

Financial Institutions | Funds & Investment Management | Insurance & Reinsurance

Exemption Frameworks for Cross-Border Business Arrangements for Foreign Offices & Foreign Related Corporations of Singapore FIs Take Effect

Introduction

On 9 October 2021, the Monetary Authority of Singapore ("**MAS**") put in place an exemption framework to exempt the foreign head offices or branches (collectively, "**Foreign Offices**" or "**FOs**") of relevant financial institutions in Singapore ("**Singapore FIs**") conducting capital markets services and/or financial advisory services from applicable business conduct and representative notification requirements when the FOs conduct business in Singapore, subject to boundary and notification conditions ("**Branch Framework**"). The Branch Framework aims to level the playing field between FOs and foreign-related corporations of the Singapore FIs ("**FRCs**") which provide cross-border financial services in Singapore under a MAS approved arrangement with the Singapore FI ("**FRC Framework**").

At the same time, the FRC Framework has been streamlined, moving away from the case-by-case approval approach to an ex-post notification approach. Before 9 October 2021, FRCs have to be approved by MAS to operate under the FRC Framework so that they are exempted from the licensing and applicable business conduct requirements under the Securities and Futures Act ("**SFA**") and Financial Advisers Act ("**FAA**").

With effect from 9 October 2021, FOs or FRCs of Singapore FIs must ensure that their new cross-border business arrangements comply with the boundary conditions under the Branch Framework or FRC Framework and submit notifications of such arrangements to MAS within 14 calendar days from the commencement date of the arrangements. FOs or FRCs which are currently operating under existing approved cross-border business arrangements or relevant exemptions before 9 October 2021 will have 12 months (on or before 8 October 2022) to comply with the boundary conditions under the new Branch Framework or revised FRC Framework and submit notifications on such arrangements to MAS. There will be no "grandfathering" of existing arrangements from the notification requirement.

This Update provides an overview of the: (i) scope and boundary conditions under the Branch Framework and FRC Framework; (ii) notification requirement for cross-border arrangements under the Branch Framework and the FRC Framework; and (iii) on-going requirements in relation to the Singapore FI's cross-border arrangements with its FOs and FRCs (including anti-money laundering and countering of the financing of terrorism ("**AML/CFT**") requirements).

Financial Institutions | Funds & Investment Management | Insurance & Reinsurance

This development follows from the following public consultation exercises conducted by MAS to gather feedback on the operation details on the two Frameworks. MAS has reviewed the feedback received from these consultations and issued its Responses to these consultations. For more information, please click on the links below:

- Consultation paper on "[Proposed Revisions to the Exemption Framework for Cross-Border Business Arrangements of Capital Markets Intermediaries](#)" issued on 4 December 2018;
- Consultation paper on "[Proposed Exemption Framework for Cross-Border Business Arrangements of Capital Markets Intermediaries Involving Foreign Offices](#)" issued on 15 March 2021; and
- Consultation paper on "[Proposed AML Notices for Cross-Border Business Arrangements of Capital Markets Intermediaries under Proposed Exemption Framework](#)" issued on 12 May 2021.

Scope of Branch Framework and FRC Framework

Who is covered under the Branch Framework and FRC Framework?

The Branch Framework and the FRC framework apply to the following Singapore FIs:

- Capital markets services licence holders (other than venture capital fund managers);
- Licensed financial advisers;
- Banks, merchant banks, finance companies, insurers conducting relevant capital markets services and financial advisory businesses as exempt capital market intermediaries or exempt financial advisers; and
- Exempt futures brokers and exempt over-the-counter derivatives brokers,

which have entered into cross-border arrangements with their FOs or FRCs to conduct regulated activities under the SFA and/or financial advisory service (other than advising other by issuing or promulgating research analyses or research reports¹) under the FAA ("**Arrangements**").

The Branch Framework or FRC Framework applies to a Singapore FI where the activities conducted by its FOs or FRCs are regulated under the SFA and/or FAA and where the extra-territoriality of the SFA and/or the FAA extends to such activities, as further elaborated in the [MAS Guidelines on the Application of Section 339 \(Extra-Territoriality\) of the Securities and Futures Act \[SFA 15-G01\]](#), and where no other exemptions apply.

¹ Foreign research houses which provide financial advisory service of issuing or promulgating research analyses or reports to investors in Singapore may be exempted from the applicable business conduct requirements under the FAA and the notification requirements for their overseas-based representatives pursuant to both the Branch Framework and FRC Framework. Such foreign houses are covered under the exemption provided in Regulation 32C of the Financial Advisers Regulations ("**FAR**") and are subject to safeguards therein. As Regulation 32C of the FAR exempts such a foreign research house from the licensing requirements under the FAA, the Singapore FIs of such FOs or FRCs are also not subject to the notification requirement for the Arrangements under the Branch Framework and FRC Framework.

Client Update: Singapore

2021 OCTOBER



Financial Institutions | Funds & Investment Management | Insurance & Reinsurance

Illustrations of the common Arrangements that are subject to the Branch Framework or FRC Framework are provided in "[Annex 2 to the MAS Response to Feedback Received – Proposed Exemption Framework for Cross-Border Business Arrangements of Capital Markets Intermediaries Involving Foreign Offices](#)" released by MAS on 8 October 2021.

What are the exemptions?

Under the new Branch Framework and revised FRC Framework, an FO or FRC which conducts regulated activities pursuant to an Arrangement with its Singapore FI that satisfies the boundary conditions and has been notified to MAS is exempted from the:

- (i) Applicable business conduct requirements under the SFA and/or FAA; and
- (ii) Requirement for the representatives of the FO or FRC to be appointed as overseas-based representatives of the Singapore FI when they serve Singapore customers under the applicable Arrangement.

Boundary Conditions of Branch Framework and FRC Framework

The boundary conditions under the Branch Framework are largely similar to the FRC Framework, with appropriate modifications. These are summarised below.

	Branch Framework	FRC Framework
Regulatory Status	<ul style="list-style-type: none"> • Singapore FI is subject to regulatory oversight by a foreign regulatory authority in the foreign jurisdiction where the FO is established ("FO's jurisdiction"), in respect of the activities carried out by the FO. 	<ul style="list-style-type: none"> • FRC carries out all its activities under the Arrangement through one or more branches or offices (including its head office) established in one or more foreign jurisdictions ("FRC's jurisdiction"). • FRC is subject to regulatory oversight by a foreign regulatory authority in each of the FRC's jurisdiction mentioned above.
AML/CFT Requirements	<ul style="list-style-type: none"> • Singapore FI is subject to AML/CFT requirements of the FO's jurisdiction that are consistent with the FATF standards and is supervised by a foreign regulatory authority in the FO's jurisdiction for compliance with the AML/CFT requirements. 	<ul style="list-style-type: none"> • FRC is subject to AML/CFT requirements of the FRC's jurisdiction mentioned above that are consistent with the FATF standards and is supervised by a foreign regulatory authority in the FRC's jurisdiction for compliance with the AML/CFT requirements.

Client Update: Singapore

2021 OCTOBER

Financial Institutions | Funds & Investment Management | Insurance & Reinsurance

	<ul style="list-style-type: none"> • Singapore FI and the FO's jurisdiction are not subject to United Nations Security Council sanctions. 	<ul style="list-style-type: none"> • FRC and the FRC's jurisdiction are not subject to United Nations Security Council sanctions.
Permitted Clientele	<ul style="list-style-type: none"> • All customers of the Arrangement must be accredited investors, expert investors and institutional investors. The opt-in requirements for accredited investors apply to customers of the Arrangement. For more details on the opt-in requirements, please refer to "FAQs on the Exemption Frameworks for Cross-Border Business Arrangements of Capital Markets Intermediaries involving Foreign Related Corporations and Foreign Offices" issued by MAS on 8 October 2021. • Clientele or transaction restrictions imposed by MAS on the Singapore FI would also apply to its FOs. 	<ul style="list-style-type: none"> • All customers of the Arrangement must be accredited investors, expert investors and institutional investors. The opt-in requirements for accredited investors apply to customers of the Arrangement. For more details on the opt-in requirements, please refer to "FAQs on the Exemption Frameworks for Cross-Border Business Arrangements of Capital Markets Intermediaries involving Foreign Related Corporations and Foreign Offices" issued by MAS on 8 October 2021. • Clientele or transaction restrictions imposed by MAS on the Singapore FI would also apply to its FRCs.

Notification Requirement for Arrangements under Branch Framework and FRC Framework

The following requirements apply to a Singapore FI under the Branch Framework and FRC framework.

Commencement of Arrangement	<ul style="list-style-type: none"> • Notify MAS of the Arrangement and confirm its compliance with the boundary conditions, within 14 calendar days of commencement of the Arrangement, in the MAS prescribed form. • Among other things, Singapore FI must assess and confirm that there are no conflict of interests arising from the Arrangement at the time of making the notification and it will implement conflicts mitigation measures on an ongoing basis.
Changes to Arrangement	<ul style="list-style-type: none"> • Notify MAS of any changes to the Arrangement, within 14 calendar days of such a change, in the MAS prescribed form. • Relevant changes to the Arrangement that should be notified to MAS include the change of regulatory status of the FO/FRC, target clientele, cessation of the Arrangement or the addition/cessation of a regulated activity under the Arrangement.

Financial Institutions | Funds & Investment Management | Insurance & Reinsurance

Ongoing Requirements for Arrangements under Branch Framework and FRC Framework

Singapore FIs must have and maintain policies and procedures to oversee the conduct of the FOs and FRCs and their representatives under the Arrangement with regard to, among other things, the following matters.

<p>Internal Control over Arrangement</p>	<ul style="list-style-type: none"> • Record keeping: With respect to businesses conducted under the Arrangement, 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 of the FRCs (as the case may be) with or on behalf of customers, as well as copies of contracts or agreements between the customers and Singapore FIs through the FOs or between the customers and the FRCs (as the case may be) in relation to businesses conducted under the Arrangement. • Customer due diligence ("CDD"): Conduct CDD in accordance with the applicable MAS Notice on AML/CFT, maintain or have access to all CDD records kept overseas by the FOs or FRCs, and provide MAS with timely access to these records. • Register of foreign representatives: Keep a register of foreign representatives of the FOs or the FRCs (as the case may be) that contains the names of the foreign representatives, their visits to Singapore and the purpose of such visits, as well as details and description of activities conducted by the foreign representatives during the visits. • Safeguards for customers: Have written policies and procedures governing the solicitation of customers in Singapore by foreign representatives of the FOs or the FRCs (as the case may be) and the handling of customers' complaints against the foreign representatives.
<p>Annual Declaration*</p>	<p>Within five months from the end of each financial year, Singapore FIs to, among other things:</p> <ul style="list-style-type: none"> • Compliance with boundary conditions: Provide a certification by an independent assurance function (internal/external auditor) on compliance with the boundary conditions for the preceding financial year. • Metrics of Arrangement: Provide information on number of individuals carrying out regulated activities under the Arrangement, business volume for each regulated activity under the Arrangement, material adverse information, etc. <p>*The due date for the first round of annual reporting will be deferred to 2023. Some examples on the applicable due dates for various scenarios are provided in "Annex 3 to the MAS Response to Feedback Received – Proposed Exemption Framework for</p>

Financial Institutions | Funds & Investment Management | Insurance & Reinsurance

	<u>Cross-Border Business Arrangements of Capital Markets Intermediaries Involving Foreign Offices</u> released by MAS on 8 October 2021
--	---

Further Information

For details, please refer to the subsidiary legislation issued under the SFA and FAA, MAS Notices, Guidelines and Forms that have been issued and/or revised to implement the new Branch Framework and revised FRC Framework which took effect from 9 October 2021.

If you have any queries on the above development, please feel free to contact our team members below who will be happy to assist.

Contacts

Financial Institutions Group



Regina Liew
Head, Financial Institutions
Group

T +65 6232 0456

regina.liew@rajahtann.com



Larry Lim
Deputy Head, Financial
Institutions Group

T +65 6232 0482

larry.lim@rajahtann.com



Benjamin Liew
Partner, Financial Institutions
Group

T +65 6232 0686

benjamin.liew@rajahtann.com

Funds & Investment Management



Arnold Tan
Co-head, Funds & Investment
Management

T +65 6232 0701

arnold.tan@rajahtann.com



Anne Yeo
Co-head, Funds &
Investment Management

T +65 6232 0628

anne.yeo@rajahtann.com



Jasmine Chew
Partner, Funds & Investment
Management

T +65 6232 0454

jasmine.chew@rajahtann.com



Philip Yeo
Partner, Funds &
Investment Management

T +65 6232 0487

philip.yeo@rajahtann.com

Insurance & Reinsurance



Simon Goh
Head, Insurance & Reinsurance

T +65 6232 0645

simon.goh@rajahtann.com



Elaine Tay
Partner, Insurance &
Reinsurance

T +65 6232 0673

elaine.tay@rajahtann.com



Wang Ying Shuang
Partner, Insurance &
Reinsurance

T +65 6232 0365

ying.shuang.wang@rajahtann.com

Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

Rajah & Tann Singapore LLP Shanghai Representative Office

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office

T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this update.

Our Regional Presence



Rajah & Tann Singapore LLP is one of the largest full-service law firms in Singapore, providing high quality advice to an impressive list of clients. We place strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.

The contents of this Update are owned by Rajah & Tann Singapore LLP and subject to copyright protection under the laws of Singapore and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Singapore LLP.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann Singapore LLP or email Knowledge & Risk Management at eOASIS@rajahtann.com.