

# Foreign Branches of Singapore FIs May Offer Cross-Border Services under a Business Arrangement Subject to Ex-Post Notification

The Monetary Authority of Singapore (**MAS**) has proposed allowing foreign head offices and other branch offices (collectively, **foreign branches**) of financial institutions in Singapore (**Singapore FIs**) to provide cross-border financial services under an arrangement with Singapore FIs forming part of the same legal entity to customers in Singapore by a system of ex-post notification. This proposal was set out in its Consultation Paper on Proposed Exemption Framework for Cross-Border Business Arrangements of Capital Markets Intermediaries Involving Foreign Offices issued on 15 March 2021 (**Consultation Paper**). The consultation closes on 15 April 2021.

The proposed system will be substantially similar to the ex-post notification system which will be implemented for foreign related corporations (**FRCs**) consulted on earlier by the MAS.<sup>1</sup> This proposed change is intended to create a level-playing field for both types of corporate structures: upon implementation, both FRCs and foreign branches of Singapore FIs will be able to offer cross-border financial services under business arrangements with their Singapore counterpart under substantially similar regulatory ex-post notification frameworks. The Consultation Paper notes that it is the MAS' intention that the new framework for foreign branches will commence on 9 October 2021.<sup>2</sup>

## Effect of proposed change

Currently, if a foreign branch of a Singapore FI conducts any regulated activity under the Securities and Futures Act (**SFA**) and/or Financial Advisers Act (**FAA**) partly in and partly outside Singapore, or where the conduct of the regulated activity takes place wholly outside Singapore but has a substantial and reasonably foreseeable effect in Singapore:

- the foreign branch does not have to be separately licensed (or exempted from licensing) but is subject to all applicable conduct requirements under the SFA and FAA, and
- its representatives who serve Singapore customers are required to be appointed as overseas-based

representatives of the Singapore FI and will therefore have to meet all regulatory requirements for such representatives including complying with entry and examination requirements.

Under the proposed ex-post notification framework for foreign branches, foreign branches that have an arrangement with the Singapore FI will be exempt from these regulatory requirements. The less onerous requirements and boundary conditions of the ex-post notification framework will apply instead.

<sup>1</sup> FRCs of Singapore FIs may currently offer their services to the customers of the Singapore FI through a business arrangement with the Singapore FI pursuant to an exemption granted by the MAS. While the exemption currently has to be applied for and granted on a case-by-case basis, the MAS will be replacing that regime with an ex-post notification system, more fully discussed in our update, "MAS Confirms Implementation of Ex-Post Notification Framework for Provision of Cross-Border Financial Services" (29 June 2020).

<sup>2</sup> Accordingly, it is likely that the framework for FRCs will also commence on or around the same date.

Note that if the representative from the foreign branch is acting on behalf of the Singapore FI, the foreign branch ex-post notification framework will not apply, and the representative would continue to need to be appointed as an overseas-based representative and comply with all necessary entry, examination and conduct requirements.

## Notification to the MAS

As noted above, under the ex-post notification system, Singapore FIs that enter into arrangements with their foreign branches will need to notify the MAS of the arrangement within 14 days of its commencement. The commencement of an arrangement refers to the date the foreign branch commences or intends to commence the conduct of the relevant regulated activity under the proposed arrangement.

The following information must be provided to the MAS:

- The regulatory status of the Singapore FI;
- The name of the cross-border arrangement;
- The rationale for the cross-border arrangement;
- The regulated activities involved under the arrangement;
- The particulars of the foreign branch;
- The roles of the Singapore FI and the foreign branch in the process chain;
- An assessment and declaration of conflicts of interest; and
- Declarations by a director as to compliance and accuracy of information.

## Compliance requirements for the framework

A Singapore FI and its foreign branch entering into business arrangements under the ex-post notification system must comply with a set of boundary conditions. These are discussed below.

### Notification of material changes

The Singapore FI / foreign branch must notify the MAS of any material change to the arrangement within 14 days of the change. Material changes would include changes to the following:

- The addition of new foreign branches to the arrangement;
- Changes in products/services under the arrangement;
- Changes in the regulatory status of the foreign branch and its representatives;
- A reduction or substantial change in the role of the Singapore FI within the arrangement; and
- A change in clientele targeted by the foreign branch.

### Licensing and scope of activities of the Singapore FI

The Singapore FI must have the relevant licence or authorisation to carry out the activities that the foreign branch intends to carry out in Singapore. A Singapore FI that is exempt from licensing can enter into arrangements involving activities for which it is exempted from being licensed. As for what it means for the Singapore FI to be carrying out the activities that the foreign branch intends to carry out in Singapore, the MAS had stated (in respect of a similar requirement under the FRC ex-post notification framework) that the Singapore FI should at the point of admission be itself carrying out the same regulated activities meaningfully and should not simply be a conduit to access customers. It further noted that a consideration of whether the activities are carried out meaningfully should take into account, on a holistic basis, both qualitative and quantitative considerations. It is likely that a similar approach will be adopted with respect to this requirement in the foreign branch ex-post notification framework.

There is an exception for product financing or custodial services. A foreign branch of a Singapore FI may provide product financing or custodial services as a complement to the Singapore FI's business of dealing in capital markets products even if the Singapore FI is not licensed or authorised to provide product financing or custodial services. The Singapore FI should, however, be licensed or authorised to deal in capital markets products for the same classes of products for which its foreign branch intends to provide product financing or custodial services under the arrangement.

### Foreign branch must be licensed or regulated

The foreign branch must be operating from a jurisdiction that is not subject to United Nations Security Council sanctions and is supervised for compliance with anti-money laundering and countering the financing of terrorism requirements consistent with standards set by the Financial Action Task Force. It must be authorised, regulated or supervised by a regulatory body in that jurisdiction. A foreign branch that is relying on exemptions to conduct the specific activity under the arrangement but that is nonetheless licensed/authorised in the jurisdiction where it is operating from will be allowed to conduct activities as part of the arrangement. Representatives of a foreign branch from a jurisdiction that does not license or authorise individuals will also be allowed to conduct activities as part of the arrangement, as long as the foreign branch itself is licensed, authorised, regulated or supervised.

### Restrictions on customers

The foreign branch arrangement may only be in respect of customers that are accredited investors, expert investors and institutional investors. Further, as the foreign branches are not separate legal entities from the Singapore FI, any clientele or transaction restrictions imposed by the MAS on the Singapore FI would also apply to its foreign branch and hence the foreign branch arrangement as well.

The MAS has stated (in respect of a similar requirement under the FRC ex-post notification framework) that the

Singapore FI and its foreign branch may establish the status of customers at the point of onboarding, rather than at the marketing stage and it is likely that a similar approach will apply in this case well.

### Restrictions on transactions

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Corporate finance advisory arrangements in respect of the following transactions are subject to additional restrictions and requirements:

- An offer of securities to the public;
- Takeovers of public companies; and
- Transactions which involve the provision of advice to a listed corporation or a subsidiary of a listed corporation where the advice is circulated to the retail shareholders of the listed corporation or is otherwise made known to the public.

Arrangements in respect of such transactions may only be conducted under the foreign branch arrangement if the Singapore FI is one of the contractual parties to the transaction, under an agreement with another party (not being the Singapore FI's foreign branch), and the Singapore FI is liable, whether solely or jointly with the other contractual party, for the obligations and liabilities of the transaction.

### Policies and procedures

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The Singapore FI must have in place written policies and procedures to oversee the conduct of the foreign branch and its representatives. These include:

- Keeping records relating to the business arrangements with the foreign branch;
- Maintaining a register in respect of every foreign representative containing the prescribed information;
- Performing customer due diligence;
- Maintaining or having access to all records kept overseas by the foreign branch that relate to the business arrangements (including know-your-customer documents), and providing the MAS with timely access to these records (in the English language) upon request;
- Ensuring the proper marketing and solicitation of customers in Singapore by the foreign branch and its representatives; and
- Implementing policies and procedures pertaining to complaints handling.

The following further guidance has been given by the MAS in respect of similar requirements under the FRC ex-post notification framework which will likely apply equally in this situation:

- Solicitation would involve influencing or inducing customers to purchase products or services, or enter into transactions and would not involve purely providing factual information to customers, or introducing customers to a financial

institution. It includes both solicitation of new customers for commencing a business relationship, as well as of existing customers for the offer of new products and services.

- Policies and procedures for solicitation may involve having country-specific guidelines on the specific types of information that can be provided to prospects, and/or require marketing materials used by foreign representatives to be approved by the local compliance. The Singapore FI may rely on existing global/group-level policies and procedures in this regard. However, the onus will be on the Singapore FI to assess and identify the relevant conduct risks that may arise in the process of marketing/solicitation, and ensure that the policies and procedures implemented adequately address these risks.

### Annual certification

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The Singapore FI must submit an annual certification from its external auditors that the conditions for the foreign branch arrangement have been complied with.

## Related developments in the Consultation Paper

Along with this proposed establishment of an ex-post notification framework for foreign branches of Singapore FIs, the following changes have also been proposed that will bring the regulation of foreign branches on a level-playing field with FRCs:

- Foreign research houses, including the FRCs of licensed or exempt financial advisers, are exempt when they issue or promulgate research analyses or reports concerning any investment product to investors in Singapore, provided that the investors may contact the financial adviser in Singapore in respect of the matters discussed in the report. The MAS has proposed extending the exemption to foreign branches of licensed or exempt financial advisers, subject to the same requirement.
- On 8 October 2018, the scope of the SFA was expanded to regulate over-the-counter derivatives (**OTCD**) transactions with a transition period ending on 8 October 2021. At the end of the transition period, FRCs may rely on the proposed ex-post notification framework to continue with their existing OTCD arrangements with their Singapore FIs. The implementation of the ex-post notification framework for foreign branches that have such OTCD arrangements will similarly allow such arrangements to continue after 8 October 2021 without requiring the foreign branches to comply with otherwise applicable conduct and representative requirements.

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