RESPONSE TO CONSULTATION PAPER

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Consultation topic:	Notices to Banks and Merchant Banks on Management of Outsourced Relevant Services
Name[1]/Organisation: [1]if responding in a personal capacity	Laurence Van Der Loo, Executive Director Asia Securities Industry & Financial Markets Association (ASIFMA)
Contact number for any clarifications:	(852) 2531-6511
Email address for any clarifications:	lvanderloo@asifma.org
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General Comments:

ASIFMA [1] wishes to thank the Monetary Authority of Singapore ("MAS") for the opportunity to provide feedback on the Proposed MAS Outsourcing Notices ("ONs"). ASIFMA would also like to thank the MAS for carefully considering our recommendations following our response to the 2019 MAS Consultation Paper on Outsourcing by Banks and Merchant Banks ('MBs') and reflecting some of our suggestions in the ONs. ASIFMA believes that it is essential for the smooth operation of market participants that there is global coordination and alignment on this important topic of outsourcing.

To support international standards setting, ASIFMA's parent organisation, the Global Financial Markets Association [2] ("GFMA") has commented on the Financial Stability Board's ("FSB") Discussion Paper ("Discussion Paper") on Regulatory and Supervisory Issues Relating to Outsourcing and Third-Party Relationships published on 9 November 2020. and also responded to the International Organisation of Securities Commission ("IOSCO") Principles for Outsourcing May 2020 Consultation. We believe that regulatory alignment is important to avoid further fragmentation of the regulatory landscape. We urge regulators to collaborate to develop consistent regulatory approaches that apply across jurisdictions and interconnected regulatory policy topics and are interoperable globally not only across countries but also across different regulated sectors (i.e. banking, securities, insurance and pensions). Global collaboration would allow for better sharing of information and lessons learned. Practically, cross-jurisdiction coordination of regulatory consultations is essential to enable financial institutions to adapt to regulatory changes in a timely manner, allowing financial institutions to maintain their focus on managing risks whilst ensuring compliance with new regulations.

[1] ASIFMA is an independent, regional trade association with over 125 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.

[2] The Global Financial Markets Association ("GFMA") brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London, Brussels and Frankfurt, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA.

From a practical perspective, we see the need to coordinate the timing of consultation and release of new regulations across jurisdictions in order to enable financial institutions to adapt to regulatory changes with sufficient time and in a globally coherent way. We respectfully request if MAS can align and finalise the MAS ONs, after IOSCO and FSB finalise their consultations, to ensure international regulatory consistency. Financial Institutions (FIs) in Singapore often act as a hub for activities in the region and so will have to comply with the laws not only of Singapore but also those of other jurisdictions and may have regulated foreign parent companies. Having the opportunity to align its approach in the ONs with that of IOSCO and FSB will promote regulatory consistency globally and regionally and avoid a need for possible multiple revisions of laws and FIs' outsourcing governance and processes if the ONs are finalised before the FSB and IOSCO consultations conclude.

As an overarching principle, we believe that regulations on outsourcing and third-party relationships should allow for a risk-based and outcome-focused approach that provides FIs with the ability to account for the different risk characteristics of various third-party relationships of different nature. We stress that regulators should avoid imposing prescriptive obligations on financial institutions. Prescriptive regulations may compromise the efficiency and resilience of financial institutions by limiting financial institutions from enhancing their own resilience capabilities and to adapt to emerging business models and technologies. Excessive regulatory controls can stifle innovation or accentuate concentration or ICT risks and increase operational costs by raising barriers to entry. Further, prescriptive approaches from various regulators may have potentially unintended consequences, including discrepancies in the definitions of key terminology, assessment of materiality and reporting requirements. This in turn will create a fragmented picture of risks and ultimately inhibit global financial institutions from obtaining a clear view of their key risks across jurisdictions where they and service providers operate. On an additional note, while regulators and standard setters should ensure regulations and guidelines are not prescriptive, to the extent that procedural requirements are mandated, we urge regulators to ensure that such procedures are set out clearly to avoid ambiguity. We submit that some of the requirements in the draft ONs are overly rigid and impose a 'one size fits all' approach to all types of outsourcing without recognizing commercial, technological and operational implications. There are several areas where the legally binding obligations on banks in the ONs are likely to be impractical to implement for cloud outsourcing or will be commercially infeasible to implement. Given the legally binding nature of the requirements, the ON should instead provide a risk assessment framework and high-level requirements on assessing and mitigating risk, while allowing banks and MBs the discretion to address identified risks based on the nature of their business and the services they are acquiring.

Global consistency of standards and treatment of in-scope services across jurisdictions is also required. Different jurisdictions have varying degrees of prescription with respect to regulatory approaches, including in relation to cloud outsourcing, regulatory reporting of outsourcing registers and cross-border outsourcing. Fragmented and prescriptive regulatory regimes that impact global financial institutions' outsourcing relationships represent a fundamental challenge for the efficient management and mitigation of risks and the cost-effective provision of services to customers.

In respect of cloud technology, a key concern of our members is that if the use of cloud as part of an outsourcing arrangement would become an automatic indication of risk, leading to an imposition of the same set of regulatory standards, without an appropriate assessment of key risk attributes such as service, scope and infrastructure of the cloud arrangement. For example, a private cloud that is wholly owned and managed within a corporate group for exclusive use by the single corporate group is much more akin to traditional on-premises models of IT provision, where inter-affiliate service is well established, than some other uses of (public) cloud. Under such private cloud arrangements, the financial institution's legal entities would have enhanced oversight of, and input into the design of, the mitigating controls put in place. However, we believe firms should also be able to reference the established inter-affiliate service model as part of their governance framework for private cloud. Such outsourcing engagements (e.g. engagements that are supported by applications/systems that are hosted on a private cloud or data that is processed via a private cloud) should not be automatically perceived as more susceptible to risk than that provisioned through traditional shared technology/hardware models. Rather, each cloud arrangement should be subject to an assessment for identifying the particular risks involved.

We have provided our detailed feedback on each of the MAS questions in the consultation paper. Our key comments centre around the following:

- The MAS was understood to be developing the ON alongside while updating the 2016 Outsourcing Guidelines, with the expectation that it would be possible to review these together. With the Guidelines not updated yet, it is more challenging to fully assess what the requirements will look like holistically. There are some gaps misalignments between the existing Guidelines and the ON which we outline further below. Until such time, as the complementary updated Guidelines are proposed and/or finalise, this may pose some difficulties for interpretation and implementation.

- We recommend that the MAS includes the Annexes (A-D) as a separate guideline or FAQ and not in the ONs since changes to these services would require a revision

to made to the entire ONs. If they are maintained in a separate document, it would warrant a change only to that document.

- We propose to exclude ongoing non-material arrangements that do not involve customer information from the outsourcing register requirement.

- We would like to confirm whether the outsourcing register under the ON is intended to capture sub-contracting, and in particular non-material subcontracting. The current Guidelines 'require material subcontractors to be inventoried', whereas the ONs is silent on this. We seek the MAS's clarification on this and recommend non-material subcontracting be excluded to maintain consistency with the existing Guidelines.

- We would like to seek MAS' clarification on why written consent is required from clients for subcontracting ongoing material outsourcing since this not market practice or in-line with other regulators. We propose to allow one-way notification to customers to obtain deemed consent of disclosure of customer information.

- For outsourcing to overseas regulated entities involving the disclosure of customer information, the ONs 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. We would appreciat if MAS could consider entering into bilateral agreements with overseas supervisors instead. This would also considerably reduce the number of requests that overseas supervisors might receive from the ORFIs that provide services to banks and MBs in Singapore.

- Para 5.1(a) of the ON stipulates that the requirements on outsourced relevant services that involve the disclosure of customer information will apply regardless of whether they are ongoing or material, i.e. these requirements will apply to all one-off/ad hoc or short-term arrangements of less than 12 months and also to non-material arrangements, as long as customer information is disclosed. We submit that this provision should be removed or made subject to risk-based assessments. Imposing requirements on all arrangements in a blanket manner imposes significant, costly and unnecessary operational/regulatory burden on banks that may not be commensurate with the risks of the specific arrangement. Our view is that a risk-based policy approach would enable a more effective allocation of resources by banks to focus on key and specific risks arising out of an outsourcing arrangement.

Thank you for providing us with the opportunity to comment on the proposed ONs. We and our members stand ready to engage on this topic further with MAS. We look forward to having the opportunity to provide further assistance as regulations governing outsourcing continue to be refined.

This response was prepared with the support of EY, based on the input from ASIFMA bank members.

Question 1. MAS seeks comments on the proposed annexes of the proposed Notices as follows:

a. **List of relevant services commonly performed by banks or MBs in Singapore (Annex A of the proposed Notices)**
b. **List of relevant services that are not commonly performed by banks or MBs, and thus, are excluded from the definition of outsourced relevant service (Annex B of the proposed Notices)**
c. **List of relevant services that are not commonly performed by banks or MBs, but are considered by MAS as outsourced relevant services (Annex C of the proposed Notices)**
d. **List of exempted outsourced relevant services (Annex D of the proposed Notices)**

Respondents should provide the rationale to support their suggestions to add or remove services from the annexes.

As a general note, we recommend that the MAS includes the Annexes (A-D) as a separate guideline or FAQ and not in the ONs since changes to these services would require a revision to made to the entire ONs. If they are maintained in a separate document, it would warrant a change only to that document.

As a second general note, we submit that the basis of inclusion or exclusion under the definition of "outsourced relevant service" is unclear. It is unclear what the rationale is for including or excluding relevant services from Annexes B and C. For example, the basis for excluding relevant services such as payment and network infrastructure because of "the characteristics of the service" is unclear. Likewise, it is unclear why cloud services are explicitly included as an "outsourced relevant service".

Annex A: Relevant services commonly performed by banks in Singapore

- Within Annex A of the ON, we notice that the wording specifically refers to "relevant services relating to risk management". We would like to seek clarification if the term "risk management" has the same interpretation or guidance from the Guidelines on Risk Management Practices, July 2014 or if MAS would define or provide specific guidance on the term "risk management" in Annex A. Also, services like processing of applications, documents, manpower management, etc. do not constitute risk management services. Hence, we would like to seek clarity on why these services are listed in Annex A and labelled as "services relating to risk management".

- We would also like to seek confirmation on whether that listing of services in Annex A has no effect from the perspective as the Notice as long as the services

herein are neither 'ongoing', 'material', or involve disclosure of Customer Information (CI).

- Most branches of a foreign incorporated bank tend to operate under a global operating model where IT system hosting is not a service commonly performed by the Branch in Singapore based on the existing nature of its setup. We propose that hosting of information systems and managing and maintenance of information systems such as end-user support, local or wide area networks management and information technology security operations (xi) conducted by intragroup entities be excluded from Annex A i.e. the list of relevant services commonly performed by banks in Singapore.

- We would appreciate further clarification from MAS on what constitutes "services provided by recruitment agencies" (vi). For example, does this refer to the hiring process only, or would services such as posting an advertisement, collecting and forwarding CVs to banks also be in-scope.

- We suggest that staff augmentation (vi) be removed from Annex A as it is not normally considered outsourced relevant service. Usually, staff augmentation are arrangements that operate on the service provider's premises under close supervision, hence they would not fall under the spirit of an outsourced relevant service. Furthermore, no data would be shared with an external party outside of the service provider's premises. The inclusion of staff augmentation is an outlier with other regulators and require local workarounds and adds additional burden on the bank or MB that is not commensurate with the level of risk which staff augmentation poses to the bank or MB.

- "Software development" and "customisation of commercial off-the-shelf (COTS) software" may not be commonly performed by banks unless there is an in-house specialist team. These services are not part of the core banking business and hence we would propose removing these items from Annex A.

- The latest draft Banking Regulation 23G(e) has prescribed "the business of providing sales, marketing and administrative services on behalf of any regulated financial institution which is a related corporation of the bank" as a non-financial business. We would like to clarify if we need to expand the outsourcing requirements to include these activities between banks and their related entities.

- We would request the MAS to provide clarity on whether the following scenario would fall in scope of the phrase "outsourced relevant service", for example:
    - a bank, acting as financial adviser and distributor, gets its client to invest in various collective investment schemes (managed on an ongoing basis by third-party fund managers such as Aberdeen, Fidelity, Schroders or

Blackrock etc). Is the bank to be regarded as receiving an "outsourced relevant service" from those third-party managers? If so, we would like the MAS to reconsider its position. This is because the bank's activities in the scenario are already regulated under statutes and regulations which are more specifically targeted to such activities;

- Regarding the list of Professional Services in Annex A (xv) of the ON, certain centralized activities such as COO office, project management, management reporting, control room and second level control functions, are typically performed at head/regional offices. It is not practical or feasible to be done at local level from organizational, governance and oversight set up. We propose to allow flexibility to FIs to assess whether such centralized activities should be considered as outsourced relevant service instead of having a blanket inclusion.

- Also regarding (xv) of Annex A, we would also like to clarify if a referral arrangement involving the bank introducing its External Asset Managers (EAMs) clients to a platform that offers improved operational processes and efficiency is considered a professional service related to the business activities of the bank, therefore falling in scope of the phrase "outsourced relevant service". We would like to clarify if a shared relationship where a client account with an account manager in Singapore and has a relationship manager in other branches outside of Singapore would be in-scope of "outsourced relevant service", since the definition of "service provider" in the ON includes any branch or office of the bank that is located outside of Singapore. We would also like to clarify if the reverse would be in-scope of "outsourced relevant service", where a client account being managed by a relationship manager in Singapore has an account manager in other branches outside of Singapore.

- Related to the previous point, we would like to clarify if MAS offshore licensed representatives providing licensed services to Singapore clients booked offshore would be in-scope of "outsourced relevant service.

Annex B: Relevant services that are excluded from the definition of outsourced relevant services

- We suggest the MAS confirms that third-party video and teleconferencing telecommunication platforms (e.g. Zoom, Bluejeans, Webex etc to name a few) fall under telecommunication services which are excluded under Annex B section 1 (ii) since they are typically used for client events and regular communications.

- We note that "Scheduled maintenance of equipment supporting business continuity and information technology disaster recovery" (xv) is a relevant service that is excluded from the definition of outsourced relevant service. We would like MAS to clarify the scope of what is excluded:

- If business continuity/disaster recovery functions and activities is an outsourced relevant service in Annex A, we would like to understand why the maintenance of BCP/DR equipment is excluded and listed in Annex B; and
- We would like to understand whether the example cited of an uninterrupted power supply refers to equipment that does not contain customer information.

- With reference to section 1(xvii), we would like to see clarification on what it means "where the bank does not have the internal expertise to conduct". There may be instances where the bank has such expertise but still choses to outsource the work. Often Big-4 firms are engaged on consulting projects that can involve confidential information and we believe 1 (xvii) should be brought under Annex A if such activity involves confidential/customer information and regardless of whether the bank has expertise in this area or not.

- We would like to propose that software licensing support as it relates to the services provided as part of the warranty associated with purchases of Commercial Off The Shelf (COTS) software be excluded from the definition of software licensing since it is not a core banking services and does not constitute an outsourced relevant service.

Annex C: Relevant Services Considered as outsourced relevant services

- We would like to clarify MAS' intended interpretation of public cloud services such as software-as-a-service, platform-as-a-service, infrastructure-as-a-service. The way point 1 under Annex C is currently drafted seems like all cloud services will be in scope of the ONs, which we believe is not the intent of MAS. As mentioned in the General Comments, we are concerned about a blanket inclusion of cloud services as outsourcing and suggest that the key risk attributes of each cloud arrangement such as service, scope and infrastructure be considered. Indeed, a key concern of our members is that if the use of cloud as part of an outsourcing arrangement would become an automatic indication of risk, leading to an imposition of the same set of regulatory standards, without an appropriate assessment of key risk attributes such as service, scope and infrastructure of the cloud arrangement. Rather, each cloud arrangement should be subject to an assessment for identifying the particular risks involved.

- We would like to confirm that public cloud setup on dedicated infrastructure hosted at the third-party location and managed by the bank is excluded from the list in Annex C. In the current MAS Guidelines on Outsourcing, MAS defines public cloud as "A cloud infrastructure made available to the general public or an industry group and owned by a third-party service provider". We would like MAS to confirm that arrangements provided by third-party vendors that offer a

proprietary environment dedicated to a single business entity/service receiver via physical components stored at the vendor's datacentre are excluded. We see these as private cloud setups as oppose to public cloud (the vendor may provide the SaaS to other clients separately on a dedicated environment).As such, we would like to seek clarification if the same definition will be used in the ON.

- Below are some examples of public cloud services, that would not be deemed as outsourcing under the current MAS Guidelines on Outsourcing.
    a) SaaS to facilitate booking of meeting rooms
    b) SaaS to facilitate booking of seats/desks where a bank adopts a hot-desking arrangement
    c) SaaS to facilitate events management involving external parties

  We noted that the proposed definition of "outsourced relevant service" differs materially from the current definition of "outsourcing arrangement" contained in the current Guidelines on Outsourcing. The definition of an "outsourcing arrangement" in the current Guidelines refers to arrangements that are "integral to the provision of financial service by the bank" – which is critically used by banks currently to apply a risk-based approach to identify relevant outsourcing arrangements. In particular, items (a) to (c) above would not have been deemed as "integral to the provision of financial services" and hence would have been deemed as non-outsourcing based on the current Guidelines as an outsourcing arrangement. We propose that items (a) to (c) above, which are akin to "receptionist services" under item(2)(iv) of Annex D, be deemed to fall under item 2 of Annex D despite these being SaaS arrangements. It would therefore be helpful if the MAS could provide guidance and/or examples if there are certain forms of cloud arrangements which could be deemed as non-relevant outsourced service.

- We would like to propose not to differentiate Postal and Express letter/parcel delivery services from government mail services and remove them Annex C, since these are not key banking activities, and they are similar to governmental mail services. This is also relevant to the wording in Annex B 1(iii) which differentiates between specific postal services.

Question 2. MAS seeks comments on the requirement for a bank or an MB to submit to MAS a register of outsourced relevant services (as described in paragraph 3.1) semi-annually or upon request.

- There are significant differences in the outsourcing registry/ inventory requirements across jurisdictions. As such, the data required for the purposes of reporting on outsourcing transactions and third-party relationships is different across jurisdictions, which can inhibit financial institutions, and regulators, from obtaining a clear and consistent view of arrangements across jurisdictions. We suggest MAS and regulators to align registry/inventory requirements as much as possible. We seek MAS' to consider aligning the format of the outsourcing register to format of the register submitted by a CMS license holder, during the annual Questionnaire on Regulated Activities as required by the Securities and Futures Act.

- The ONs requires the need to include all ongoing outsourced relevant services and all outsourced relevant services that involve the disclosure of customer information, regardless of whether the services are provided once-off or on an ongoing basis. Not only will this be too onerous for the banks and MBs but also the submission of a register that contains all immaterial outsourcing arrangements, whether involving disclosure of customer information or not, is too onerous. We would like to recommend that the register only be mandated to contain all material outsourcing arrangements, and that the ON language stipulate that Banks/MB have adequate controls on completeness and accuracy (instead of mentioning "must be complete and accurate at all times". We would like to propose to exclude ongoing non-material arrangements that do not involve customer information from the outsourcing register requirement.

- We would like to confirm whether the outsourcing register under the ON is intended to capture sub-contracting, and in particular non-material subcontracting. The current Guidelines 'require material subcontractors to be inventoried', whereas the ONs is silent on this. We seek the MAS's clarification on this and recommend non-material subcontracting be excluded to maintain consistency with the existing Guidelines.

- We note that 3.1(b) is no longer inclusive for only 'ongoing' arrangements, and a one-month short term arrangement would be in-scope. We believe this overly onerous and that it does not reflect a risk-based approach to capturing outsourced services. We propose the MAS define an alternative / reasonable threshold for triggers to provide more clarity on 'ongoing'.

- Since MAS Notice 634 already includes a clause stating that the MAS can at any time request a bank or MB to submit the register, we propose that there is no need to provide the register to the MAS semi-annually. In the event the submission must happen semi-annually, we would like to seek the MAS' clarification on the submission dates and cut-offs and request MAS to include them in the ONs. We further consider the requirement to keep the register updated "at all times" to be challenging – the current requirement to update the

register “promptly” is more reflective of the practical mechanics of maintaining the information in the register.

Question 3. MAS seeks comments on the requirements pertaining to the management of material ongoing outsourced relevant services and evaluation of service providers.

- The term “Disclose” is not defined in the Banking Act or the Notice. The obligations in Section 5.1(c), 6.1 and 6.2(b) turn on the concept of “disclosing” customer information to a service provider. However, the term “disclose” is not defined. The term should be properly defined to exclude the passive role of cloud service providers—while information may be processed or stored by the cloud service provider, information is not “disclosed” in the ordinary meaning of the term. Otherwise, related obligations are impractical and overly burdensome for both banks, their customers and the service provider.

- We suggest MAS considers requiring banks and MBs to perform due diligence checks by the next calendar year (rather than strictly within 12 months), as this will allow for due diligence reviews to be grouped/consolidated together. With a proposed stringent 12-month requirement in the ONs, banks and MBs will end up continuously performing due diligence reviews throughout the year as new arrangements will progressively get added to the register. This will significantly increase complexity and compliance costs.

- Since banks and MBs will also be required to re-perform the due diligence checks within a year and thereafter, at a frequency approved by the bank’s or MB’s board, or a committee delegated by it, we would like to recommend that intragroup outsourced services be treated differently from third party outsource services. We recommend that intragroup outsourced services be reviewed at a frequency defined by the bank or MB for the first year and thereafter in accordance with their risk management frameworks. d

- The requirement to assess the “track record” of a provider could unintentionally erect barriers to market entry. It should be clarified that this should not preclude the use of providers newly established on the market.

- We would also like to seek clarity on whether the relaxation for intragroup outsourcing extends to the audit requirement.

Question 4. MAS seeks comments on the requirement for banks and MBs to enter into outsourcing agreements for their material ongoing outsourced relevant services and to ensure the inclusion of certain terms in these agreements.

- With reference to clause 7.1(d) in the draft ONs, "the Authority, or an auditor appointed by the Authority, be allowed to audit the books, systems and premises of the service provide." We would like to see if the MAS can please provide clarification on what alternatives are available to banks and MBs if the service providers are regulated and prohibited by their home country regulators from allowing MAS or an auditor appointed by it to audit the books, systems and premises.

- We also note that the definition of an "outsourcing agreement' only requires that policies and procedures be in place for intragroup outsourcing. We would like to recommend that stipulation should be expanded to include "intragroup agreements" since some banks use intragroup agreements to govern their internal outsourcing arrangements.

Question 5. MAS seeks comments on the terms required to be included in the outsourcing agreements.

- We submit that some of the suggested terms are quite prescriptive which might not always add a lot of value – e.g. in clauses 7.1 (d) (i), it could simply be referred to "the ability of the service provider to provide the services in compliance with the agreement and applicable law" (which includes service continuity and protection of information, as well as risk management". It opens the question whether the contracts need to contain exactly this language, to which we would like to comment that that will hardly be possible. Especially in the field of the increasingly prevalent cloud services provision, the contractual provisions often rather achieve the objective of the regulatory requirement, than to implement it directly. On the example of audit, an extensive onsite audit would be allowed in the arrangements. No mention would be made of the purpose of such audit.

- Clause 7.1 (f) states that the service provider should ensure that all records of transactions, documents and information given to the service provider are deleted, destroyed or rendered unusable as soon as possible except when the

service provider is prohibited from doing so by written law or foreign laws. It appears rather lenient to allow the service provider to maintain copies due to foreign laws. In many jurisdictions, such records should be made generally inaccessible, at least. We recommend that the MAS add this requirement to restrict access to the records.

Question 6. MAS seeks comments on the requirements pertaining to the protection of customer information.

- We would like to request MAS' to include a clause about the service provider's obligation to keep customer information confidential to be included the outsourcing agreements as it is important to understand (as mentioned under question 5) that these requirements will not always be implemented verbatim.

- Furthermore, is it still correct, as per section 3.9 of the MAS Response to Feedback Received dated November 2019, and Q4 of the FAQs of July 2016, that "information that is encrypted in a secure manner or anonymised, such that it is not referable to any customer, will not be considered "customer information"? Additionally, the definitions of "customer information" is not in line with the definition under section 40A of the Banking Act. This is important to understand as it will make a major impact on the scope of transactions to which Section 8 of the Notice will apply and will allow alignment with the Guidelines on Outsourcing. We note that the definition of customer/confidential information in the Notice creates an exclusion to information that is not referable to any named customer/persons or group of named customers/persons. Additionally, Annex C of the consultation paper seems to suggest that there may be arrangements involving customer information that is not necessarily material. We would appreciate it if the MAS could confirm this interpretation.

- We request the MAS to clarify how the contractual requirements in the draft ON sit compared to 5.5.2 of the 2016 Guidelines on Outsourcing as the contractual requirements cover identical topics (such as confidentiality, audit, termination, subcontracting) but in slightly different ways, which we submit is confusing.

- Per Para 4.9 of the consultation paper encourages banks and MBs to obtain legal advice pertaining to situations where customer information may be required by law to be disclosed by a service provider, where an outsourced relevant service involves the disclosure of customer information to the service provider. The

scope, nature and ambit of the legal advice contemplated in this para is not clear. While we welcome measures to protect customer information, clarifying the scope, nature and ambit of the legal advice will make this section clearer.

Question 7. MAS seeks comments on the requirements pertaining to the use of sub-contractors for material ongoing outsourced relevant services.

- We would like the MAS to clarify if the sub-contractor definition and requirements set out in the ONs apply to material ongoing intra-group outsourcing arrangements. For example, a material ongoing intra-group outsourcing arrangement outsourced to another branch or office of the same bank (service provider) and the service provider then has further outsourced it to another branch or office of the same bank.

- We would like to seek MAS' clarification on why the proposal is for written consent to be required from client for subcontracting ongoing material outsourcing since this not market practice or in-line with other regulators., We propose to allow one-way notification to customers to obtain deemed consent of disclosure of customer information. It is operationally onerous on bank to obtain written consent from all customers. In addition, for customers who are banks, we propose to do away with the need to obtain any written or deemed consent, given that outsourcing and sub-contracting arrangements would already be common practices across most banks. We would like to propose that broad language incorporated into terms and conditions acknowledged by customers, regarding the bank potentially engaging service providers and subcontractors on services involving disclosure of customer information, be sufficient to meet the requirements, as opposed to the need to seek customers' consent each time that a new subcontractor/ service provider is being appointed. We therefore seek the MAS' confirmation in this regard.

- We submit that the subcontracting restrictions are overly prescriptive. Sections 6.1, 6.2, and 7.1(h) prescribe requirements for commercial agreements between banks and their service providers or dictate down-stream contractual agreements with third parties that are impractical to implement for cloud services. Cloud services are often homogenized and provided on a one to many basis, and it is impractical (if not impossible) for cloud service providers to tailor service offering for individual customers. Therefore, it is not feasible for the service provider to implement different subcontractor management processes or contracts with those subcontractors based on the risk assessment of each individual bank. We recommend that MAS retains the flexibility provided to

Banks under Section 47A(4) and (5) of the Banking Act and the MAS outsourcing Guidelines in managing subcontracting risk.

- We would like to seek MAS' clarification on the relationship between Section 6.2(b) and 6.3(d), which is not immediately clear. While 6.2(b) deals with mandatory minimum requirements for subcontracting that entails disclosure of client information, 6.3(d) sets out requirements for any and all subcontracting, to the extent the FI considers this necessary according to (c). Why then, are the requirements of 6.3(d) more stringent and more detailed? Why does (ii) contain a reference to disclosure of client information?

- Furthermore, we would like to see MAS' clarification on why should section 6.2 (c) be a policy driven risk requirement as all contractual obligations between the bank and the service provider must be passed on to the subcontractors. It is for the service provider to ensure that the clauses are flown down into the subcontracting agreement.

- On paragraph 6.2(b)(i) of the ON, the sub-contractor needs to be notified in writing of the bank's obligations of confidentiality under the Act and common law. Tying that with paragraph 4.13 of the consultation paper where banks need to include terms in its outsourcing agreement with the service provider for services where disclosure of customer information is involved, to require the service provider to in turn include terms in the service provider's agreement with its sub-contractors on the safeguarding of the confidentiality and integrity of customer information, we would seek MAS' clarification on:

    - Whether it suffices to impose this obligation on the service provider in their dealings with sub-contractors, if any, or if express consent is required from sub-contractors. It will be impractical for banks to impose legal obligations on sub-contractors given that there is no direct contractual relationship between the bank and the sub-contractors; and

    - Whether it suffices for the notification to include, in general, the bank's or MB's obligation to protect customer confidentiality or is there a need to list down the legal provisions that banks/MBs are bound by.

  As per the current MAS Guidelines on Outsourcing, Paragraph 5.5.4, FIs "should ensure that the sub-contracting of any part of material outsourcing arrangements is subject to the institution's prior approval". However, as per the ONs, Paragraph 6.3, "Where a bank in Singapore allows a material ongoing outsourced relevant service to be sub-contracted, the bank must ensure all of

the following: (a) the bank is notified within 30 days of the engagement of a sub-contractor".

- We would like to seek MAS' clarification if this pre-approval requirement (in the current Guidelines) will be changed. As this notification requirement is something a bank or MB will rely on the service provider for, we would request MAS to consider making this a contractual requirement under 6.2(b) of the ONs, so it is imposed as part of the contractual obligations.

Question 8. MAS seeks comments on the requirements pertaining to the audit requirements for material ongoing outsourced relevant services.

We welcome the ability to rely on pooled or third-party certification performed by independent parties and thank the MAS for taking into consideration and implementing our previous submissions.

- While we welcome all measures to keep a balanced check on the manner in which outsourced relevant services are being conducted, we feel the conducting an audit every 3 years will put too much burden and pressure on banks and MBs. We would like the MAS to consider that banks / MBs apply a risk-based approach to determine the frequency of the audit rather than MAS set the audit frequency on material outsourcing arrangements.

- We would like to seek clarity on the scope and nature of the audits that are required to be performed in order to meet the requirements in the ONs, in particular for intragroup outsourcing arrangements vs external third party arrangements.

- We would like the MAS to consider the inclusion of audits that may be performed by expert independent internal teams or by the banks/MBs' internal audit function since the ONs requires that specific audits be performed by an 'independent party' which may be taken to imply a party external to the bank/MB. Furthermore, the current MAS Outsourcing Guidelines allows for 'internal expert assessment'.

- We would like to seek clarification on the requirements in relation to auditor qualification as stipulated in the MAS Guidelines and whether they apply to the ONs.

- Per MAS Notice 634, "Banks shall ensure that an independent report on the service provider's control environment is prepared annually, highlighting any deficiencies in the internal controls and any breaches of confidentiality that may have occurred". We would like to seek clarity if in the ONs, the yearly audit will be replaced with the frequency of audits of not more than 3 years.

- On paragraph 9.1 of the draft ON requiring independent audits on each of its material ongoing outsourced relevant services, we would note that the requirement is onerous and would seek to have greater flexibility on the frequency, particularly for foreign banks where large number of relevant services may be performed by inter-affiliate entities/Head Office. Banks should be able to take a risk-based approach with respect to their audits and not be mandated on frequency, particularly with respect to intra-group outsourcing. The mandating of these audits can add significant cost to a bank. We would also like to seek MAS' confirmation on whether the minimum 3 years frequency requirement is geared toward the specific scope mentioned in paragraph 7.1(d)(i) and (ii) and need not include a review of each underlying outsourced process in particular.

- Paragraph 9.2 of the ON requires that banks submit a list of all audits performed in the past 12 months. We recommend that the MAS re-consider whether it is necessary to impose an additional submission requirement on financial institutions and streamline such information request to reduce/avoid duplication (e.g. leverage audit information that is already being provided to MAS as part of its regular supervision of financial institutions; leverage or remove the audit information in the Outsourcing Register).

- MAS Audit of service providers and subcontractors. 7.1(d) turns the permissive Section 47A (5)(c) and Section 47A (10) of the Banking Act into a mandatory and rigid set of contractual terms and significantly expands the scope of MAS's audit without affording practical protections to service providers, or their subcontractors. We recommend that MAS considers the scope of audit contained in the MAS Outsourcing Guidelines as a benchmark for this Notice.

Question 9. MAS seeks comments on the requirements pertaining to the termination of material ongoing outsourced relevant services.

- It would help if the MAS could in guidance give clearer scenarios under which it may consider it appropriate to terminate an outsourcing arrangement. We would like to suggest that termination should be considered as last resort and always consider exit strategies where those exist.

- 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.

- The ON requires banks to include mandatory broad termination rights in their outsourcing agreement which go beyond material breach of the agreement or a

regulator instruction from MAS to terminate the agreement. The prescribed broad and rigid set of terms that must be specifically stated in an agreement are a one-size fits all and does not consider different circumstances of outsourcing. Given that non-compliance with the Notice can lead to criminal sanctions we recommend affording banks and MBs greater flexibility in implementing appropriate commercially viable contractual terms.

- 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: 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.

Question 10. MAS seeks comments on the requirements in paragraph 4.22 pertaining to an ORFI's provision of material ongoing outsourced relevant services.

- We would like to seek clarification on whether third-party certification performed by independent parties will be deemed sufficient to satisfy the requirement to audit the ORFI.

- We would also like to clarify with the MAS if the requirement to provide MAS with a confirmation from the overseas supervisor of the ORFI applies to Material Ongoing Intragroup Outsourcing Arrangements or only to external Service Providers.

Question 11. MAS seeks comments on the requirement in paragraph 4.23 on a bank or an MB to provide MAS with a confirmation from the overseas supervisor of the ORFI and the scope of such a confirmation.

- For outsourcing to overseas regulated entities involving the disclosure of customer information, the ONs 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. We would appreciate it if MAS could consider entering into bilateral agreements with overseas supervisors instead. This would also considerably reduce the number of requests that overseas supervisors might receive from the ORFIs that provide services to banks and MBs in Singapore.

- In connection with this, the same approach should be taken in relation to paragraph 11.1(b) of the draft Notice which requires a written confirmation by the supervisory authority of the ORFI that:

    - The Authority will have access to customer information and any record document, report or information relating to the provision of the material ongoing outsourced relevant service; and

    - The bank and any person appointed by the bank will be allowed to audit the books of the ORFI for the purposes mentioned in section 47A(10) and submit report of the audit to the Authority.

  Alternatively, MAS may wish to consider allowing banks and MBs to submit a copy of the outsourcing agreement, which stipulates the same clauses albeit agreed by the service provider, in lieu of the written confirmation from overseas supervisors.

- 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. We would like to request the MAS to consider applying this requirement to only those arrangements relying on the Outsourcing of Operational Function Third Schedule exemption per the current approach.

- We consider that it would be more practical for the bank or MB 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 international practice (e.g. HKMA).

- Given that MAS allows banks and MBs to perform reduced due diligence checks on intragroup service providers, we suggest that intragroup outsourced relevant services be excluded to provide MAS with a written undertaking from the supervisor of the ORFI. Banks and MBs will continue to assess the intragroup entity's risk management framework and track record as well as controls on confidentiality and security of customer information as required under the proposed ON.

- In relation to the submission of the bank's policies and procedures relating to managing request for customer information, we would like to clarify the frequency and timeline expected for such submission.

- We note in Section 11 of the ON that the written undertaking requirement from supervisor of ORFI is extended to the sub-contractor of a material ongoing outsourced relevant service. In a global bank operating model, this is common for a local branch to outsource to head or regional office who sub-contract to other offices in India or Romania. It will be difficult to obtain such confirmation from the local supervisors from sub-contracting perspective. We propose to remove such onerous requirements on sub-contractor of material outsourcing as it is too intrusive and not in line with industry practices.

Question 12. MAS seeks comments on the requirements applicable to outsourced relevant services that involve the disclosure of customer information, and for the meaning of "customer" which will apply to these requirements to include companies which carry on banking business, merchant banking business or investment banking business.

- The proposed definition of "customer information" in the ON does not explicitly exclude information "that is public, anonymised, or encrypted in a secure manner such that the identifies of the customers cannot be readily inferred". The proposed definition instead excludes any information "that is not referable to any named customer or group of customers".

We therefore would like to seek the MAS' clarification that information that is anonymised or encrypted in a secure manner such that the identities of customers cannot be readily inferred, would fall within the proposed exclusion of "customer information" in the ON.

- Para 5.1(a) stipulates that the requirements on outsourced relevant services that involve the disclosure of customer information will apply regardless of whether they are ongoing or material, i.e. these requirements will apply to all one-off/ad hoc or short-term arrangements of less than 12 months and also to non-material arrangements, as long as customer information is disclosed. We submit that this provision should be removed or made subject to risk-based assessments. Imposing requirements on all arrangements in a blanket manner imposes significant, costly and unnecessary operational/regulatory burden on banks that may not be commensurate with the risks of the specific arrangement. Our view is that a risk-based policy approach would enable a more effective allocation of resources by banks to focus on key and specific risks arising out of an outsourcing arrangement.

- We would like to seek MAS' clarity on the requirements to 'evaluate prior to and on an ongoing basis, the service provider's ability to safeguard the confidentiality and integrity of customer information disclosed to the service provider' for services that are one-off in nature. If the transaction is of a one-off nature, is the expectation from the MAS the same as for ongoing services?

Question 13. MAS seeks comments on the requirement for a bank or an MB incorporated in Singapore to implement a group policy on outsourced relevant services.

No comments

Question 14. MAS seeks comments on the effective dates of the proposed Notices.

- We would like to clarify the timeline requirement for compliance in case of renewal of contracts, if the renewal is due in 3 years and compliance timeline is 3 years (at the time of renewal).

- Similar to the 2019 consultation, we propose for the MAS to consider extending the period to 24 months, for the ONs to be effective as it will have material impacts on the banks and MBs existing framework and policy to effectively roll–out the additional requirements including the need to reassess existing outsourcing arrangements against the new definitions, do the due diligence, obtain written undertakings from foreign regulators and revise existing outsourcing agreements.

- We propose that the timelines are harmonised with that of the FSB & IOSCO consultations in order to prevent divergence on outsourcing standards internationally and between FIs and possible multiple revisions to the ON to later accommodate the IOSCO and FSB consultation conclusions if implemented in Singaporean regulatory requirements.

  Furthermore, we would like to clarify how the Guidelines on Outsourcing will apply and/or be updated, as this would be relevant to timing/ implementation.

Any other comments:

- The MAS was understood to be developing the ON alongside while updating the 2016 Guidelines on Outsourcing, with the expectation that it would be possible to review these together. With the Guidelines not updated yet, it is more challenging to fully assess what the requirements will look like holistically. There are some gaps misalignments between the existing Guidelines and the ON. Until such time, as the complementary updated Guidelines are proposed and/or finalise, this may pose some difficulties for interpretation and implementation. Further, per paragraph 1.6 of the consultation paper which states "MAS will subsequently review and amend the Guidelines to align with the proposed Notices", we would like to seek further clarity around this.

- Many global banks have global booking arrangements. A typical example would be in the case of an MNC or FI client with offices in various countries in APAC, where the client may trade FX products with our bank's Singapore branch, equities products with our Hong Kong branch, etc. All these transactions are ultimately booked in our bank's Head Office. For such MNC/FI clients where trades are booked in Head Office, they may be considered as Head Office's clients instead of Singapore branch's clients. Therefore the related FX/equities

trade processing and downstream services, which would typically be done centrally in another location (e.g. India), should not be considered as "outsourcing" by the Singapore branch in such a global booking model.

- We note that "service providers" include (a) any branch or office of the bank that is located outside Singapore; or (b) any person that provides a relevant service to the bank. We would like to seek MAS' confirmation that limb (a) includes intragroup entities of the bank.

- Lastly, in terms of the definition of "Board of Directors", for a bank incorporated outside Singapore, a board-level committee, or a management committee or body responsible for the oversight of the branches and offices of the bank located within Singapore. The definition of board in the current MAS Guidelines on Outsourcing references "a management committee or body beyond local management charged with oversight and supervision responsibilities for the institution in Singapore". We would like to confirm if the local management is included.