

**NOTICE ON REQUIREMENTS IN RELATION TO CROSS-BORDER ARRANGEMENTS UNDER THE SECURITIES AND FUTURES (EXEMPTION FOR CROSS-BORDER ARRANGEMENTS) (FOREIGN RELATED CORPORATIONS) REGULATIONS 2021**

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**1. INTRODUCTION**

- 1.1. This Notice is issued pursuant to section 101 of the Securities and Futures Act (Cap. 289) (“SFA”) and applies to all specified persons as defined under regulation 2(1) of the Securities and Futures (Exemption for Cross-Border Arrangements) (Foreign Related Corporations) Regulations 2021 (“SF(ECBA)(FRC)R”) in relation to qualifying businesses carried out by their FRCs under cross-border arrangements in reliance on the exemptions in the SF(ECBA)(FRC)R.

**2. DEFINITIONS**

- 2.1. For the purposes of this Notice:

“SF(LCB)R” means Securities and Futures (Licensing and Conduct of Business) Regulations;

“SGX-ST” means the Singapore Exchange Securities Trading Limited;

“Specified Regulated Entity” means a specified person who has entered into a cross-border arrangement with its FRC; and

“transaction-related documentation” means any document that is issued or received by a FRC in the course of carrying out a transaction under the cross-border arrangement.

- 2.2. The expressions used in this Notice shall, except where defined in this Notice or where the context otherwise requires, have the same meanings as in regulation 2 of the SF(ECBA)(FRC)R and sections 2(1), 4A, 81SF, 239(1) and 283(1) of the SFA.

### **3. OBJECT OF NOTICE AND APPLICATION OF REQUIREMENTS UNDER PARAGRAPH 5**

- 3.1. The requirements set out in this Notice serve to mitigate the risks from qualifying businesses carried on under cross-border arrangements between Specified Regulated Entities and their FRCs.
- 3.2. The requirements set out in paragraph 5 below only apply to the Specified Regulated Entity from the following dates:
- (a) where the FRC of the Specified Regulated Entity relies on the exemptions under regulation 4 of the SF(ECBA)(FRC)R, the date the FRC commences business in a regulated activity under a cross-border arrangement in reliance on the exemptions under regulation 4 of the SF(ECBA)(FRC)R;
  - (b) where the FRC of the Specified Regulated Entity relies on the exemptions under regulation 5 of the SF(ECBA)(FRC)R, the date of lodgement of the notice mentioned in paragraph 4.2.

### **4. NOTIFICATION OF CROSS-BORDER ARRANGEMENTS**

- 4.1. Where a FRC of a Specified Regulated Entity relies on the exemptions under regulation 4 of the SF(ECBA)(FRC)R, the Specified Regulated Entity must lodge with the Authority a notice setting out the details of the cross-border arrangement in Form FN (in accordance with regulation 4(2) of the SF(ECBA)(FRC)R) by the 14<sup>th</sup> day after the day on which the qualifying business commences.
- 4.2. Where a FRC of a Specified Regulated Entity intends to rely on the exemptions under regulation 5 of the SF(ECBA)(FRC)R, the Specified Regulated Entity must lodge with the Authority a notice of the cross-border arrangement in Form FN (in accordance with regulation 5(1) of the SF(ECBA)(FRC)R) on or before 8 October 2022.

### **5. ONGOING REQUIREMENTS IN RELATION TO CROSS-BORDER ARRANGEMENT**

#### **5.1 Restrictions on transactions within cross-border arrangements**

- 5.1.1. In respect of cross-border arrangements where the FRC carries on business in the regulated activity of advising on corporate finance, the Specified Regulated Entity

must ensure that its FRC must not give advice on any of the following transactions that does not qualify as an Exempted Transaction under paragraph 5.1.2:

- (a) any transaction involving an offer of specified products that is —
  - (i) required to be made in or accompanied by a prospectus under Part XIII of the SFA and made in or accompanied by a prospectus in respect of the offer;
  - (ii) made in or accompanied by a profile statement in reliance on an exemption under section 240(4) or 296(2) of the SFA; or
  - (iii) made in or accompanied by an offer information statement in reliance on an exemption under section 277(1) or 305B(1) of the SFA;
- (b) any transaction in which the Take-over Code applies;
- (c) any transaction where the FRC is giving advice to any public company, a corporation whose capital markets products are listed for quotation on SGX-ST, or a corporation which is a subsidiary of a corporation whose capital markets products are listed for quotation on SGX-ST, except for a transaction where all of the following conditions are satisfied:
  - (i) the advice given by the FRC will not be circulated to the shareholders of the corporations that are not accredited investors, institutional investors or expert investors;
  - (ii) the advice given by the FRC will not be made known to the public.

5.1.2. For the purposes of paragraph 5.1.1, an Exempted Transaction is any transaction where all of the following conditions are satisfied:

- (a) the Specified Regulated Entity is a party to the transaction;
- (b) the Specified Regulated Entity is liable (whether solely or jointly with the FRC) to the person receiving the advice provided by the FRC in respect of any advice given by the FRC, under the terms of an agreement with the person receiving the advice;
- (c) the FRC is not advising a related corporation of the Specified Regulated Entity.

## 5.2. Internal Controls over Cross-Border Arrangement

5.2.1. A Specified Regulated Entity must ensure that the FRC does not carry on a qualifying business in reliance on any exemption under the SF(ECBA)(FRC)R, unless the circumstances for exemption under regulation 6(1)(b) and (e) of the SF(ECBA)(FRC)R are met.

5.2.2. The Specified Regulated Entity must:

- (a) keep or cause to be kept in or outside Singapore, the following records in relation to the cross-border arrangement:
  - (i) records of customers of the FRCs;
  - (ii) records of transactions entered into by its FRC with or on behalf of customers of the FRC, including details of the transaction or transaction-related documentation; and
  - (iii) copies of contracts or agreements entered into by its FRC with customers of the FRCs in relation to the qualifying business conducted under the cross-border arrangement;
  
- (b) keep or cause to be kept in or outside Singapore, a register of foreign representatives of its FRC containing the following information:
  - (i) the name of the foreign representative and the FRC that the foreign representative is acting for;
  - (ii) the date(s) of any visit to Singapore by a foreign representative; and
  - (iii) the purpose of any such visit and details and description of any activities conducted by the foreign representative during the visit;
  
- (c) ensure that there are written policies and procedures governing the cross-border arrangement, including but not limited to the following:
  - (i) the solicitation of customers in Singapore by foreign representatives of FRCs; and
  - (ii) the handling of complaints filed against foreign representatives of FRCs; and
  
- (d) ensure the maintenance of the written policies and procedures mentioned under sub-paragraph (c), whether in or outside Singapore.

5.2.3. The Specified Regulated Entity must provide the Authority with any of the documents mentioned in paragraph 5.2.2(a) to (c) and where applicable, the translation of such documents in the English language, upon the Authority's written request.

### 5.3. **Reporting and Notification Requirements**

5.3.1. A Specified Regulated Entity must lodge with the Authority —

- (a) a notice of change in particulars in Form FC (as set out at the Authority's website at <http://www.mas.gov.sg>) providing any change in particulars provided in the notice under paragraph 4, not later than 14 days after the date of the change;
- (b) a notice of cessation of a cross-border arrangement in Form FC (as set out at the Authority's website at <http://www.mas.gov.sg>), not later than 14 days after the date of cessation of the cross-border arrangement; and
- (c) an annual declaration in relation to its cross-border arrangement(s) in Form FR (as set out at the Authority's website at <http://www.mas.gov.sg>), not later than 5 months from the end of the financial year.

**Note:**

Under section 101(3) of the SFA, any person who contravenes any of the directions issued by the Authority shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, a further fine of \$5,000 for every day or part thereof during which the offence continues after conviction.