



Monetary Authority of Singapore

SECURITIES AND FUTURES ACT (CAP. 289)

**GUIDELINES ON APPLICATIONS FOR APPROVAL OF
ARRANGEMENTS UNDER PARAGRAPH 9 OF THE THIRD
SCHEDULE TO THE SECURITIES AND FUTURES ACT**

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**GUIDELINES ON APPLICATIONS FOR APPROVAL OF ARRANGEMENTS
UNDER PARAGRAPH 9 OF THE THIRD SCHEDULE TO THE SECURITIES
AND FUTURES ACT**

1 Purpose of these Guidelines

1.1 These Guidelines are issued pursuant to section 321 of the Securities and Futures Act (Cap. 289) [“SFA”] to provide guidance on approval of arrangements under paragraph 9 of the Third Schedule to the SFA [“Paragraph 9”].

[Amended on 1 July 2005]

1.2 These Guidelines set out the Monetary Authority of Singapore’s [“the Authority”] assessment criteria and the application procedures for approval of arrangements under Paragraph 9.

2 Applicability of Paragraph 9

2.1 Section 82(1) of the SFA provides that no person shall, whether as principal or agent, carry on business in any regulated activity as specified in the Second Schedule to the SFA, or hold himself out as carrying on such business for any regulated activity¹ under the SFA, unless he is a holder of a capital markets services licence for that regulated activity or he is a person exempted under section 99 of the SFA.

2.2 It is further provided in section 82(2) of the SFA that the licensing requirement in subsection (1) shall not apply to any person specified in the Third Schedule to the SFA. In particular, Paragraph 9 allows a foreign company to carry on any regulated activity that is effected under an arrangement between the foreign company and its related corporation licensed under the SFA or exempted under section 99(1)(a), (b), (c) or (d) of the SFA, where such arrangement is approved by the Authority. In addition, regulation 14(3) of the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10) provides

¹ As defined in section 2(1) of the SFA.

that any person who acts as a representative of a foreign company specified in Paragraph 9 shall be exempted from section 99B(1) of the SFA, in so far as the representative complies with any conditions or restrictions imposed on the foreign company pursuant to an approval granted by the Authority for the arrangement between the foreign company and its related corporation under Paragraph 9, where those conditions and restrictions are applicable to the representative.

[Amended on 1 July 2005]

[Amended on 26 November 2010]

3 Assessment Criteria

3.1 The Authority will take a facilitative approach to the approval of arrangements between an entity that is licensed under the SFA or exempt under section 99(1)(a), (b), (c) or (d) of the SFA [“Singapore Entity”] and its foreign related corporation(s). While we recognise that many such arrangements form a part of legitimate business activities, it is not the Authority’s intent that an approval granted under Paragraph 9 be regarded as encouraging the establishment of entities in Singapore that –

- a. are no more than shell companies;
- b. are marketing entities with minimal business presence; or
- c. facilitate business practices or market conduct that could undermine regulatory integrity, or pose a risk to financial stability and market confidence².

[Amended on 26 November 2010]

[Amended on 13 May 2011]

3.2 In making an application for approval of the arrangement under Paragraph 9, the Singapore Entity should ensure that its foreign related corporation(s) meet the following criteria:

- a. it has maintained a track record of at least the past 3 years³ in the proposed activity to be conducted;
- b. it possesses competence in the specific area of business that it is proposing to effect under the arrangement;

² An example of such arrangement is one that facilitates the execution of trades by Singapore-domiciled customers on approved exchanges in Singapore through the foreign related corporation(s), when the execution of such trades could be effected through the Singapore Entity on a fully disclosed basis.

³ This criterion is based on the regulated activity to be provided by the foreign related corporation(s), and not on specific product offerings. The Authority would consider exceptions to the requirement of 3 years track record on a case-by-case basis, taking into account organizational changes, reputation, experience and competency of the group of related corporations.

- c. it discharges its functions in an efficient, honest and fair manner;
- d. it maintains a good ranking⁴ in its home country; and
- e. it is subject to proper supervision by its home regulatory authority for the activities carried out under the arrangement⁵.

[Amended on 26 November 2010]

- 3.3 In assessing an application, the Authority will take into consideration:
- a. the nature of the regulated activities proposed to be effected under the arrangement;
 - b. the roles of the Singapore Entity and its foreign related corporation(s) in relation to the arrangement;
 - c. the adequacy of controls and procedures⁶ and management oversight of the proposed activities;
 - d. the adequacy of record keeping and documentation systems to ensure proper audit trail in relation to the arrangement; and
 - e. the target clientele.

[Amended on 26 November 2010]

3.4 Since rules, regulations and market practices vary across jurisdictions, the Authority may for prudential reasons give favourable consideration to arrangements where certain key processes of the regulated activity are undertaken or controlled by the Singapore Entity. The Authority will take a holistic view when assessing the arrangement, which may involve more than one foreign related corporations or more than one regulated activities under the SFA or both.

3.5 Please refer to Appendix I⁷ for an illustrative list on how the Authority may view a proposed arrangement for a regulated activity under the different scenarios where some parts of the process are undertaken in Singapore and other parts abroad. References to the term "Local" in Appendix 1 connotes that part of the process is undertaken by the Singapore Entity while "Foreign" means that part of the process is undertaken by its foreign

⁴ In assessing good ranking, the Authority considers the reputation and financial standing of the foreign related corporation(s).

⁵ The applicant may be asked to provide evidence that the business conduct rules, degree of investor protection, industry competency standards, investigative and disciplinary powers of the home regulator are comparable to those in Singapore.

⁶ These include risk management systems, mechanisms for resolving disputes or handling complaints and investor recourse.

⁷ Approval for arrangements under Paragraph 9 includes all regulated activities under the SFA; some may not be illustrated in the examples given in Appendix I.

related corporation(s). For most regulated activities, the Authority would expect “Know-Your-Customer” (“KYC”) due diligence, order placement and client servicing⁸ to be provided by the Singapore Entity.

[Amended on 1 July 2005]

[Amended on 26 November 2010]

4 Target Clientele

4.1 The Authority will also take into consideration the type of customers that the business carried on in the regulated activity is targeting, including whether the customers are accredited investors⁹, expert investors¹⁰, institutional investors¹¹ or retail investors. Specifically where the arrangements are targeted at retail investors, the Singapore Entity should have proper risk disclosure for the investors and also put in place procedures for dealing with disputes or complaints from the investors. In addition, there should be adequate procedures for record keeping and access to records kept overseas to ensure a proper audit trail.

[Amended on 1 July 2005]

4.2 Generally, the Authority would have fewer regulatory concerns about arrangements targeting accredited investors, expert investors or institutional investors due to their ability to better safeguard their own interests. This applies to arrangements involving investment vehicles which fall within the definition of “accredited investor” in section 4A of the SFA.

[Amended on 1 July 2005]

4.3 For arrangements involving investment vehicles which do not fall within the definition of “accredited investors” in section 4(A) of the SFA, applicants should apply a “look-through” method to ascertain whether the end-beneficiaries of such investment vehicles satisfy the definition of “accredited investors”, “expert investors” or “institutional investors” in section 4A(1) of the SFA, as the case may be. Where all end beneficiaries of the investment vehicle satisfy the applicable definition of “accredited investor”, “expert investor” or “institutional investor”, the Authority would have fewer regulatory concerns when evaluating an application for approval under Paragraph 9.

[Amended on 1 July 2005]

⁸ Client servicing would include sales, marketing, solicitation and other pre-contract and pre-transaction dealings. Due to the wide range of activities encompassed within the definition of client servicing, applicants are required to furnish detailed information on such activities to be conducted by the Singapore Entity.

⁹ As defined in section 4A(1) of the SFA

¹⁰ As defined in section 4A(1) of the SFA

¹¹ As defined in section 4A(1) of the SFA

5 Applications and Supporting Documents

5.1 An application for approval under Paragraph 9 must state clearly the specific arrangement to be approved by the Authority. An “arrangement” for the purposes of an application under Paragraph 9 has three main aspects: the entities involved in undertaking the activity including the roles and responsibilities of the Singapore Entity and its foreign related corporation(s); the types of customers; and the specific type of regulated activity, as defined in the Second Schedule of the SFA. The application should focus on providing information on each of these aspects, keeping in mind the assessment criteria in paragraphs 3 and 4. In approving an application, the Authority would expect the roles, responsibilities and service standards of the various parties in the proposed arrangement to be clearly formalised in a service level agreement or an equivalent document. A working guide on information and supporting documents to be included in the application is provided at Appendix II.

[Amended on 26 November 2010]

5.2 An applicant may submit one application for an arrangement that entails approval under both Paragraph 9 and paragraph 11 of the First Schedule to the Financial Advisers Act (Cap. 110) [“Paragraph 11”]. Where an arrangement involving more than one foreign related corporation or regulated activity has common processes, procedures and controls, an applicant may describe these once rather than repeating them for each entity. This will allow the Authority to assess the arrangement in the entirety.

5.3 In addition, the applicant should ensure that there is proper documentation of the arrangements for audit trail purposes. The Authority may, where necessary, request such documentation from the Singapore Entity.

5.4 In granting the approval under Paragraph 9 or Paragraph 11 or both, the Authority reserves the right to review the approval of any arrangement as the Authority sees fit, including where there is material change in the circumstances of the arrangement. A material change refers to change in the substance of the arrangement rather than one of form. Such change may be in relation to the type of regulated activity, the target clientele and the role of the Singapore Entity. An organisational restructure, change in names of entities or other similar organisational changes, which do not affect the substance of the arrangement, would not normally be considered material. The approval letter will set out the specific circumstances when a new approval or notification may be required.

APPENDIX I

**ILLUSTRATIVE LIST OF PROPOSED ASSESSMENT OF APPLICATIONS FOR APPROVAL OF
ARRANGEMENTS UNDER PARAGRAPH 9**

TABLE 1

Dealing in Capital Markets Products, Providing Custodial Services, Product Financing

| Type of Arrangement | Process Chain | | | | | | | | Assessment |
|---------------------|----------------------------------|------------------------|-----------------|--------------------|------------------|-------------------------------------------|-----------------------|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | Opening of Account ¹² | Order Placement | Trade Execution | Trade Confirmation | Trade Settlement | Client Servicing e.g. admin, enquiries | Custodial Arrangement | Product Financing | |
| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | |
| 1 | Foreign | Local | Foreign | Local | Foreign | Part Local and Foreign | Foreign | Local or Foreign | TO APPROVE |
| 2 | Foreign | Local | Foreign | Foreign | Foreign | Part Local and Foreign | Foreign | Local or Foreign | TO APPROVE |
| 3 | Foreign | Part Local and Foreign | Foreign | Foreign | Foreign | Part Local and Foreign | Foreign | Foreign | The application would be reviewed favourably if: <ul style="list-style-type: none"> • Clientele for the proposed arrangement is restricted to accredited investors, expert |

¹² Where the account is maintained and where transactions are booked

TABLE 2**Fund Management**

| Type of Arrangement | Process Chain | | | | Assessment |
|---------------------|--------------------|---------------------|-----------------------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | Signing of Mandate | Management of Funds | Marketing/ Client Servicing | Custodial Services | |
| | (1) | (2) | (3) | (4) | |
| 1 | Foreign | Local or Foreign | Local | Local or Foreign | TO APPROVE |
| 2 | Foreign | Local or Foreign | Part Local and Foreign | Local or Foreign | <p>Applications would be reviewed favourably where:</p> <ul style="list-style-type: none"> ● Clientele for the proposed arrangement is restricted to accredited investors, expert investors or institutional investors; [Amended on 1 July 2005] ● Substantial portion of Marketing/Client Servicing is carried out by the Singapore Entity (please provide details on the activities being carried out). ● KYC due diligence is carried out by the Singapore Entity and proper documentation is available upon request by the Authority. [Amended on 26 November 2010] |
| 3 | Foreign | Foreign | Foreign | Foreign | NO APPROVAL |

Appendix II

INFORMATION TO BE SUBMITTED IN THE APPLICATION FOR APPROVAL UNDER PARAGRAPH 9

This is a working guide to aid applicants in the preparation of their submissions. Applicants may furnish additional information that is deemed to be relevant and useful in support of their applications. Applications are to be made by the Singapore Entity and should cover all pertinent facts, in particular, to focus on the nature of the regulated activities proposed to be effected under the arrangement as well as the roles of the Singapore Entity and its foreign related corporation(s), in relation to the arrangement. If necessary, descriptions on the flow of transaction should be depicted in a flow chart.

The Authority should be notified immediately if there is any change in the information furnished in the application after it has been submitted for approval.

A. General Information

1. Name of foreign related corporation.
2. Name of the Singapore Entity that is relevant to this application. Please state whether the Singapore Entity is licensed under the SFA or exempted under Section 99(1)(a), (b), (c) or (d) of the SFA. (Please present information in a table format if there are more than two relevant Singapore Entities.)
3. Describe the relationship and shareholding structure between the foreign related corporation and the Singapore Entity. Please attach the organisation chart, and include any other related entities that are operating in Singapore. (Detailed description of such other related entities need not be provided unless they form part of the arrangement.)

B. Information about the foreign related corporation

4. Date and place of incorporation.
5. Nature of business.
6. Licensing status.

Whether the foreign related corporation is licensed, registered, approved or otherwise regulated, or exempted from licensing under the law of its country of origin. Please also include information pertaining to membership(s) with overseas exchanges.

For each licence, registration or membership, please specify: a.

Licence / Registration / Membership Type

b. Name of Licensing Authorities / Exchanges

6A. Latest audited annual / financial report of the parent group and the foreign related corporation

(Applicant may provide website where such information is available.)

[Amended on 26 November 2010]

6B. Describe the group's internal audit process and provide a latest copy of the internal audit of the Singapore Entity.

[Amended on 26 November 2010]

C. Description of the arrangement

7. For each regulated activity that the foreign related corporation intends to effect under the arrangement, please specify:

a. Type of regulated activity, as defined under the Second Schedule of the SFA.

b. Whether the regulated activity intended to be carried out by the foreign related corporation is regulated in the home jurisdiction of the foreign related corporation. If not, please state whether such regulated activity is exempted from regulation in the home jurisdiction. Please also include the foreign related corporation's experience (in terms of the number of years) in the proposed capital markets services activity.

[Amended on 1 July 2005]

ba. Describe the regulatory status and requirements relevant to the foreign related corporation in respect of the following, and whether they exceed or are comparable to the Singapore regime. (Applicant may wish to cite the relevant legislation in the foreign related corporation's home jurisdiction.)

a. Licensing status

b. Capital requirements

c. Business conduct rules to ensure market integrity

d. Degree of investor protection

e. Book keeping requirements

- f. Audit and reporting requirements
- g. Investigative powers of regulator
- h. Industry competency standards (e.g. examination requirements)

Where the regulatory requirements are materially different, describe the relevant mitigating measures the Singapore company and/or the foreign related corporation has or it is prepared to take.

[Amended on 26 November 2010]

- c. Type of customers. Please state whether the customers are accredited investors, expert investors, institutional investors or retail investors. Where the arrangements involve retail investors, please provide a breakdown of the proportion of clients that would constitute accredited investors, expert investors, institutional investors, and retail investors.

[Amended on 1 July 2005]

- d. Description of the flow of transactions that the foreign related corporation intends to effect under the arrangement. Please provide details of role played by the Singapore Entity.

- e. Reason(s) for the arrangement between the Singapore Entity and the foreign related corporation(s) under this application.

- ea. Describe procedures on account opening and KYC due diligence. Please furnish sample of KYC form.

[Amended on 26 November 2010]

- f. Whether there are adequate systems and controls in place that will ensure the soundness and integrity of the regulated activity to be provided by the foreign related corporation, including operating procedures on customer complaints handling, or dispute resolution, maintenance of and access to client transaction records kept by the foreign related corporation in connection with the proposed arrangement, etc. Please provide a brief description of such systems and controls.

[Amended on 26 November 2010]

- g. Highlight any potential conflict of interests on the part of the Singapore Entity that may arise as a result of the arrangement and explain how such conflict will be resolved or mitigated.

D. Information on the legal procedures and contractual relationships derived from the arrangement¹³.

8. Describe the contractual relationships between:
 - a. the customers and the Singapore Entity;
 - b. the customers and the foreign related corporation; and
 - c. the Singapore Entity and the foreign related corporation.

Please provide draft or sample service agreement or equivalent document setting out the terms and conditions, and the roles and service obligations in connection with the proposed arrangement.

[Amended on 26 November 2010]

9. Information on the procedures for dealing with complaints from customers, including whether there is a disclosure regime for customers. Please provide information on the recourse available to customers, in the case of fraud or negligence on the part of the Singapore Entity or the foreign related corporation.

Please furnish any relevant provisions on client recourse that are set out in the agreement between the client and the Singapore Entity / foreign related corporation.

[Amended on 26 November 2010]

10. Details of the types and frequency of reports, statements and other documents to be furnished to customers and whether the Singapore Entity would perform the reconciliation and verification of reports and statements.

E Other Information

11. Any other information that is relevant to the application. Please provide supporting documents where possible.

¹³ Point D9 is not required to be furnished if the proposed arrangement only serves accredited investors, expert investors or institutional investors.

[Amended on 1 July 2005]