

## Client Alert

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## MAS consults on proposed revisions to exemption framework for cross-border business arrangements

The Monetary Authority of Singapore (**MAS**) released a consultation paper (**paper**) on 4 December 2018 proposing revisions to the exemption framework for cross-border business arrangements between financial institutions in Singapore and their foreign related corporations (**FRC Framework**). If these proposals are implemented, regulated financial institutions in Singapore may proceed to enter into such arrangements with their foreign related corporations (**FRCs**) and to provide an *ex post* notification to the MAS rather than being required to obtain case by case prior approval from the MAS. Certain conditions will continue to apply.

### Will this affect you?

#### Proposed Inclusions

The MAS proposes to apply the FRC Framework not just to entities licensed and exempted under the Securities and Futures Act (**SFA**) and the Financial Advisers Act (**FAA**), but also to over-the-counter derivatives brokers and futures brokers (collectively, **exempt brokers**). Entities approved under prior paragraph 9 and paragraph 11 applications would also be transitioned over.

#### Proposed Exclusions

However the FRC Framework will not cover:

1. foreign research houses who issue or promulgate research analyses concerning investment products as such foreign research houses should rely on the exemption from licensing under regulation 32C of the Financial Advisers Regulations, which is broader in scope and does not require the foreign research house to be related to the financial adviser in Singapore; and
2. venture capital fund managers (**VCFMs**) given their business model on the basis that they would not typically have arrangements with FRCs to manage segregated mandates for Singapore customers.

### What is required to comply?

The paper sets out the following boundary conditions for the proposed FRC Framework:





<b>Boundary Condition</b>	<b>Proposed Measures</b>
<b><i>Notification Requirements</i></b>	<ul style="list-style-type: none"><li>• Notify MAS of the arrangement via a prescribed form and confirm compliance with boundary conditions within 14 days of the arrangement's commencement.</li><li>• On an ongoing basis, notify MAS of any material change to the arrangement within 14 days.</li></ul>
<b><i>Regulatory Status of the Singapore Entity</i></b>	<ul style="list-style-type: none"><li>• The Singapore entity must have the relevant licence or authorization to conduct the regulated activity that the FRC intends to undertake under the arrangement.</li><li>• As an exception, FRCs can enter into an arrangement with the Singapore entity to provide product financing or custodial services as a complement to the Singapore entity's business of dealing in capital markets products.</li></ul>
<b><i>Regulatory Status of FRCs</i></b>	<ul style="list-style-type: none"><li>• The FRC should be licensed or authorised in their own jurisdiction to conduct the regulated activity under the arrangement.</li><li>• FRC must be from a jurisdiction that is:<ul style="list-style-type: none"><li>○ Supervised to ensure compliance with anti-money laundering and countering the financing of terrorism requirements consistent with standards set by the Financial Action Task Force (FATF); and</li><li>○ Not subject to UN Security Council sanctions.</li></ul></li></ul>
<b><i>Permissible Clientele under the Arrangements</i></b>	<ul style="list-style-type: none"><li>• Restricted to non-retail customers, i.e. accredited investors, expert investors and institutional investors.</li><li>• Restricted to specific type of customer (within non-retail customers) the Singapore entity is restricted to serving, e.g. CMS licence holders restricted to accredited and/or institutional investors would mean the FRC would be similarly restricted to such clientele</li></ul>
<b><i>Internal Controls over the Arrangements</i></b>	<ul style="list-style-type: none"><li>• Keep records consistent with regulation 39 of the Securities and Futures (Licensing and Conduct of Business) Regulations or regulation 25 of the Financial Advisers Regulations.</li><li>• Maintain a register containing:<ul style="list-style-type: none"><li>○ Duration of every visit to Singapore by a foreign representative to carry out the activity</li></ul></li></ul>



under the arrangement;

- Foreign representative's relevant qualifications; and
- Status of licenses relating to activities under the arrangement held by the foreign representative in another jurisdiction.
- Perform know-your-customer (KYC) due diligence in accordance with MAS' Notice on Prevention of Money Laundering and Countering the Financing of Terrorism.
- Maintain or have access to all records kept overseas by the FRC that relate to the arrangements and provide MAS with access (in English) upon request.
- Ensure that foreign representatives only solicit clients in Singapore through or with appointed representatives of the Singapore entity.
- Implement policies and procedures to handle complaints.

***Annual Reporting Requirements***

- Submit an annual certification from external auditors that boundary conditions under the FRC Framework have been complied with.
- MAS proposes to introduce a new annual reporting requirement where information on the size and type of activities will be collected via a prescribed machine-readable format.

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## Implementation Timeline

The consultation period will end on 31 January 2019.

If you have any questions or feedback you would like to provide in relation to the consultation paper, please do not hesitate to contact us.

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