

8 March 2019

Outsourcing Workgroup
Monetary Authority of Singapore
10 Shenton Way, MAS Building
Singapore 079117
(submitted to: outsourcing@mas.gov.sg)

To whom it may concern,

ASIFMA response to MAS Consultation Paper on Outsourcing by Banks and Merchant Banks

On behalf of its members, Asia Securities & Financial Markets Association¹ ("[ASIFMA](#)") is submitting hereby our comments and suggestions on the Monetary Authority of Singapore (MAS) Consultation Paper on Outsourcing by Banks and Merchant Banks issued on 7 February 2019.

Outsourcing has become a key part of regulated financial firms' operating model and brings various benefits such as economies of scale, being able to access lower costs, allowing firms to concentrate on their core business and to benefit from specialization in the provision of services resources. ASIFMA members also recognize that appropriate risk management and governance processes ought to be in place so that the risks of outsourcing are managed prudently and core regulatory objectives for the protection of customers, systemic stability and markets are not jeopardised. In order to facilitate the dialogue between financial institutions, policy makers and regulators, and in order to drive harmonization of the fragmented outsourcing requirements in the region, ASIFMA in June 2018 published its [Proposed Leading Principals for Regulation of Outsourcing](#), which were also shared with the MAS for consideration. We will refer to these principles where appropriate in this paper.

ASIFMA greatly appreciates MAS's consideration of the points and questions raised in this response and would be pleased to discuss them in greater detail as appropriate. We suggest that MAS continues to engage with and consult the industry on this important topic and we recommend MAS to issue a revised

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¹ ASIFMA is an independent, regional trade association with over 100 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, competitive and efficient Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

draft Outsourcing Notice for further public consultation to allow holistic consideration of the proposed requirements and to allow the industry to assess the impact.

If you have any questions, please contact Patrick Pang at ppang@asifma.org or Laurence Van der Loo at lvanderloo@asifma.org. We would also very much welcome an in-person meeting to discuss our response in further detail and address any questions you might have.

This submission was prepared by ASIFMA member firm EY, based on feedback from the wider ASIFMA membership.

Yours sincerely,



Mark Austen
CEO
ASIFMA

RESPONSE TO CONSULTATION PAPER

Consultation topic:	Outsourcing by banks and merchant banks
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Confidentiality	
I wish to keep the following confidential:	NA

Question 1: MAS seeks comments on the proposed amendment to the Banking Act to strengthen MAS' oversight of outsourcing arrangements of banks.

I. Section 58A of the Banking Act to refer to Notice on Outsourcing

Member feedback:

- *The essence of this new proposed section 58A is already captured in the Outsourcing Guidelines. Indeed, a bank would usually consider an arrangement entered into by a related entity to provide a service to the bank as an outsourcing arrangement by the bank and therefore subject to the Guidelines. As such, this section may be duplicative and may add additional ambiguity in implementation (e.g., the Outsourcing Guidelines allow for materiality assessments, section 58A does not).*
- *For banks with extensive operations and branches with group-wide outsourcing arrangements, the requirements outlined in section 58A may be difficult to implement as service providers may be reluctant to accept varying sets of obligations for different jurisdictions (please see further elaboration on obligations such as audit, information and termination rights below) as well as revisions to contracts previously agreed upon. In light of these difficulties, we suggest that the requirements remain in the Outsourcing Guidelines as opposed to being provided for as primary legislation.*

Member proposition:

- *We suggest that section 58A be focuses on providing a framework for primary legislation and for the substantive outsourcing requirements to be set out in the Outsourcing Guidelines (if such requirements are not already there). Alternatively, we would ask that agreements entered into by related entities be excluded from the application of Section 58A (but continue to be subject to the Outsourcing Guidelines) to allow for a risk-based calibrated approach to be taken.*

II. MAS' right to inspect or audit

Member feedback:

- *Adding in such a clause on the MAS' right to audit is difficult as standard contracts are currently generally being used by the service provider and sub-contractor.*
- *Global/international vendors often challenge such a clause seeking audit or inspection rights since they are governed by a global contract.*
- *There are practical challenges faced by MAS-regulated banks/financial institution groups to comply with these requirements, particularly the requirement for audit and access rights to subcontractors, due to the following reasons:*
 - a. *The proposed subsections (2)(c) and (2)(d), and in particular the subcontractor audit and access requirement, are not regulatory requirements commonly imposed by other comparable financial regulators. As such, these requirements are often not required to be negotiated into outsourcing agreements entered between non-MAS regulated bank/financial institution groups and third-party service providers. Consequently, it will be difficult if not impossible for MAS-regulated banks/financial institution groups in certain cases to negotiate such terms into their contracts with third party service*

providers. This is particularly the case for cloud hosting arrangements which are typically based on standardised contracts.

- b. Banks do not have direct contractual relationships with service providers' subcontractors and, hence, would need to rely on their service providers to negotiate the required subcontractor audit and access rights into service providers' underlying agreements with their subcontractors. Banks cannot control the outcome of such negotiations.
- c. In many cases, third party service providers have pre-existing contracts with their subcontractors, which the service providers may not be keen or able to re-negotiate. A subcontractor will likely not be motivated to renegotiate its contract with its service providers to grant audit and access rights to the service provider, its customers and their regulators. In such cases, the service providers will not accede to a bank's request to include such subcontractor audit and access rights into the outsourcing contract.

Member propositions:

- We propose that MAS clarify in these sections, that
 - a. the right of inspection or audit to be conferred on the bank, MAS or their appointed parties, and
 - b. the need to provide record, document, information or report relating to the outsourcing arrangements to the bank, the MAS or their appointed parties,
 are applicable only to material outsourcing arrangements, as opposed to all outsourcing arrangements.
- We propose that the requirements in proposed sections 58A(2)(c) and (2)(d) be contained only in the Outsourcing Guidelines, and that these requirements not be included in the proposed Banking Act amendments or Outsourcing Notices. This is because banks will not be able to necessarily control non-compliance and mandating this requirement in sections 58A(2)(c) and (2)(d) in the Outsourcing Notice/Banking Act will therefore restrict MAS-regulated banks from participating in group-wide outsourcing initiatives or restrict MAS-regulated financial institutions groups from achieving the benefits of outsourcing, including enhanced risk management controls/processes/tools offered by third party service providers, and the greater efficiencies that could be achieved.
- We propose for MAS to focus on areas which are within banks' control i.e. for the Banking Act or Outsourcing Notice to instead mandate: (i) audit and access rights to the service provider and the services provided; and (ii) contractual terms which require the service provider to be contractually liable for subcontractors' performance and for their compliance with the other provisions of the agreement between the banks and the service provider (e.g. confidentiality and security obligations).
- Specifically, in relation to section 58A(2)(d), there might be practical operational difficulties with whether the Bank/Merchant Bank can enforce such rights in relation to sub-contractors via the agreements signed with the service providers. ASIFMA members suggest that the existing requirements in the MAS Outsourcing Guidelines imposing these requirements onto the service provider are sufficient. In the event that requirements in proposed sections 58A(2)(d) are not met, the Bank/Merchant Banks should take these into consideration in their periodic review of the outsourcing arrangement with the service provider.
- Regarding the proposed definition of "right of inspection or audit" that includes a requirement to assess "corporate governance", we are concerned that service providers and subcontractors

will not agree to banks and regulators inspecting their corporate governance practices, and will only be agreeable to audits covering risk management processes and controls which are applicable to the services provided. We therefore propose that the MAS remove the reference to “corporate governance” in paragraph (c) of the proposed definition of “right of inspection or audit”.

- Should the service provider have an Outsourced Service Provider’s Audit Report (OSPAR), the rights to audit (the service provider and its sub-contractors) will already be reflected in it. In view of such existing requirements in the Association of Banks in Singapore (ABS) Guidelines, we propose that MAS not add it to the Banking Act/Outsourcing Notice as it would be duplicative.

Member clarifications/For discussion:

- Could MAS clarify how it expects banks to enforce such clauses?
- Regarding proposed section 58A(2)(d)(ii), can the MAS provide guidance on how many layers of sub-contractors banks have to inquire to identify them? For instance, a mega IT service provider will have multiple sub-contractors for various workflows (maybe more than 20 subcontractors some of whom may also have subcontracts). Will banks be expected to assess and review every one of them? Also, such sub-contractors can change and the mega IT service provider may not promptly inform banks of such changes.
- Would MAS consider sub-custodians as a “service provider” too? The preference is to maintain the distinction between use of sub-custodians vs outsourcing. The Singapore custody provider’s delegation of global custody to its affiliate (through intercompany arrangement) provides for review of the global custodian’s records by the Singapore entity and its agents, as well as by MAS, plus the provision and review of system and organizational control reports (SOC-1).

ASIFMA Proposed Leading Principles for Regulation of Outsourcing:

- While ASIFMA members appreciate the need for regulators to have appropriate access to information about outsourcing arrangements, the ASIFMA Proposed Leading Principle for Regulation of Outsourcing suggest that it would seem appropriate that audit rights, which are by their nature intrusive and likely to raise sensitivities among outsourced service providers, be left to audit by the outsourcing financial institution’s internal audit or a suitable external service provider rather than being audit by the regulator. It should still provide sufficient independent assurance. Audit should also be risk based. Principle 7 – Audit Requirements of the ASIFMA Principles proposed that: “...it appears that the HKMA, MAS and APRA and the US banking regulators require audit over the risk management controls of outsourcing arrangements on a regular basis determined on a risk based approach...As long as the outsourcing rules include a proper periodic audit by internal audit or a reputable external auditor, then the regulator should leave that to the institution to comply with and execute.”

III. Right to terminate the outsourcing agreement

Member feedback:

- The usage of certain terms which are open to interpretation throughout the proposed section 58A causes material uncertainty for banks in Singapore. Examples include “certain circumstances”, “expedient in the public interest”, “as it thinks fit”, “such other factors as the Authority considers relevant”. Without clear explanations, the potential for the MAS to force a

bank to terminate an outsourcing agreement according to proposed section 58A(2)(e) will lead to commercial uncertainty and this puts banks in a difficult place when negotiating outsourcing deals. For consistency, the same test should be incorporated into the rights conferred on the Authority under subsections (2)(f) and (2)(b)(iv). The Notice to be issued should clarify exactly what those "specific circumstances" are in order to provide more legal and commercial certainty (as it appears to be addressed in the current section 8 of the 2014 Notice). It is difficult to give proper feedback or suggested drafting without additional clarity as to when the powers would be exercised.

Member propositions:

- It would help if the MAS could in guidance give clearer scenarios under which it may consider it appropriate to terminate an outsourcing arrangement.
- The MAS should provide a reasonable opportunity to be heard in which a bank may argue their case or be granted the ability to remediate any shortcomings, before termination of an outsourcing arrangement. That could be proportionate to the urgency of the situation – providing for a "reasonable" opportunity to be heard would accommodate this.
- We propose that MAS list the circumstances that the MAS may specify for default termination and early exit clauses. We would also like to request that MAS allow the financial institution time to initiate an orderly exit of an outsourcing arrangement, as opposed to an immediate termination.
- We suggest that the MAS only require the termination of an outsourcing arrangement in the following situations:
 - a. A service provider undergoes change in ownership in a way that causes concerns in respect of whether the services can continue to be provided to the same standard or otherwise causes material conflicts of interest becomes insolvent, liquidation, receivership or judicial management;
 - b. where there is material breach of agreement and no capability for remediation within a reasonable period;
 - c. where there is material breach of agreement with capability for remediation but it is not remedied within a reasonable timeframe between bank and service provider (this covers the scenario that a material breach could cause potential issues to the bank, including regulatory compliance, if not remediated.)
 - d. where the MAS directs a bank to terminate an outsourcing agreement as a service provider has failed to comply with applicable laws and regulations; and
 - e. where the MAS requires a bank to amend the outsourcing agreement and the service provider is unwilling or unable to do so.
- We propose that banks only be required to notify the MAS if termination of an outsourcing arrangement is required pursuant to a breach of security and confidentiality of a bank's customer information on the following basis:
 - a. The revised 2016 Guidelines had abolished the need for financial institutions to engage in prior consultation with the MAS for material outsourcing arrangements. We propose that there is similarly no need for financial institutions to notify the MAS of termination of outsourcing arrangements (regardless of the trigger), unless the termination is driven by a breach of customer confidentiality, which is separately also subject to a notification requirement under section 47 of the Banking Act.

b. We agree that the MAS should be notified of termination events triggered by a breach of customer confidentiality and security, and this requirement is also aligned to the notification obligations under MAS Notice 644 (Technology Risk Management) relating to security breaches which comprise the security, integrity or confidentiality of customer information.

- We request that section 8 Termination and Exit of Outsourcing (Outsourcing Notice Consultation Paper 2014) to be applicable only to material outsourcing agreements given that the prescribed provisions are not commensurate with the lower risks posed by non-material outsourcing arrangements. Further, banks may not have the resources or the bargaining power to negotiate with every single service provider particularly in respect of standard, non-material, low-value outsourcing agreements

Member clarification/For discussion:

- Are the specified circumstances those set out in paragraph 8.1 of “Annex B Draft Notice 2014 Outsourcing Guidelines”?

IV. Protecting confidentiality of any customer information - Section 58A()2(b)(i)

Member clarification/For Discussion:

- The requirement for the service provider to confer a right to audit may not be possible in certain jurisdictions/outsourcing arrangements. In such circumstances, will there be acceptable alternatives?
- Can MAS provide guidance on expectations in relation to data privacy matters if the service providers providing services to multiple organizations are unable to clearly ringfence the record, document, information etc of the relevant bank? (for example on the public cloud, even though confidentiality of one bank's information is functionally segregated from other banks using the same service).

V. Item 3 Part II of Third Schedule of the Banking Act

Member proposition:

- We refer to the proposed amendment in the first column, “Disclosure.... have been outsourced, in compliance with Section 58A”. Under the current third schedule, customer information may be disclosed if it relates to an “outsourcing arrangement”, without a further condition for it to be “in compliance with Section 58A”. However, with the proposed amendment, in the event a bank fails to comply with any requirement set out under Section 58A, it would consequently be in breach of both the requirements of Section 58A as well as Section 47. Hence, we respectfully suggest that the phrase “in compliance with Section 58A” be deleted from the first column's proposed edit.

Member clarification/For discussion:

- Could the MAS clarify if item 3 of Part II of Third Schedule of the Banking Act (“item 3”) is intended to be extended to disclosure of customer information to a sub-contractor and further sub-

contractors down the chain. We note that the draft section 58A of the Banking Act draws a distinction between a service provider and a sub-contractor. However, under the second column of item 3, the proposed amendment is drafted to only refer to “any person...which is engaged by the bank or the bank’s related entity to perform the outsourced functions”. It is therefore unclear whether a sub-contractor will meet this definition. In MAS Consultation Paper paragraph 2.4, MAS only referred to a service provider but not to a sub-contractor.

VI. Outsourcing arrangements entered by related entities - Sections 58A(2)(a), (b), (e)(ii) and (g)

Member propositions:

- *For outsourcing arrangements entered by related entities (proposed sections 58A(2)(a), (b), (e)(ii) and (g)), the powers set out in the Banking Act should be stated to be applicable only in the context of the financial institution in Singapore – i.e. considering the extent to which it is affected and/or is able to affect a specific requirement.*
 - a. *In that light, e.g. if MAS instructed a bank to terminate an outsourcing agreement entered by a related entity in accordance with proposed section 58A(2)(e)(ii), the related entity can only be expected to terminate the portion relevant to Singapore. The group should not be compelled to exit the relationship overall.*
 - b. *Similarly, the due diligence required under proposed section 58A(2)(g) would be performed by the group/related entity rather than the bank in Singapore. As drafted this may be ambiguous. It should not be the case that the Singapore financial institution be prohibited from acceding to the outsourcing arrangement by a related entity if sufficient due diligence has not been performed by itself, but the bank in Singapore would not necessarily be able to force the related entity to perform the due diligence in accordance with the MAS’ expectations.*

Question 2: MAS seeks comments on the proposal to similarly strengthen MAS’ oversight of outsourcing arrangements of merchant banks.

<refer to comments and suggestions in question 1 above>

Question 3: MAS seeks comments on the proposed repeal of MAS Notice 634 and MAS Notice 1108, and the proposed requirement that banks and merchant banks must comply with the relevant Outsourcing Notice before they may disclose customer information to their service provider.

I. Outsourcing notification to MAS

Member clarifications/For discussion:

- Clarification is required as to whether paragraph 4.5 of 2019 Consultation Paper would require banks to notify MAS upon entering into an outsourcing arrangement involving disclosure of customer information even with customers' explicit consent for the disclosure has been obtained.
- Currently, the MAS Notices 634 and 1108 requirements apply only to those arrangements relying on the Outsourcing of Operational Function Third Schedule exemption. With both Notices 634 and 1108 to be incorporated into the Notice on Outsourcing which applies to all material outsourcing arrangements, arrangements relying on other Third Schedule exemptions will be brought in-scope of the requirement to notify MAS.
- Paragraph 4.7 of the Consultation Paper, states that MAS intends to preserve the requirement for banks to notify the MAS of all outsourcing arrangement involving disclosure customer information. This contrasts with MAS' response to the consultation on the proposed amendments to the MAS Outsourcing Guidelines on July 2016, where it had stated that:
 - a. "MAS has removed the expectation for institutions to notify MAS before commencing any material outsourcing arrangements. Institutions were previously expected to pre-notify MAS of any material outsourcing arrangements, and MAS would impose prudential requirements on the institution, where necessary. With the growing prevalence and complexity of outsourcing arrangements, such a case-by-case approach has become less tenable. Instead, MAS will continue to assess and monitor the robustness of institutions' outsourcing risk management frameworks while institutions will continue to be responsible for ensuring the safety of all of their outsourcing arrangements" (Paragraph 5.4).
 - b. Pursuant to the Outsourcing Guidelines released on July 2016, FIs were only required to maintain a table of key information for all outsourcing arrangements (per the template in Annex 3 of the Guidelines) to be submitted annually or at MAS' request. In light of the above, we would request that MAS reconsider its proposal to reintroduce notification requirements as these are likely to impose significant compliance burden to financial institutions and a corresponding supervisory burden on MAS that we think would not be warranted by the regulatory risk posed.

Member proposition:

- We suggest MAS to consider:
 - a. Disclosure of customer information through the submission of the outsourcing register. Indeed, in the existing outsourcing register template, there is a field which requires confirmation on whether customer information is involved in the outsourcing. Through banks' annual submission of the outsourcing registers, MAS could ask to further review those which involve customer information. We therefore propose that MAS seek information on outsourcing arrangements involving customer information via its review

of the outsourcing register, as opposed to pre-notification by banks. Pre-notification would increase the burden on banks, and reduce the agility for banking groups to rollout global outsourcing arrangements.

- b. Applying the notification requirement only to those arrangements relying on the Outsourcing of Operational Function Third Schedule exemption as per current approach.

II. Written confirmations from regulators from other jurisdictions (Outsourcing Notice Consultation Paper 2014 section 9.1)

Member feedback:

- For outsourcing to overseas regulated entities involving the disclosure of customer information, the September 2014 draft Notice on Outsourcing requires the regulated entities to provide MAS with a written confirmation by their supervisory authorities. It may not be practical to obtain this from regulators from other jurisdictions. In ASIFMA members' experience, regulators are not willing to provide such confirmations to private parties.
- Certainly, for one-off arrangements, overseas regulators might not be forthcoming to provide such confirmation. It is operationally not practical to request a written confirmation from the overseas regulator for every material outsourcing arrangement.

Member clarifications/For discussion:

- Can MAS consider applying this requirement to only those arrangements relying on the Outsourcing of Operational Function Third Schedule exemption per the current approach?
- It may be more practical for the financial institution to provide the MAS with a legal opinion from a law firm in the relevant jurisdiction applying to all arrangements in that jurisdiction (not arrangement-specific). This is in line with e.g. HKMA practice)

ASIFMA Principles:

- The ASIFMA Principles endorsed the then existing MAS definition of outsourcing and materiality as appropriately balanced and a model for other regulators. Principle 3 – Materiality provided that: “Members recommend that regulators take a pragmatic approach when assessing whether an outsourcing arrangement is considered material. Members generally agreed with an approach of considering materiality in light of the impact of a disruption in the provision of outsourced services on: the services the firm is licensed to provide; the financial position of the outsourcing firm; the firm’s customers; and the outsourcing firm’s ability to meet its legal and regulatory obligations...Members overwhelmingly consider that outsourcing regulation should not apply if an outsourcing arrangement is regarded as immaterial.”

III. Central register for all outsourcing arrangements (Outsourcing Notice Consultation Paper 2014 section 3.1(d))

Member clarification/For discussion:

- Section 3.1(d) states the need to maintain a central register of all material outsourcing arrangements. Please clarify what the MAS expects for non-material outsourcing arrangements.

IV. Outsourcing requirements (audits) on service provider (Outsourcing Notice Consultation Paper 2014 section 7)

Member propositions:

- *In the draft Notice on Outsourcing, the MAS has retained the requirement that the “period between audits shall not exceed 3 years”. This 3-year requirement was removed post public consultation in the Guidelines for Outsourcing. For intra-group outsourcing arrangements, the requirement that “period between audits shall not exceed 3 years” is onerous. In recognition of the operational and administrative challenges, we suggest the MAS provide an exemption or a relief from this period for affiliate outsourcing arrangements and allow FIs to use a risk-based approach to determine the frequency of audit.*
- *Some financial groups operate a number of regulated entities in Singapore, and there are often intra-group outsourcing arrangements among these entities in Singapore. In such cases, we would propose the MAS provide relief from full compliance with outsourcing requirements such as due diligence, independent audits, in recognition that the services would be provided by a MAS-regulated entity (and therefore would have the safeguard of being subject to MAS supervision or outsourcing requirements in any case).*
- *Additionally, many ASIFMA members in Singapore are full branches of entities in well-regulated jurisdictions, including the US and European jurisdictions. We recommend that MAS considers providing relief from full compliance with these requirements for intragroup entities (especially head-office) when these intragroup entities are based in well-regulated jurisdictions with equivalent outsourcing governance frameworks.*

Member clarification/For discussion:

- *Could the MAS clarify if the current draft about the period between audits not exceeding 3 years is meant to only cover material outsourcing arrangements?*

ASIFMA Principles:

- *We refer to our comments on the ASIFMA Principles in relation to audit above.*

V. Access to information (Outsourcing Notice Consultation Paper 2014 sections 5and)

Member clarification/For discussion:

- *We request that section 5 to be applicable only to material outsourcing agreements given that the prescribed provisions are not commensurate with the lower risks posed by non-material outsourcing arrangements. Further, banks may not have the resources or the bargaining power to negotiate with every single service provider particularly in respect of non-material, low-value standard outsourcing/vendor agreements.*
- *Inclusion of contract provisions about: section 5(b) MAS’ access to a service provider and sub-contractor & (c) indemnify and hold the MAS harmless from any liability: In certain jurisdictions/outsourcing arrangements, this requirement may not be possible. We suggest it will*

be sufficient if only the requirement in section 5.1(a) is met (ie allow the bank to conduct audits on the service provider and sub-contractor and submit the report to the MAS)?

VI. Retention of client consent exemption

Member feedback:

- *In Paragraph 4.5, MAS proposes that all outsourcing arrangements involving the disclosure of customer information, even where written customer consent for onwards disclosure of such information has been obtained, would be considered material outsourcing arrangements and be subject to the requirements in the proposed outsourcing notices. Currently, there are outsourcing arrangements where it is possible for an entity to not to comply with MAS 634 requirements (for example Paragraph 14 of Annex 1) where it has obtained client consent for disclosure of customer data. These agreements will have to be remediated if the above proposal goes through, which would impose additional compliance burden. There are also some requirements in MAS Notice 634 e.g. Paragraph 14 of Annex 1 which it may be challenging to impose on outsource service providers if the exemption based on client consent is no longer available, such as written confirmations from foreign regulators.*

Member proposition:

- *We respectfully ask MAS to consider retaining the exemption to MAS 634 where an entity has obtained client consent for disclosure of customer data.*

Question 4: MAS seeks comments on the proposed revision to the definition of “outsourcing arrangement” and the types of outsourcing arrangements to be considered a “material outsourcing arrangement”.

I. Proposed update in definition of outsourcing arrangement

Member feedback:

- *The definition of “ongoing basis” is not clear. We also note that the requirements which have been proposed for material outsourcing would also extend to short-term/one-off arrangements, which would give rise to a disproportionate compliance burden and operational challenges for banks. For example, internal governance, audit and foreign regulator’s consent requirements would be difficult to implement for such short-term/one-off arrangements. We propose to retain the current definition.*
- *International practice and other international financial regulators consider and prescribe definitions of outsourcing arrangements as typically not including one-off/ad-hoc arrangements regardless of the nature of the data involved. This proposal would make Singapore an outlier and imposes a significant, costly and unnecessary operational/regulatory burden to comply with the MAS Outsourcing Notice requirements for short term outsourcing arrangements. Some*

regulators (e.g. the HKMA) use e.g. a 12-month timeline as a threshold to determine whether a service is deemed as an outsourcing arrangement. We propose that the MAS' definition of an outsourcing arrangement remains consistent with key comparable financial regulators' definitions of an outsourcing arrangement.

- For outsourcing arrangements that a bank is not dependent on an on-going basis (i.e. one-off covering arrangement) involving customers' information (i.e. which does not fall under the current definition of material outsourcing arrange), certain requirements currently in the draft outsourcing notice 2014, including audit requirements, will not be tenable will and will be impractical to implement for one-off arrangements.
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- Outsourcing arrangements are included in the outsourcing registers to facilitate ongoing review and monitoring of banks' outsourcing arrangements. We do not see any value in including one-off/short-term services into the outsourcing registers and for these arrangements to be subject to the outsourcing regulatory regime because:
 - a. One-off/short-term services will not be subject to ongoing/periodic outsourcing reviews as the services would likely have ceased by the time of the next relevant outsourcing review cycle. Hence deeming such arrangements as "outsourcing" yields no purpose or benefit for wider outsourcing governance purposes.
 - b. One-off/short-term services will cease shortly after commencement and will need to be removed from the outsourcing register shortly after commencement. The proposed definition will therefore unnecessarily increase the administrative burden for banks in terms of adding/removing such services into outsourcing registers within short periods of time, but with no material value/benefits.
- The proposed definition will bring into scope voluminous relationships that are currently scoped out from the existing Guidelines, and will make it unmanageable for banks, especially where there is otherwise no benefit to monitor and manage such relationships in the medium to longer term.
- One-off/short-term services would nevertheless be subject to commercial contractual requirements which would typically set out the scope of the services and required performance of the services. There are no material operational benefits for one-off/short-term services to be subject to additional outsourcing regulatory requirements which are typically applicable for the purpose of monitoring and managing of medium-longer term engagements.
- The definition of "currently or is commonly performed by the bank" is not clear. The scope of "commonly performed by the bank" is vague as what is deemed to be a "commonly performed" function of a bank might differ from bank to banks due to different scale and set up of banks (e.g. locally incorporated bank vis-à-vis a local branch of a foreign bank).

Member propositions:

- The proposed expanded outsourcing arrangement definition can extensively expand the population of arrangements which banks need to cover without a corresponding regulatory benefit. It can potentially increase the cost and effort needed. We would appreciate it if the MAS can take a risk-based approach so that the regulatory burden on Singapore based banks can be controlled.
- We would like MAS to reconsider this revision to the definition of outsourcing arrangement as this introduces greater uncertainty as to what constitutes an outsourcing arrangement. As mentioned above, our concern is that the removal of the concept of "ongoing basis" suggests

that even one-off or sporadic requests for products and services could constitute outsourcing, which would in turn greatly increase the cost of compliance for no real benefit to risk management.

- The revised definition of outsourcing will greatly expand the current scope to include almost all the services including ad-hoc services (e.g. one-off external training) and services not integral to the provision of financial services (e.g. cleaning services). MAS should consider retaining the portion of the existing definition “integral to the provision of a financial service” in the revised definition of “outsourcing arrangement”.
- The proposed definition under section 58A (“that is currently or commonly performed by the bank”) does not tie with the 2014 draft Notice (“that may currently or potentially be performed by the institution”) For consistency, we request alignment of definitions across all outsourcing related documents.
- We noted that the definition of “Outsourcing arrangement” in the draft section 58A of the Banking Act is different from the definition proposed in the 2019 consultation paper. For consistency and clarity, we recommend the MAS standardize the definition across the different pieces of legislation.

ASIFMA Principles:

- ASIFMA Members generally endorsed the then MAS definition which required that an outsourcing arrangement be “ongoing” (see Principle 2 – Definition of outsourcing).

II. Data centres as an outsourcing arrangement

Member feedback:

- MAS would be an outlier among major financial regulators that considers the use of a data centre as an outsourcing arrangement. Such standards may affect banks’ competitiveness in contract negotiation with the service provider.

Member propositions:

- We request that the MAS reconsider including co-location data centres as a form of outsourcing agreement on the following basis:
 - a. The co-location of data centres, housing IT infrastructure owned and operated by banks, does not fall within the typical definition of outsourcing as it is not a service/activity that is normally performed by financial institutions themselves.
 - b. Co-location of data centres is not regarded by other key financial regulators (e.g. HKMA, APRA, the UK FCA etc.) as outsourcing. Consequently, it is often extremely challenging to negotiate outsourcing regulatory requirements into contracts with data centre providers, who are not otherwise subject to similar requirements relating to their other customers, including other globally-regulated financial institutions.
 - c. Co-location data centre providers do not have access to/process banks’ customer information. Banks typically own and run the infrastructure within the co-location data centres themselves, including storing/processing their own data. Co-location data centres are therefore akin to office premise leases, where the landlord would lease premises e.g., in an office tower, to multiple tenants. Leasing premises is not deemed as outsourcing.

III. Definition of material outsourcing arrangement

Member feedback:

- *Regarding the proposal to deem all arrangements where customer information is disclosed as material outsourcing arrangements, regardless of tenure/impact, this proposal potentially brings into scope many minor, short-term arrangements and subjects them to the material outsourcing requirements. In addition, customer information constitutes a wide array of information, there are varying degrees of materiality to the impact if such customer information is disclosed. As such, subjecting all arrangements where customer information is disclosed to material outsourcing requirements would be extremely onerous.*
- *We have concerns that this proposal will unnecessarily heighten the compliance burden on banks as numerous outsourcing arrangements would need to be deemed as material outsourcing arrangements under the proposed change, and banks will need to allocate additional resources to manage such arrangements notwithstanding that there are no heightened outsourcing risks if the impact of any unauthorised access or disclosure or loss of customer information has been assessed to be non-material.*
- *In proposed section 58A (6), "outsourcing arrangement" means an arrangement between a service provider and a bank in Singapore or its related entity, under which the service provider agrees to do one or more of the following (a) provide the bank any service that is currently or is commonly performed by the bank; provide any service to the public in the name of the bank. It is not clear what "provide any service to the public" means as this is potentially very broad.*
- *Without having sight of the proposed notice alongside the Banking Act proposal, it is unclear if the definition of "customer information" would exclude appropriately encrypted data, thereby aligning to the current Outsourcing Guidelines. It is also unclear if the proposed definition in the Notice will be consistent with the section 40A Banking Act definition referenced by section 58A and Item 3 Part 2 of the Third Schedule of the Banking Act.*
- *Whilst the proposed definition of "outsourcing arrangement" has been included in the consultation, only changes to the definition "material outsourcing arrangement" have been provided; the new proposed definition of the material outsourcing arrangement is not completely stated.*
- *The current definition of "material outsourcing arrangement" set out in MAS' Outsourcing Guidelines is a better reflection of a risk-based policy approach. We consider that a risk-based policy approach would enable a more effective allocation of resources by banks to focus on the pertinent risks which could arise from outsourcing. Over-stretching current resources to impose "material outsourcing risk management requirements" in the new Notice to all outsourcing arrangements involving customer information, irrespective of their tenure or the customers' information type could be counter-productive.*

Member propositions:

- *We respectfully request that MAS maintains the status quo in its policy position to only subject outsourcing arrangement involving "higher risk" customer information to the new outsourcing notice, as is currently reflected in the MAS Outsourcing Guidelines.*
- *We propose for banks to be permitted to use a risk-based approach to determine the materiality of its outsourcing arrangements in this regard, and to focus their resources on managing those*

outsourcing arrangements with high information/outsourcing risks. We therefore propose that the MAS retains its current definition of a material outsourcing arrangement, which brings into scope only those outsourcing arrangements, which in the event of unauthorised access or disclosure, loss or theft, may have a material impact on banks' customers, where customer information is involved.

- *Indeed, our preference is to retain the element of materiality in assessing whether such arrangements should be regulated. This would provide the banks with some ability to calibrate their requirements to match the severity of potential impact of loss of customer information. The removal of materiality is especially impactful on intragroup arrangements. It is conceivable that disclosure of customer information happens across branches and related entities regularly. Removing the materiality factor would mean most if not all intragroup arrangements would constitute material outsourcing, which may require additional and potentially onerous implementation.*

Member clarifications/For discussion:

- *We request clarification of whether outsourcing arrangements relating to encrypted/masked customer data can still be considered as non-material; and whether publicly available customer information can still be considered as non-material customer information.*
- *The definition of Customer Information in the existing Guidelines excludes any customer information that is public, anonymised or encrypted in a secure manner such that the identifies of the customers cannot be readily inferred. We request clarity as to whether this would continue to be excluded from the definition of customer information in the new notice.*

ASIFMA Principles:

- *We refer to the comments above about the definition of outsourcing under Principle 2 – Definition of outsourcing.*

Question 5: MAS seeks comments on the proposed transition period of 12 months.

Member feedback:

- *We anticipate that any required inclusion of subcontractor audit and access rights requirement into banks' outsourcing contracts would take extensive periods of time beyond a 12 months period, For example, service providers/subcontractors will need to undergo internal assessment/policy changes to effect such required changes and service providers will need to undertake similar extensive/challenging negotiations with their underlying subcontractors to permit such audit and access rights)=.*

Member proposition:

- *Could the MAS clarify the status of the September 2014 outsourcing consultation paper in relation to this 2019 Consultation Paper?*
- *We would like to request the following this consultation, MAS issues a revised draft Outsourcing Notice for further public consultation to allow holistic consideration of the proposed*

requirements and to allow impact assessment. The environment has continued to change over the past four years including the revision to the revised Guidelines on Outsourcing (which we assume will continue to apply to banks and merchant banks but ASIFMA members would appreciate clarity on this). Significant changes were made to the draft Outsourcing Guidelines of 2014 following an intensive period of public consultation and we anticipate that the application of the proposed changes require further consideration and consultation.

- We respectfully request a longer transition period.
- In the 2016 consultation on outsourcing, there was an additional concession for rectification to existing outsourcing agreements, “where the rectification concerns an existing outsourcing agreement, it may be made when the outsourcing agreement is substantially amended, renewed or extended, whichever is earliest.” (Paragraph 2.2. Response to the consultation feedback on the proposed amendments to the MAS Outsourcing Guidelines on 27 July 2016). We would like to request that the same concession be granted in respect of any contractual rectifications necessitated by the proposed Notices.

Any other comments:

Member feedback:

- We reiterate our comment that it is extremely challenging if not impossible in certain cases, to negotiate subcontractor audit and access rights requirement into outsourcing contracts, particularly for cloud hosting arrangements, and we propose for MAS to duly consider the industry’s feedback in this regard.

Member propositions:

- Our expectation is that the provisions to be included in a future revised draft Notice will reflect, where earlier feedback had been adopted on the 2014 proposals, similar provisions found in the current Outsourcing Guidelines to the extent that these are not impacted by the changes proposed by the 2019 Consultation Paper.
- We also strongly suggest harmonization of definitions and related requirements across the Banking Act, Notice Guidelines, and FAQs.
- We would like to emphasize the importance of ensuring alignments of requirements imposed on different licensees.