
First published in the *Government Gazette*, Electronic Edition, on 8 October 2021 at 5 pm.

No. S 764

FINANCIAL ADVISERS ACT (CHAPTER 110)

FINANCIAL ADVISERS (EXEMPTION FOR CROSS-BORDER ARRANGEMENTS) (FOREIGN RELATED CORPORATIONS) REGULATIONS 2021

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation and commencement
 2. Definitions
 3. Forms
 4. Exemption for FRCs of specified financial advisers carrying on qualifying businesses providing certain financial advisory services under cross-border arrangements, and their foreign representatives
 5. Exemption for FRCs of specified financial advisers previously carrying on qualifying businesses providing certain financial advisory services under cross-border arrangements, and their foreign representatives
 6. Circumstances for exemption
-

In exercise of the powers conferred by section 100(1) of the Financial Advisers Act, the Monetary Authority of Singapore makes the following Regulations:

Citation and commencement

1. These Regulations are the Financial Advisers (Exemption for Cross-Border Arrangements) (Foreign Related Corporations) Regulations 2021 and come into operation on 9 October 2021.

Definitions

2.—(1) In these Regulations, unless the context otherwise requires —

“accredited investor” has the meaning given by section 4A(1)(a) of the Securities and Futures Act (Cap. 289);

“AML/CFT requirement” or “Anti-Money Laundering/Countering the Financing of Terrorism requirement” means a law or regulatory requirement of a foreign jurisdiction for the detection or prevention of money laundering or the financing of terrorism;

“cross-border arrangement” means an arrangement between an FRC of a specified financial adviser and the specified financial adviser under which the FRC carries on a qualifying business;

“derivatives contract” has the meaning given by section 2(1) of the Securities and Futures Act;

“exchange-traded derivatives contract” has the meaning given by section 2(1) of the Securities and Futures Act;

“expert investor” has the meaning given by section 4A(1)(b) of the Securities and Futures Act;

“FATF” means the intergovernmental body known as the Financial Action Task Force;

“foreign company” has the meaning given by section 4(1) of the Companies Act (Cap. 50);

“foreign exchange OTC derivatives contract” means an OTC derivatives contract entered into on a margin basis the value of which is determined by reference to, is derived from, or varies by reference to —

(a) the value or amount of any currency or currency index; or

(b) fluctuations in the values or amounts of any currency or currency index;

“foreign jurisdiction” means a country or jurisdiction other than Singapore;

“foreign regulatory authority” means —

- (a) an authority of a foreign jurisdiction, exercising any function that corresponds to a regulatory function of the Authority under the Monetary Authority of Singapore Act (Cap. 186); or
- (b) a non-governmental organisation exercising any function that corresponds to a regulatory function of the Authority under the Monetary Authority of Singapore Act under the law of, or by delegation from an authority of, a foreign jurisdiction;

“foreign representative”, in relation to an FRC of a specified financial adviser, means a representative of the FRC who performs on behalf of the FRC any financial advisory service in respect of which the FRC is carrying on a qualifying business under a cross-border arrangement;

“FRC” or “foreign related corporation”, in relation to a specified financial adviser, means a foreign company that is a related corporation of the specified financial adviser;

“institutional investor” has the meaning given by section 4A(1)(c) of the Securities and Futures Act;

“on a margin basis”, in relation to a contract, means the entering of a contract by 2 parties where one party provides to the other party (whether directly or indirectly through such party’s agent) money, securities, property or other collateral which represents only a part of the value of the contract;

“over-the-counter derivatives contract” or “OTC derivatives contract” means a derivatives contract other than an exchange-traded derivatives contract;

“specified financial adviser” means —

- (a) a licensed financial adviser; or
- (b) an exempt financial adviser mentioned in section 23(1)(a), (b), (c), (d) or (e) of the Act;

“specified investment product” means —

- (a) any specified OTC derivatives contract;
- (b) any foreign exchange OTC derivatives contract arranged by —
 - (i) any bank that holds a licence granted under section 7 or 79 of the Banking Act (Cap. 19); or
 - (ii) any merchant bank that holds a merchant bank licence, or is treated as having been granted a merchant bank licence, under the Banking Act; or
- (c) any spot foreign exchange contract for the purposes of leveraged foreign exchange trading arranged by —
 - (i) any bank that holds a licence granted under section 7 or 79 of the Banking Act; or
 - (ii) any merchant bank that holds a merchant bank licence, or is treated as having been granted a merchant bank licence, under the Banking Act;

“specified OTC derivatives contract” means an OTC derivatives contract the value of which is determined by reference to, is derived from, or varies by reference to —

- (a) the value or amount of any item other than any —
 - (i) securities;
 - (ii) securities index;
 - (iii) currency; or
 - (iv) currency index; or
- (b) fluctuations in the values or amounts of one or more items other than any —
 - (i) securities;
 - (ii) securities index;
 - (iii) currency; or
 - (iv) currency index;

“spot foreign exchange contract” has the meaning given by section 2(1) of the Securities and Futures Act.

- (2) For the purposes of these Regulations, “qualifying business” —
- (a) in relation to an FRC of a licensed financial adviser — means a business of providing any financial advisory service (other than the financial advisory service mentioned in paragraph 2 of the Second Schedule to the Act) in respect of one or more types of investment products authorised by the financial adviser’s licence; or
 - (b) in relation to an FRC of an exempt financial adviser who is exempt under section 23(1)(a), (b), (c), (d) or (e) of the Act — means a business of providing any financial advisory service (other than the financial advisory service mentioned in paragraph 2 of the Second Schedule to the Act) in respect of one or more types of investment products, where the exempt financial adviser has, in respect of that financial advisory service —
 - (i) lodged with the Authority a notice under regulation 37(1)(b) or (ba) of the Financial Advisers Regulations (Rg 2); and
 - (ii) not lodged with the Authority a notice under regulation 37(1)(d) of those Regulations.

Forms

3.—(1) Form FN, which is to be used for the purposes of these Regulations is set out on the Authority’s Internet website at <http://www.mas.gov.sg>, and any reference in these Regulations to Form FN is a reference to the current version of the form bearing the corresponding letters which is displayed on that website.

(2) Any document required to be lodged with the Authority under these Regulations must be lodged in the relevant form and in the manner specified in the website mentioned in paragraph (1), or in such other manner as the Authority may specify from time to time.

(3) Any form used for the purposes of these Regulations must be completed in the English language and in accordance with such directions as may be specified in the form or by the Authority.

(4) The Authority may refuse to accept any form if it is not completed or lodged in accordance with this regulation.

(5) Where strict compliance with any form is not possible, the Authority may allow for the necessary modifications to be made to that form, or for the requirements of that form to be complied with in such other manner as the Authority thinks fit.

Exemption for FRCs of specified financial advisers carrying on qualifying businesses providing certain financial advisory services under cross-border arrangements, and their foreign representatives

4.—(1) Paragraph (2) applies to an FRC of a specified financial adviser where —

- (a) all the circumstances mentioned in regulation 6(1) are present; and
- (b) the qualifying business of the FRC is carried on by the FRC under a cross-border arrangement and commences on or after 9 October 2021.

(2) The FRC mentioned in paragraph (1) is exempt from the following provisions in respect of any financial advisory service provided under the qualifying business:

- (a) sections 6(1), 22A and 23A of the Act;
- (b) regulations 18B, 20, 21, 22, and 22D of the Financial Advisers Regulations.

(3) The specified financial adviser of an FRC mentioned in paragraph (1) and exempt under paragraph (2) must lodge with the Authority a notice setting out the details of the cross-border arrangement in Form FN by the 14th day after the day on which the qualifying business commences.

(4) An FRC of a specified financial adviser ceases to be exempt under paragraph (2) —

-
-
- (a) in the case where the specified financial adviser fails to lodge with the Authority a notice setting out the details of the cross-border arrangement in accordance with paragraph (3) — on the day immediately after the day mentioned in paragraph (3); or
 - (b) in any other case — on the day on which any of the circumstances mentioned in regulation 6(1) ceases to be present.

(5) A foreign representative of an FRC exempt under paragraph (2), when acting as a representative of the FRC in respect of the financial advisory service that is the subject of an exemption under that paragraph, is exempt from —

- (a) sections 22A, 23A and 23B(1A) of the Act; and
- (b) regulations 21(3), 22 and 22D of the Financial Advisers Regulations.

Exemption for FRCs of specified financial advisers previously carrying on qualifying businesses providing certain financial advisory services under cross-border arrangements, and their foreign representatives

5.—(1) Paragraph (2) applies to an FRC of a specified financial adviser where —

- (a) all the circumstances mentioned in regulation 6(1) are present;
- (b) the FRC was, immediately before 9 October 2021, carrying on a qualifying business —
 - (i) under a cross-border arrangement that is approved by the Authority under paragraph 11 of the First Schedule to the Act; or
 - (ii) in respect of any specified investment product under a cross-border arrangement in reliance on the exemption under regulation 32CA of the Financial Advisers Regulations; and

(c) the specified financial adviser has lodged with the Authority a notice of the cross-border arrangement in Form FN on or before 8 October 2022.

(2) The FRC mentioned in paragraph (1) is exempt, on the day of the lodgment of the notice of the cross-border arrangement with the Authority, from the following provisions in respect of any financial advisory service provided under the qualifying business:

(a) sections 6(1), 22A and 23A of the Act;

(b) regulations 18B, 20, 21, 22, and 22D of the Financial Advisers Regulations.

(3) An FRC of a specified financial adviser ceases to be exempt under paragraph (2) on the day on which any of the circumstances mentioned in regulation 6(1) ceases to be present.

(4) A foreign representative of an FRC exempt under paragraph (2), when acting as a representative of the FRC in respect of the financial advisory service that is the subject of an exemption under that paragraph, is exempt from —

(a) sections 22A, 23A and 23B(1A) of the Act; and

(b) regulations 21(3), 22 and 22D of the Financial Advisers Regulations.

Circumstances for exemption

6.—(1) For the purposes of regulations 4(1)(a) and (4)(b) and 5(1)(a) and (3), the circumstances are —

(a) the FRC of the specified financial adviser carries out all its activities under the cross-border arrangement through one or more branches or offices (including its head office) that are established in one or more foreign jurisdictions;

(b) the FRC is subject to regulatory oversight, in respect of any activity that is carried out by the FRC, by a foreign regulatory authority in each of the foreign jurisdictions mentioned in sub-paragraph (a);

(c) the FRC is subject to AML/CFT requirements of every foreign jurisdiction mentioned in sub-paragraph (a) that

are consistent with the standards set by the FATF and supervised by a foreign regulatory authority in that foreign jurisdiction as to whether the FRC complies with the AML/CFT requirements;

- (d) the FRC and every foreign jurisdiction mentioned in sub-paragraph (a) are not subject to any sanction imposed pursuant to a Resolution of the Security Council of the United Nations; and
- (e) any customer of the FRC of the specified financial adviser to whom the specified financial advisory service is provided —
 - (i) is an accredited investor, institutional investor or expert investor; and
 - (ii) either —
 - (A) belongs to a class of persons that the Authority has specified under any condition or restriction imposed under section 13(2) or 23(9) of the Act (as the case may be) as being a class of persons to whom the specified financial adviser may provide the specified financial advisory service; or
 - (B) does not belong to a class of persons that the Authority has specified under any condition or restriction imposed under section 13(2) or 23(9) of the Act (as the case may be) as being a class of persons to whom the specified financial service may not provide the specified financial advisory service.

(2) In this regulation, “specified financial advisory service” means the financial advisory service in respect of which the FRC of the specified financial adviser is exempt under regulation 4(2) or 5(2), as the case may be.

Made on 6 October 2021.

RAVI MENON
Managing Director,
Monetary Authority of Singapore.

[CMI 10/2021; AG/LEGIS/SL/110/2020/7 Vol. 1]