



Monetary Authority of Singapore

**FINANCIAL ADVISERS ACT
(CAP. 110)**

**GUIDELINES ON APPLICATIONS FOR APPROVAL OF
ARRANGEMENTS UNDER PARAGRAPH 11 OF THE
FIRST SCHEDULE TO THE FINANCIAL ADVISERS ACT**

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GUIDELINES ON APPLICATIONS FOR APPROVAL OF ARRANGEMENT UNDER PARAGRAPH 11 OF THE FIRST SCHEDULE TO THE FINANCIAL ADVISERS ACT

Purpose of these Guidelines on Applications for Approval of Arrangement under Paragraph 11 of the First Schedule to the Financial Advisers Act [“these Guidelines”]

1 These Guidelines are issued pursuant to section 64 of the Financial Advisers Act (Cap. 110) [“the Act”] to provide guidance on approval of arrangements under paragraph 11 of the First Schedule to the Act [“Paragraph 11”].

[Amended on 1 July 2005]

2 These Guidelines set out the Monetary Authority of Singapore [“the Authority”]’s assessment criteria and the application procedures for approval of arrangements under Paragraph 11.

Definitions

3 For the purposes of these Guidelines:

“accredited investors” has the same meaning as in regulation 2(1) of the Financial Advisers Regulations (Rg 2) [“FAR”];

[Amended on 1 July 2005]

“expert investors” has the same meaning as in regulation 2(1) of the FAR;

[Amended on 1 July 2005]

“financial adviser” has the same meaning as in section 2(1) of the Act;

[Amended on 1 July 2005]

“financial advisory service” has the same meaning as in section 2(1) of the Act;

[Amended on 1 July 2005]

“institutional investors” has the same meaning as in regulation 2(1) of the FAR; and

[Amended on 1 July 2005]

“investment product” has the same meaning as in section 2(1) of the Act.

[Amended on 1 July 2005]

3A The expressions used in these Guidelines, shall, except where expressly defined in these Guidelines and where the context otherwise requires, have the same meanings as in the Act.

[Amended on 26 November 2010]

Applicability of Paragraph 11

4 Section 6(1) of the Act provides that no person shall act as a financial adviser in Singapore in respect of any financial advisory service unless he is authorised to do so by a financial adviser's licence or is an exempt financial adviser.

[Amended on 1 July 2005]

5 In particular, Paragraph 11 allows a foreign company (within the meaning of section 4(1) of the Companies Act (Cap. 50)) whose provision of any financial advisory service is effected under an arrangement between the foreign company (on the one hand) and its related corporation which is licensed under the Act or exempt under section 23 (other than subsections (1)(ea) and (1)(f)) (on the other hand), where such arrangement is approved by the Authority. Individuals providing any financial advisory service for the foreign related corporation under an arrangement approved by the Authority are not representatives as defined in the Act and are therefore not required to be an appointed or provisional representative under the Act.

[Amended on 1 July 2005]

[Amended on 26 November 2010]

Assessment Criteria

6 The Authority will take a facilitative approach to the approval of arrangements between an entity that is licensed under the Act or exempt under section 23 (other than subsections (1)(e)(a) and (1)(f)) [“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 11 be regarded as encouraging the establishment of entities in Singapore that are no more than shell companies, or facilitate business practices or market conduct that could undermine regulatory integrity, or pose a risk to financial stability and market confidence.

[Amended on 1 July 2005]

[Amended on 26 November 2010]

7 In making an application for approval of the arrangement under Paragraph 11, the Singapore entity should ensure that its foreign related corporation(s) meets the following criteria:

- (a) it has maintained a track record¹ of at least the past 3 years in the proposed financial advisory service;
- (b) it possesses competence in the specific area of business that it is proposing to effect under the arrangement;
- (c) it discharges its functions in an efficient, honest and fair manner;
- (d) it maintains a good ranking² in its home country; and
- (e) it is subject to proper supervision by its home regulatory authority.

8 In assessing an application, the Authority will take into consideration:

- (a) the nature of the financial advisory services 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 procedures³ and management oversight over the proposed financial advisory services;
- (d) the adequacy of record keeping and documentation systems to ensure proper audit trail in relation to the arrangement; and

¹ This criteria is based on the financial advisory service 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 organisational changes, reputation, experience and competency of the group of related corporations.

² In assessing good ranking, the Authority would consider the reputation and financial standing of the foreign related corporation(s).

³ These include mechanisms for resolving disputes and handling complaints and investor recourse.

(e) the target clientele.

[Amended on 26 November 2010]

9 Since rules, regulations and market practices vary across jurisdictions, the Authority may, for prudential reasons, give favorable consideration to arrangements where certain key processes, such as Advisory⁴ and Client Servicing⁵, of the financial advisory services provided 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 corporation or more than one financial advisory service provided under the Act or both.

[Amended on 1 July 2005]

10 Please refer to Appendix I⁶ for an illustrative list on how the Authority may view a proposed arrangement for a financial advisory service under the different scenarios where some parts of the process are undertaken in Singapore and other parts undertaken abroad. References to the term "Local" in Appendix I connotes that the process is undertaken by the Singapore entity while "Foreign" means that the process is undertaken by its foreign related corporation(s). Using Table 1 in Appendix I for illustration purpose, the provision of financial advice is segregated into two main processes, namely, Prospecting⁷ and Advisory. For the purpose of determining whether to grant an approval under Paragraph 11, the Authority will view a proposed arrangement favorably if the key process of Advisory is undertaken by the Singapore entity. Although the Advisory process can be further broken down into the individual processes of “know your client”, needs analysis and product recommendation, the Authority considers that there would be practical difficulties if these individual processes are separately provided by the Singapore entity and its foreign related corporation(s).

[Amended on 1 July 2005]

⁴ “Advisory” process includes “know your client”, needs analysis and product recommendation.

⁵ “Client Servicing” process includes sales, marketing, solicitation, and other pre-contract and pre-transaction activities. Due to the wide range of activities encompassed within the definition of client servicing, applicants are required to furnish detailed information of such activities to be provided by the Singapore entity.

⁶ Approval is required for all arrangements involving the provision of any financial advisory services under the Act; some of which may not be illustrated in the examples given in Appendix I.

⁷ Prospecting refers to the process of searching for clients.

Target Clientele

11 The Authority will also take into consideration the type of clients that the business carried on under the proposed arrangement is targeting, including whether the clients are accredited investors, expert investors, institutional investors or retail investors. Specifically where the arrangements are targeted at retail investors, the Singapore entity should ensure that there is proper risk disclosure to investors and also put in place procedures for dealing with disputes or complaints from 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]

12 Generally, the Authority would have fewer regulatory concerns about arrangements targeting accredited investors, expert investors or institutional investors due to their ability to safeguard their own interests. This applies to arrangements involving investment vehicles which fall within the definition of “accredited investor” in regulation 2(1) of the FAR.

[Amended on 1 July 2005]

13 For arrangements involving investment vehicles which do not fall within the definition of “accredited investor” in regulation 2(1) of the FAR, applicants should apply a “look-through” method to ascertain whether the end-beneficiaries of such investment vehicles satisfy the definition of “accredited investor”, “expert investor” or “institutional investor” in regulation 2(1) of the FAR, 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 11.

[Amended on 1 July 2005]

Applications

14 An application for approval under Paragraph 11 must state clearly the specific arrangement to be approved by the Authority. An “arrangement” for the purposes of an application under Paragraph 11 has three main aspects: the entities involved in providing the financial advisory service including the

roles and responsibilities of the Singapore entity and its foreign related corporation(s); the type(s) of clients; and the type of financial advisory service, as specified in the Second Schedule to the Act. The application should focus on providing information on each of these aspects, keeping in mind the assessment criteria in paragraphs 6 to 13. 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 1 July 2005]

[Amended on 26 November 2010]

15 An applicant may submit one application for an arrangement that entails approval under both Paragraph 11 and Paragraph 9 of the Third Schedule to the Securities and Futures Act (Cap. 289) [“Paragraph 9”]. Where an arrangement involving more than one foreign related corporation or financial advisory service has common processes, procedures and controls, an applicant may describe these processes, procedures and controls once rather than repeating them for each entity involved. This will allow the Authority to assess the arrangement in the entirety.

[Amended on 1 July 2005]

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

[Amended on 1 July 2005]

17 In granting the approval under Paragraph 11 or Paragraph 9 or both, the Authority reserves the right to review the approval of any arrangement as the Authority sees fit, including where there is a 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 financial advisory service provided, the target clientele or 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 specific circumstances when a new approval or notification may be required.

[Amended on 1 July 2005]

**ILLUSTRATIVE LIST OF PROPOSED ASSESSMENT OF APPLICATIONS FOR APPROVAL OF
ARRANGEMENTS UNDER PARAGRAPH 11**

**Table 1 – Advising Others Concerning Any Investment Product, Other Than Advising Others by Issuing or
Promulgating Research Analyses or Research Reports Concerning Any Investment Product**

Type of Arrangement	Process Chain		Assessment
	Prospecting (searching for clients) (1)	Advisory (know your client, needs analysis and product recommendation) (2)	
1	Foreign	Local	To Approve
2	Local	Foreign	The application would be viewed positively if: <ul style="list-style-type: none"> • the foreign related corporation has the necessary expertise to undertake the Advisory process; and • clients of proposed arrangement are restricted to accredited investors, expert investors or institutional investors.
3	Local	Partly Local and Partly Foreign ⁸	
4	Foreign	Foreign	No Approval

⁸ This means the Advisory process is undertaken by the Singapore entity with assistance from foreign related corporation, and vice-versa.

Table 2 – Advising Others by Issuing or Promulgating Research Analyses or Research Reports Concerning Any Investment Product

Type of Arrangement	Process Chain		Assessment
	Producing Research Report (1)	Distributing Research Report (2)	
1	Local	Foreign	Not applicable for Paragraph 11 application.
2	Foreign	Local	The application would be viewed positively if the Singapore entity bears responsibility for the research analyses or research reports.
3	Foreign	Foreign	The application would be viewed positively if the foreign related corporation has the necessary expertise ⁹ to produce the research analyses or research reports.

⁹ The Authority will adopt a broad view in assessing whether the foreign related corporation has the necessary expertise. For instance, a foreign related corporation domiciled in country A is presumed to have the necessary expertise to provide research on country A securities.

Table 3 – Marketing of Collective Investment Schemes [“CIS”]/Arranging Contract of Insurance in respect of Life Policies

Type of Arrangement	Process Chain			Assessment
	Completing Order Form / Proposal Form (liaising with client) (1)	Place Order with Fund Manager/ Insurance Co ¹⁰ (2)	Client Servicing (e.g. admin, queries) (3)	
1	Local	Local	Foreign	The application would be viewed positively if clients of the proposed arrangement are restricted to accredited investors, expert investors or institutional investors.
2	Foreign	Local	Local	
3	Local	Foreign	Local	
4	Local	Foreign	Foreign	
5	Foreign	Foreign	Local	
6	Foreign	Local	Foreign	The application would be viewed positively if: <ul style="list-style-type: none"> • clients of the proposed arrangement are restricted to accredited investors, expert investors or institutional investors; and • the foreign related corporation does not undertake the Advisory

¹⁰ This refers to process where the Singapore entity or foreign related corporation places the order with a fund manager / insurance company. Prior approval would have been obtained from the Authority for placement with foreign fund recognised under section 287 of the SFA/unregistered insurers under section 33(4) of the Insurance Act.

				process under Table 1 in respect of any client who purchases a unit of a CIS or enters into a contract of insurance in respect of life policies.
7	Foreign	Foreign	Foreign	No Approval

[Amended on 1 July 2005]

Appendix II

INFORMATION TO BE SUBMITTED IN THE APPLICATION FOR APPROVAL UNDER PARAGRAPH 11

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 financial advisory services 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 chart. Applicants should furnish supporting documents regarding the information furnished in their applications, where possible.

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 Act or exempted under section 23 (other than subsections (1)(e)(a) and (1)(f)) of the Act. (Please present information in a table format if there are more than two relevant Singapore entities.)

[Amended on 26 November 2010]

- 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 securities exchanges or overseas futures exchanges.

For each licence, registration or membership, please specify:

- (a) Licence / Registration / Membership Type; and
- (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 financial advisory service that the foreign related corporation intends to effect under the arrangement, please specify:
 - (a) Type of financial advisory service as specified in the Second Schedule to the Act.
 - (b) Whether the type of financial advisory service proposed to be undertaken by the foreign related corporation is regulated in the home jurisdiction of the foreign related

corporation. If not, please state whether such financial advisory service 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 financial advisory service.

- (ba) 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
 - d. Degree of investor protection
 - e. Book keeping requirements
 - f. Audit and reporting requirements
 - g. Investigative powers of regulator
 - h. Industry competency standards

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

[Amended on 26 November 2010]

- (c) Type of clients. Please state whether clients 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.
- (d) Description of the flow of transactions that the foreign related corporation intends to effect under the arrangement. Please provide details of the role played by the Singapore entity.

- (e) Reason(s) for the arrangement between the Singapore entity and the foreign related corporation under this application.
- (f) Whether there are adequate systems and controls in place that will ensure the soundness and integrity of the financial advisory service to be provided by the foreign related corporation, including operating procedures on client complaint handling and dispute resolution, maintenance of and access to client transaction records kept by the foreign related corporation in connection with the proposed arrangement. Please provide a brief description of such systems and controls.

[Amended on 26 November 2010]

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

D Information on the legal procedures and contractual relationships derived from the arrangement¹¹

- 8 Describe the contractual relationships between:
- (a) the clients and the Singapore entity;
 - (b) the clients 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]

Information on the procedures for dealing with complaints from clients, including whether there is a disclosure regime for clients. Please provide information on the recourse available to

¹¹ Point D9 is not required to be furnished if the proposed arrangement only serves accredited investors, expert investors, or institutional investors.

clients in the event of fraud or negligence on the part of the Singapore entity or the foreign related corporation.

[Amended on 26 November 2010]

- 9 Please furnish any relevant provisions on client recourse that are set out in the agreement between the client and the Singapore entity or 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 clients and whether the Singapore entity does 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.

[Amended on 1 July 2005]