign Offices](#)" ("**Consultation Paper**") issued on 15 March 2021. The consultation ends on **15 April 2021**.

The proposal aims to level the playing field between the Foreign Offices and foreign-related corporations of the Singapore FIs ("**FRCs**") which are providing cross-border financial services to customers in Singapore under the FRC framework. Currently, FRCs that have been approved by MAS to operate under the FRC framework are exempt from licensing and the applicable conduct requirements. In 2020, MAS announced that it will move the approval approach under the FRC framework to an ex-post notification approach. However, the ex-post notification FRC framework does not apply to Foreign Offices. This means that the Foreign Offices and their representatives serving Singapore customers will continue to be subject to the business conduct requirements in the Securities and Futures Act ("**SFA**") and Financial Advisers Act ("**FAA**").

Therefore, the Branch Framework that is similar to the ex-post notification FRC framework is proposed in the Consultation Paper to address this issue.

This Update provides an overview of: (i) the proposed Branch Framework and the boundary conditions and notification requirement thereunder; and (ii) the details for operationalising the proposed Branch Framework and the ex-post notification FRC framework.

Scope of and Exemption under Proposed Branch Framework

Under the proposed Branch Framework, subject to the boundary conditions and notification requirement, the Foreign Offices will be exempt from:



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- (i) The applicable business conduct requirements under the SFA and/or FAA when they conduct regulated activities under an arrangement with their Singapore Office which is notified to MAS; and
- (ii) The requirement to appoint overseas-based representatives to serve Singapore customers where the representative is acting on behalf of the Foreign Office in carrying on the regulated activities under a business arrangement with the Singapore Office.

Scope of Proposed Branch Framework

Similar to the ex-post notification FRC framework, MAS proposes that the Branch Framework apply to the following Singapore FIs:

- (i) Persons licensed under section 82(1) of the SFA (i.e. **capital markets services licensees**), other than persons licensed to conduct the regulated activity of fund management solely in respect of the management of portfolios of specified products on behalf of venture capital funds;
- (ii) Persons licensed under section 6(1) of the FAA (i.e. **licensed financial advisers**);
- (iii) Exempt persons under section 99(1)(a), (b), (c) or (d) of the SFA (i.e. **exempt capital markets intermediaries**);
- (iv) Exempt persons under section 23 (other than subsections (1)(ea) and (f)) of the FAA (i.e. **exempt financial advisers**); 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**).

Issuance of Research Analyses or Reports Exempted under Financial Advisers Regulations

Presently, foreign research houses (including the FRCs of licensed or exempt financial advisers) seeking to provide financial advisory service to any investor under arrangements with licensed or exempt financial advisers in Singapore may do so by relying on the existing exemption under Regulation 32C of the Financial Advisers Regulations ("**FAR**").

To level the playing field between a foreign research house which is a FRC and one which is a Foreign Office, MAS proposes to expand Regulation 32C of the FAR to similarly exempt Foreign Offices in respect of the same financial advisory service, subject to the same safeguard currently provided for under Regulation 32C.

With the proposed amendment, all arrangements concerning issuing or promulgating research analyses or reports concerning any investment product will be exempt under Regulation 32C, and excluded from both the proposed Branch Framework and ex-post notification FRC framework.

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Boundary Conditions of Proposed Branch Framework

To mitigate the risks from the cross-border arrangements, MAS proposes to apply a similar set of boundary conditions as under the ex-post notification FRC framework, with appropriate modifications, as follows:

- **Regulatory status of the Singapore FI.** The Singapore FI must be within the scope which the proposed Branch Framework applies to, and is appropriately licensed or otherwise exempted to conduct the regulated activity under the arrangement. As an exception, MAS will allow Foreign Offices to enter into an arrangement with the Singapore FI to provide product financing or custodial services under the SFA as a complement to the Singapore FI's business of dealing in capital markets products, even if the Singapore FI itself does not carry out product financing or custodial services in its local operations.
- **Regulatory status of the Foreign Office.** The Foreign Office must be:
 - (i) Licensed, authorised, regulated, or supervised by a regulatory body in the foreign jurisdiction where the Foreign Office is operating from. Foreign Offices that are relying on exemptions in respect of the specific activity under the Branch Arrangement, but that are nonetheless licensed, authorised, regulated or supervised in the jurisdiction where they are operating from, will be allowed to conduct that specific activity under the Branch Arrangement; and
 - (ii) Operating from a jurisdiction that is supervised for compliance with anti-money laundering and countering the financing of terrorism ("**AML/CFT**") requirements consistent with standards set by the Financial Action Task Force and a jurisdiction that is not subject to United Nations Security Council ("**UNSC**") sanctions.
- **Clientele and transaction restrictions.** The clientele under Branch Arrangements is restricted to non-retail customers, i.e. accredited investors, expert investors and institutional investors, who have the ability to better safeguard their own interests. Singapore FIs should note that restrictions on the types of transactions which can be undertaken as part of corporate finance advisory arrangements continue to apply. Any clientele or transaction restrictions imposed by MAS on the Singapore FI would also apply to its Foreign Offices as they are not separate legal entities.
- **Singapore FI must have internal control over the arrangement.** The Singapore FI must have policies and procedures to oversee the conduct of the Foreign Offices and their representatives under the Branch Arrangements. These policies and procedures include: (i) keeping records relating to the arrangements with the Foreign Offices; (ii) maintaining a register of every representative of the Foreign Office; (iii) conducting customer due diligence by the Singapore FI, in accordance with the relevant MAS Notice on AML/CFT and MAS Regulations made pursuant

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to UNSC Resolutions; (iv) maintaining or having access to all records kept overseas by the Foreign Offices that relate to the arrangements, and providing MAS with timely access to these records; (v) marketing and solicitation of customers in Singapore by the Foreign Office and its representative; and (vi) handling of customer complaints.

- **Singapore FI must submit an annual audit certification and meet annual reporting requirements.** The annual certification must be from an independent assurance function, certifying that the boundary conditions have been complied with. The Singapore FI will also have to submit relevant metrics on the Branch Arrangements annually to facilitate the monitoring of risks.

Notification Requirement of Proposed Branch Framework

MAS proposes that the relevant Singapore FI must:

- Within 14 days of commencement of the Branch Arrangement, notify MAS of the Branch Arrangement and confirm its compliance with the boundary conditions.
- On an ongoing basis, notify MAS of specified changes to the arrangement within 14 days of such a change via a prescribed form. These changes include: (i) addition of new Foreign Offices to the arrangement; (ii) changes in products/services under the arrangement; (iii) changes in the regulatory status of the Foreign Offices and its representatives; (iv) reduction or substantial change in the role of the Singapore FI within the arrangement; and (v) change in clientele targeted by the Foreign Offices.

Proposed Implementation and Transitional Period

MAS plans to implement the proposed Branch Framework on **9 October 2021**. As MAS also intends to extend the proposed Branch Framework to the over-the-counter derivatives contracts ("**OTCD**") Branch Arrangements which are covered under the OTCD transition arrangement ("**Existing OTCD Branch Arrangements**"), FIs will be provided with a transition period of six months to comply with the proposed boundary conditions and submit notifications on their Existing OTCD Branch Arrangements under the proposed Branch Framework.

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Operationalisation of Proposed Branch Framework and Ex-post Notification FRC Framework

Under the proposed Branch Framework and ex-post notification FRC framework, the Singapore FI is required to:

- (i) Notify MAS of the cross-border arrangement and confirm to MAS its compliance with the boundary conditions within 14 days of commencement of such an arrangement;
- (ii) Notify MAS of any changes to the arrangement within 14 days of such a change; and
- (iii) Report annually (five months from the end of the financial year) on information on the size, type of activities and other relevant metrics to allow for effective and risk-based monitoring of developments on the arrangement.

To ensure the consistency and sufficiency of information to be submitted, MAS proposes to require the Singapore FI to submit its notification forms and annual reporting form in a prescribed format. The same forms will be used for both the proposed Branch Framework and ex-post notification FRC framework.

To effect the proposed ex-post notification FRC framework, MAS also proposes to introduce relevant Regulations and Notices:

- The Regulations will set out: (i) the scope of the proposed ex-post notification FRC framework; (ii) exemptions to be granted to the FRCs and their representatives; and (iii) conditions to be complied with before an FRC arrangement can be notified to MAS.
- The Notices will set out the ongoing conditions to be complied with after an FRC arrangement has been notified to MAS.

For details, please refer to the Consultation Paper and its accompanying Annexes.

If you have any queries on the above development or would like to submit any feedback to the Consultation Paper, please feel free to contact our team members below who will be happy to assist.

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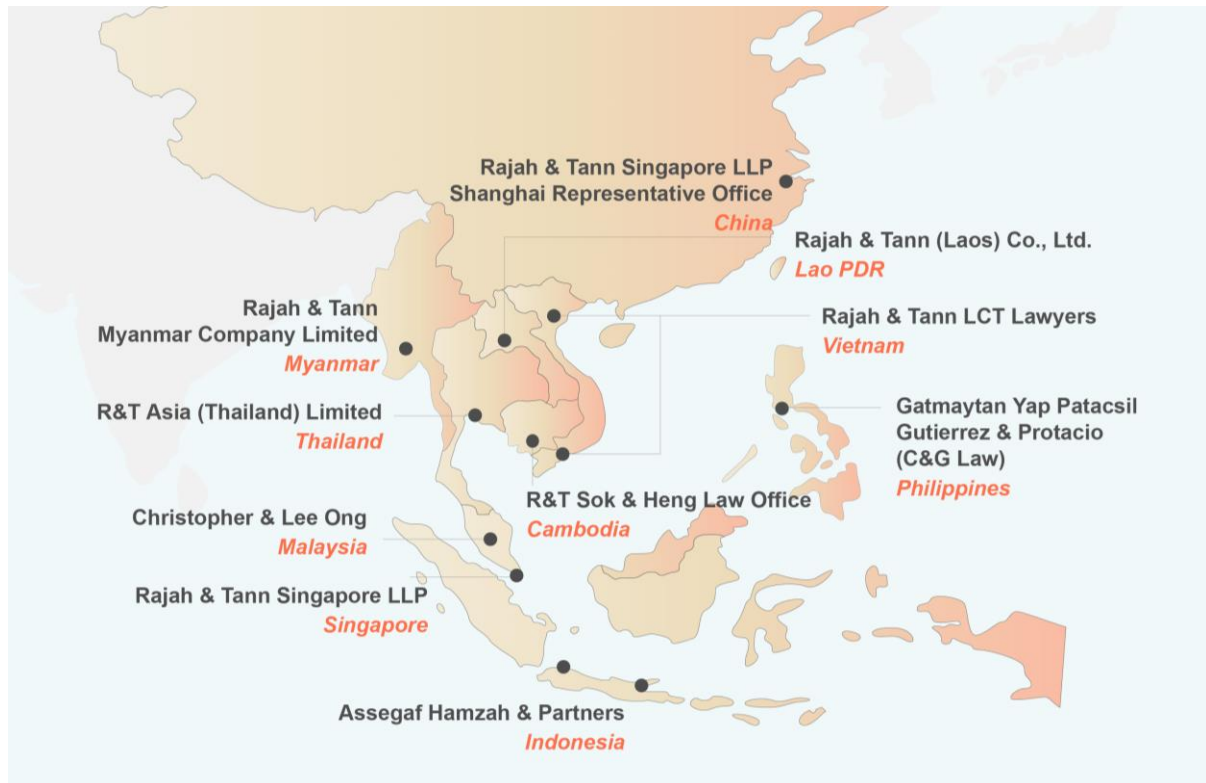
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