

FREQUENTLY-ASKED-QUESTIONS - UNDERTAKING OF REGULATED ACTIVITIES BY UNLICENSED FOREIGN CAPITAL MARKET INTERMEDIARIES

Introduction

As financial firms and businesses become increasingly global, capital market intermediaries tend to seek markets and provide services across borders. This FAQ aims to assist the implementation of the provisions of the Capital Market & Services Act 2007 (CMSA) and its related subsidiary legislations with regard to carrying on regulated activities in Malaysia by foreign intermediaries.

1. What activities require a license from the SC?

A person carrying out any of the six regulated activities as defined in Schedule 2 of the CMSA will require a license from the SC. The activities are dealing in securities, trading in futures contracts, fund management, advising on corporate finance, investment advice and financial planning.

In this regard, a foreign capital market intermediary cannot carry on regulated activities in Malaysia without being licensed from the SC.

2. Are foreign capital market intermediaries allowed to advise or undertake a regulated activity on the international aspects of a transaction and meet clients locally without being licensed? For example, foreign intermediaries who act as placement agents to distribute Malaysian securities overseas or foreign intermediaries who act as international advisers to Malaysian companies undertaking a foreign transaction such as purchase or sale of overseas companies.

The foreign intermediary need not be licensed if:

- the advise or activity is performed outside Malaysia and the foreign firm has no physical presence in Malaysia, and
- the foreign firm undertakes the activity as a result of a local company seeking the services of a foreign intermediary's outside Malaysia i.e. as in the case of 'reverse inquiries'.

Generally, follow up meetings in Malaysia with the client who had sought and engaged the foreign intermediary will not trigger the licensing requirement. However, the foreign intermediary must have a license if it markets its services or meet with clients locally to market their services or products.

3. What are the important aspects of 'reverse inquiry' that should be noted? Among others, foreign firms should note the importance of the following:

- Maintaining evidence that 'reverse inquiry' had occurred. This may be by way of correspondences, documentation or any other verifiable manner;
- Recurring 'reverse inquiry', where the same foreign entity appears to be acting for several parties, may trigger the need for a license, as it raises doubt as to

whether the foreign entity is in fact soliciting clients in Malaysia and may reflect that the foreign entity is carrying on business in Malaysia.

4. If a foreign firm is approached by a local institution to advise on the local aspects of transaction, does the foreign firm need to be licensed?

Subject to the relevant SC Guidelines, the foreign firm will need to seek a license if the activity is a regulated activity and is carried out within Malaysia. However, it need not be licensed if the advice is provided from outside Malaysia.

5. Can the name of the foreign firm which is not licensed appear in the prospectus or other disclosure statements, which is submitted to the SC and made available to the public?

Subject to the relevant SC Guidelines on activities that can be carried out by a foreign firm and having regard to the above requirements, the foreign firm can be listed in the prospectus or other relevant disclosure statements.

The disclosure documents must also clearly describe the activities carried out by the foreign firm and that it is being carried out, outside Malaysia.

6. What are license requirements for a foreign firm who intends to enter Malaysia to meet with clients on a particular transaction or undertake a regulated activity on a temporary basis?

The staff of the foreign firm may apply for a temporary license from the SC.

An employee of a foreign intermediary that has a local presence in Malaysia, may apply for a temporary license to carry on the regulated activities of 'advising on corporate finance', investment advise or any other regulated activities that the local company is licensed by the SC to carry on.

An employee of a foreign intermediary that does not have a local presence in Malaysia, may apply for a temporary license for 'advising in corporate finance' or investment advise' only.

7. What are the principles for making temporary license available?

The temporary license framework was made available to provide local companies and investors with access to high end services which may not be readily available domestically. At the same, it is recognized that the services are not provided on a regular basis and to facilitate the transfer of skills.

The temporary license applicant should adhere to the following principles:

- It is not intended to replace or undermine the licensing requirements;
- Persons who intend to conduct regulated activities on a regular basis should apply for a full capital market services license (CMSL) or capital market services representatives license (CMSRL) and
- It is also not intended to be a provisional license while an applicant is waiting for approval and issuance of a CMSL or CMSRL.

8. In what other circumstance would a CMSL or CMSRL license or temporary license not required?

A foreign firm need not apply for a CMSL or CMSRL or temporary license if it is entering Malaysia to undertake the following activities:

1. To provide product support and training on invitation by a local license holder
2. The foreign intermediary has an arrangement with a local license holder i.e. the activities are carried out with the local license holder present at all times
3. Intermediation, marketing and the relevant regulated activities is carried out by the local license holder, who will be fully responsible and accountable
4. The foreign firm does not distribute its promotional material (e.g. brochures on its company or products) to potential clients in Malaysia

9. What are the options available to a foreign firm wanting to carry out corporate finance or investment advisory activity in Malaysia?

i) Establish a licensed firm

The SC Licensing Handbook provides guidance on the detail requirement on establishing a licensed corporate finance or investment advisory firm in Malaysia.

ii) Apply for a work permit

An individual interested in carrying out corporate finance or investment advisory activities in Malaysia should be attached to a firm licensed for corporate finance or investment advisory.

iii) Temporary license

As described above, the individual's employer need not have a presence in Malaysia to undertake corporate finance or investment advisory on a temporary basis. The license is valid for 3 months which may be extended for a further 3 months within a 24 month period.

If his work requires him to be in Malaysia for more than 6 months, he is advised to apply for a work permit or consider being engaged by a local company licensed to carry out investment advisory.

Further details on the temporary license and the application process are [available here](#).

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