Global Financial Services Regulatory Guide - Singapore

4. How do the licensing requirements apply to cross-border business in your jurisdiction?

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# How do the licensing requirements apply to cross-border business in your jurisdiction?

A firm outside Singapore may be subject to Singapore laws and regulations if it conducts activities or transacts business in Singapore (even if partly) and/or targets persons in Singapore (even if the target activities are carried out wholly outside Singapore).

**Regulated activities**

Where a firm conducts its activities wholly outside Singapore, it may still be subject to Singapore laws and regulations, depending on whether the applicable statute governing that activity has extraterritorial jurisdiction. For example:

Under the Banking Act 1970, no person, whether in Singapore or elsewhere, shall accept any deposit from any person in Singapore or accept or receive in Singapore any application for a credit card or charge card. Further, a person must not, in the course of carrying on a deposit-taking business (whether in Singapore or elsewhere), accept in Singapore any deposit from any person in Singapore.

Under the Securities and Futures Act 2001 (which generally regulates capital markets activities) and the Insurance Act 1966 (which regulates insurance and insurance broking business), acts done wholly outside Singapore will be subject to regulation if they have a substantial and foreseeable effect in Singapore. Generally, a foreign entity's acts will be deemed as having a substantial and foreseeable effect in Singapore if there is solicitation or advertising of their products or services that are targeted at Singapore persons, or if there are substantial number of Singapore persons engaging in a foreign entity's regulated products or services. Acts conducted by a foreign entity partly in Singapore will also be subject to regulation.

Under the Financial Advisers Act 2001 (which regulates financial advisory services), a person is regarded as carrying out financial advisory business in Singapore if they engage in any activity or conduct intended to or likely to induce the public in Singapore to use any financial advisory service provided by them.

Under the Payment Services Act 2019, a person other than a licensed payment service provider in Singapore or an exempt payment service provider, whether in Singapore or elsewhere, must not: (i) offer to provide, or issue any advertisement containing any offer to provide, to the public in Singapore or any section of the public in Singapore, any type of payment service, whether in Singapore or elsewhere, or make an offer or invitation; or (ii) issue any advertisement containing any offer or invitation, to the public in Singapore or any section of the public in Singapore, to enter into any agreement relating to the provision by any person of any type of payment service, whether in Singapore or elsewhere, whether by themselves or through any other person in Singapore or elsewhere.

It is not the MAS’ policy intent to regulate activities conducted wholly outside Singapore where: the foreign entity is responding to unsolicited inquiries or applications from persons in Singapore; the foreign entity is servicing a client previously resident overseas who has subsequently become a resident in Singapore; or the foreign entity purchases the services of, or provides services to, a regulated person.

Specific exemptions from licensing requirements may also apply for certain regulated activities where the foreign firm is related to an entity regulated in Singapore. For example, in relation to certain activities under the Securities and Futures Act 2001 (fund management, dealing in capital markets products, etc.) and the Financial Advisers Act 2001 (providing certain financial advisory services), a foreign related entity or foreign office of a Singapore licensed entity may carry out regulated activities in Singapore for non-retail investors, under an arrangement with its related corporations in Singapore that has the requisite license, subject to meeting the boundary conditions and notification requirements.

There are also various types of product-/service-/investor-specific licensing exemptions that may apply, such as the following:

Entities dealing in bonds or advising on bonds only with or for accredited, institutional or expert investors are exempt from the requirement to obtain a license for dealing in capital markets products under the Securities and Futures Act 2001 and a financial adviser's license under the Financial Advisers Act 2001.

Entities marketing CIS with institutional investors only are exempt from the requirement to obtain a license for dealing in capital markets products under the Securities and Futures Act 2001.

Entities providing financial advisory services to institutional investors only or related corporations are exempt from holding a financial adviser's license under the Financial Advisers Act 2001.

**Foreign entities / foreign-owned entities**

Generally, in order to obtain a license, an entity may be set up as a Singapore-incorporated subsidiary or a Singapore branch of a foreign company. However, in some cases, such as fund management, dealing in capital markets products, providing financial advisory services, and payment services, the MAS actually requires that a company be incorporated in Singapore (as opposed to a branch) to obtain the license for providing such regulated services.

There are no foreign ownership restrictions, although controllers and substantial shareholders of regulated entities will need to obtain the MAS' prior approval (this is independent of whether the shareholder or controller is a foreign or Singapore person).

**Overseas-based personnel**

Where a firm is authorized to carry out regulated activities such as fund management, trading, provision of custodial services, or provision of financial advisory services, it may be required to register individuals acting on its behalf in the public register of representatives maintained by the MAS.  To accommodate situations where individuals ordinarily based outside Singapore carry out regulated activities in Singapore on behalf of their affiliates in Singapore on a temporary basis, an individual may be appointed as a temporary representative. A temporary representative is not required to comply with certain minimum examination requirements but may not carry out regulated activities in Singapore for more than six months in any 24-month period.

Broadly speaking, the appointment of directors for entities requiring a license by the MAS are also subject to the  prior approval of MAS.

**Unregulated activities**

A firm based outside Singapore should also be cautious of general business registration requirements in Singapore, even if they are conducting non-regulated activities or are exempt from licensing in Singapore. In this regard, under Singapore law, any person carrying out business or having a place of business in Singapore must register the business or company in Singapore.

**Use of certain prohibited terms**

Firms should also not transact business in Singapore under the name “bank”; carry out business in Singapore under the name “insurance,” “insurance broker” or “financial advisor”; or display the title or description “securities exchange,” “futures exchange,” “securities clearing house” or “futures clearing house” in Singapore, unless they are authorized to do so by the MAS.

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