

**THIS VERSION OF THE REGULATIONS IS IN DRAFT FORM AND
SUBJECT TO CHANGE. IT IS ALSO SUBJECT TO REVIEW BY THE
ATTORNEY GENERAL'S CHAMBERS.**

FINANCIAL ADVISERS ACT
(CHAPTER 110, SECTION 104)

FINANCIAL ADVISERS (EXEMPTION FROM REQUIREMENTS) (CROSS-
BORDER ARRANGEMENTS) (FOREIGN OFFICES) REGULATIONS

In exercise of the powers conferred by section 104(1) of the Financial Advisers Act, the Monetary Authority of Singapore makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Financial Advisers (Exemption from Requirements) (Cross-Border Arrangements) (Foreign Offices) Regulations and come into operation on 9 October 2021.

Definitions

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

“accredited investor” means any of the following persons in relation to a counterparty, if the person has opted to be treated by the counterparty as an accredited investor for all the consent provisions, under regulation 3(2) of the Securities and Futures (Classes of Investors) Regulations 2018 (G.N. No. S 665/2018) —

- (a) an individual mentioned in section 4A(1)(a)(i) of the Securities and Futures Act (Cap. 289);
- (b) a corporation mentioned in section 4A(1)(a)(ii) of the Securities and Futures Act;

- (c) a trustee mentioned in section 4A(1)(a)(iii) of the Securities and Futures Act;
- (d) a person mentioned in section 4A(1)(a)(iv) of the Securities and Futures Act;

“AML/CFT requirement”, in relation to a foreign jurisdiction, means a law or regulatory requirement of that foreign jurisdiction for the detection or prevention of money laundering or the financing of terrorism;

“consent provision” and “counterparty” have the same meanings as in regulation 3(9) of the Securities and Futures (Classes of Investors) Regulations 2018;

“cross-border arrangement”, in respect of a licensed financial adviser or a specified exempt financial adviser, means the policies and procedures of the licensed financial adviser or the specified exempt financial adviser, by which its foreign office carries on business in providing any of the following financial advisory services in Singapore other than the financial advisory service mentioned in paragraph 2 of the Second Schedule to the Act —

- (a) in the case of a licensed financial adviser, the financial advisory service in connection with the type or types of investment products that the licensed financial adviser is authorised to provide by its licence;
- (b) in the case of a specified exempt financial adviser who is exempt from the requirement to hold a financial adviser’s licence to act as a financial adviser in Singapore, the financial advisory service in connection with the type or types of investment products, which it is providing in reliance on the exemption;

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

“FAR” means the Financial Advisers Regulations (Rg 2);

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

“foreign office”, in respect of a licensed financial adviser or a specified exempt financial adviser, means an office or branch of the licensed financial adviser or the specified exempt financial adviser (including its head office) that is located outside Singapore;

“foreign regulatory authority” means —

- (a) an authority of a country or jurisdiction other than Singapore, 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 (Cap. 186) under the law of or by delegation from an authority of a country or jurisdiction other than Singapore;

“foreign representative”, in respect of a licensed financial adviser or a specified exempt financial adviser, means a representative of the licensed financial adviser or the specified exempt financial adviser, who is —

- (a) ordinarily resident outside Singapore;
- (b) not an appointed or provisional representative of any principal in Singapore; and
- (c) carries out for the licensed financial adviser or the specified exempt financial adviser, any financial advisory service provided by its foreign office under a cross-border arrangement;

“institutional investor” has the same meaning as in section 4A(1)(c) of the Securities and Futures Act (Cap. 289);

“specified exempt financial adviser” means a person exempted from the requirement to hold a financial adviser’s licence under section 23(1)(a), (b), (c), (d) or (e) of the Act; and

“specified investment product” has the same meaning as in regulation 2(1) of the FAR.

Exemption for foreign offices of licensed financial advisers or specified exempt financial advisers providing any financial advisory service under a cross-border arrangement

3. Subject to regulation 5, a licensed financial adviser or a specified exempt financial adviser is exempt from —

- (a) sections 22A, 23B(3), 25 to 29, 32, 33, 34 and 36 of the Act in respect of any financial advisory service provided by its foreign office under a cross-border arrangement;
- (b) regulations 18B, 20, 21, 22, and 22D of the FAR in respect of any financial advisory service provided by its foreign office under a cross-border arrangement;
- (c) section 38 of the Act in respect of foreign representatives that act as representatives in respect of any financial advisory service provided by its foreign office under a cross-border arrangement and supervisors that are responsible, whether directly or indirectly, for the supervision or management of the conduct and performance of the foreign representatives or other such supervisors; and
- (d) section 39(3)(a) of the Act in respect of foreign representatives that act as representatives in respect of any financial advisory service provided by its foreign office under a cross-border arrangement.

Exemption for foreign representatives providing any financial advisory service under a cross-border arrangement

4. A foreign representative of a licensed financial adviser or a specified exempt financial adviser who is exempted under regulation 3 is exempt from:

- (a) sections 22A, 23B(1) and 23B(1A) of the Act; and
- (b) regulation 21(3) of the FAR,

when acting as a representative in respect of any financial advisory service provided under a cross-border arrangement.

Scope of exemptions under regulation 3

5.—(1) The exemptions under regulation 3 only apply if —

- (a) the licensed financial adviser or the specified exempt financial adviser is subject to regulatory oversight by a foreign regulatory authority in a foreign jurisdiction in respect of the activities of its foreign office under the cross-border arrangement;
- (b) the licensed financial adviser or the specified exempt financial adviser is —
 - (i) subject to AML/CFT requirements in the foreign jurisdiction mentioned in paragraph (a) that are consistent with the standards set by the FATF; and
 - (ii) supervised by a foreign regulatory authority in that foreign jurisdiction in respect of compliance with the AML/CFT requirements;
- (c) the foreign jurisdiction mentioned in paragraph (a) is —
 - (i) not subject to any sanction imposed pursuant to a Resolution of the Security Council of the United Nations; or
 - (ii) subject to a sanction imposed pursuant to a Resolution of the Security Council of the United Nations, but the Authority has given its approval in writing for the commencement or continuation of the cross-border arrangement;

- (d) the licensed financial adviser or the specified exempt financial adviser carries on business in the financial advisory service mentioned in regulation 3 with classes of investors, that the licensed financial adviser is restricted to under conditions or restrictions in its financial adviser's licence or the specified exempt financial adviser is restricted to under conditions or restrictions imposed on the specified exempt financial adviser; and
- (e) the licensed financial adviser or the specified exempt financial adviser does not carry on business in the financial advisory service mentioned in regulation 3 with any person who is not an accredited investor, institutional investor or expert investor.

(2) Paragraph (1) does not apply if the licensed financial adviser or the specified exempt financial adviser, is a person mentioned in regulation 6(3) until the date the licensed financial adviser or the specified exempt financial adviser (as the case may be) lodges with the Authority a notice of the cross-border arrangement in a form to be specified by the Authority.

Cessation of exemptions under regulation 3

6.—(1) A licensed financial adviser or a specified exempt financial adviser, who is otherwise exempted under regulation 3, shall not be or shall cease to be so exempted, if the licensed financial adviser or the specified exempt financial adviser does not lodge with the Authority a notice of the cross-border arrangement in a form to be specified by the Authority:

- (a) within 14 days from the date that the licensed financial adviser or specified exempt financial adviser commences business in providing a financial advisory service under the cross-border arrangement in reliance on the exemptions under regulation 3; or
- (b) in the case of a person mentioned in paragraph (3), on or before 8 April 2022.

(2) A person who acts as a foreign representative of a licensed financial adviser or a specified exempt financial adviser, who is otherwise exempted under regulation 4, shall not be or shall cease to be so exempted, if the exemption granted to the licensed financial adviser or the specified exempt financial adviser ceases in accordance with paragraph (1).

(3) The following persons are mentioned for the purpose of paragraph (1)(b):

- (a) a specified exempt financial adviser whose foreign office was, immediately before 9 October 2021, carrying on business in providing any financial advisory service in respect of a specified investment product under a cross-border arrangement in reliance on the exemption under regulation 40BC of the FAR;
- (b) a licensed financial adviser whose foreign office was, immediately before 9 October 2021, carrying on business in providing any financial advisory service in respect of a specified investment product under a cross-border arrangement in reliance on the exemption under regulation 40BB(1) of the FAR.