Monetary Authority of Singapore

RESPONSE TO FEEDBACK RECEIVED – CONSULTATION PAPER ON FOREIGN EXCHANGE CONVERSION IN CHINA VIA THE RENMINBI CLEARING BANK IN SINGAPORE

1 Introduction

1.1 On 2 May 2013, MAS issued a public consultation paper on proposed regulatory requirements that all participating banks and merchant banks in Singapore must comply with when conducting foreign exchange conversion in China via the Renminbi clearing banking in Singapore for the settlement of eligible cross-border trade. A total of 22 respondents have submitted their feedback. The respondents are listed in the Annex. MAS would like to thank all respondents for their comments.

1.2 MAS has carefully considered the feedback received. Comments that are of wider interest, together with MAS' responses, are set out below.

2 Scope of the Notices

Feedback

2.1 Some respondents sought confirmation that the Notices do not apply to participating banks in Singapore which do not conduct foreign exchange conversion in China via the Renminbi Clearing bank. Some respondents sought clarification if the proposed Notices are applicable to offshore Renminbi foreign exchange conversion. One respondent asked if a participating bank outside of Singapore will be subject to the requirements as set out in the proposed Notices.

MAS' Response

2.2 The proposed Notices apply to all participating banks in Singapore. At the same time, MAS notes that all participating banks, including participating banks outside of Singapore, have to enter into an agreement with the Renminbi Clearing Bank in Singapore for the provision of Renminbi clearing and settlement services. The aforesaid agreement requires a participating bank to

ensure compliance with the prevailing rules and regulations imposed by MAS. Therefore, MAS expects all participating banks to comply with the requirements as set out in the proposed Notices when they conduct foreign exchange conversion in China via the Renminbi Clearing Bank in Singapore.

2.3 The proposed Notices do not apply to offshore Renminbi foreign exchange conversion.

3 Scope of Eligible Cross-border Trade

Feedback

3.1 Some respondents sought clarification on whether the scope of eligible cross-border trade includes transactions which may support such eligible trade, including advance payment, pre-trade financing, payment of expenses and salaries, working capital loans, capital injection and etc.

3.2 Some respondents suggested that the scope of eligible cross-border trade should be expanded to cover services trade and foreign direct investment. Some respondents also proposed for payments for other related or incidental services, e.g. bank fees, interest rates, consultancy fees, agency fees, legal fees, custom duties and warehouse storage fees, to be included along with insurance and freight charges.

MAS' Response

3.3 The scope of eligible cross-border trade is restricted to merchandise trade, and a participating bank may conduct foreign exchange conversion in China via the Renminbi Clearing Bank for the settlement of an eligible cross-border trade and the payment for insurance and freight charges for the eligible cross-border trade. The foreign exchange conversion may be conducted for advance payment of an eligible cross-border trade, subject to the same requirement that it must be conducted not more than three months before or after the advance payment is due, as the case may be. Other transactions and payment for services which may support eligible cross-border trade are not included in the scope.

3.4 MAS has taken note of the feedback from the industry and will continue to review the scope of eligible cross-border trade and the related requirements with the People's Bank of China (PBC) and update the Notices as and when necessary.

Feedback

3.5 Some respondents proposed for participating banks to be allowed to conduct foreign exchange conversion in China via the Renminbi Clearing Bank more than three months before or after the payment is due, as the case may be. Some respondents suggested for MAS to allow a certain percentage of the foreign exchange conversion to be conducted beyond the prescribed three-month period.

3.6 Some respondents sought clarification on how the three-month period is computed, taking into consideration the effective date of the trade contract and the foreign exchange contract. Some respondents commented that insurance and freight charges may be not be settled on same date as per the trade transaction.

3.7 Some respondents sought clarification on the use of the Renminbi obtained under the foreign exchange conversion for other purpose, e.g., before the payment due date. Some respondents sought clarification on the action to be taken by the participating bank in the event of a cancellation of an eligible cross-border trade.

MAS' Response

3.8 All foreign exchange conversion must be conducted not more than three months before or after the payment is due, as the case may be.

3.9 The three-month period refers to three calendar months and should be computed based on the payment due date as stipulated in the trade contract. As an illustration, in the case of a purchase of goods, if the payment due date is 15 Sep 2013, the foreign exchange conversion should be conducted no earlier than 15 June 2013. In the case of a sale of goods, if the payment due date is 15 Sep 2013, the foreign exchange conversion should be conducted no later than 15 Dec 2013. The conduct of the foreign exchange conversion refers to the date of the settlement of the foreign exchange contract. MAS notes that the insurance and freight charges may be settled on different dates as per the trade transaction and therefore the computation of the corresponding three-month period can be independent of that of the trade transaction.

3.10 Renminbi funds obtained under the foreign exchange conversion should be used for the purpose of settlement of eligible cross-border trade. Participating banks should take adequate steps to ensure that the Renminbi funds are available to fulfil the payment obligation on the due date. In the

event of a cancellation of the eligible cross-border trade, the participating bank should reverse the foreign exchange conversion as soon as practicable. The participating bank should request for the necessary documentation to verify the cancellation of the trade.

Feedback

3.11 Some respondents sought clarification on the definition of "eligible cross-border trade", in particular the definition of "person", the approach to determine if a person located in China and whether the eligible cross-border trade must involve the delivery of goods to or from China. Some respondents sought clarification on whether the bank receiving the Renminbi funds for the settlement of an eligible cross-border trade must be located in China.

3.12 Some respondents sought clarification on the applicability of the criteria for eligible cross-border trade for inward remittance from China. Some respondents also asked if the foreign exchange conversion and the corresponding remittance transaction must be conducted by the same participating bank.

MAS' Response

3.13 An eligible cross-border trade must involve the delivery of goods to or from China, and this will be evidenced by the relevant Chinese customs declarations where applicable. The trade transaction may be conducted with a trading partner in or outside of China. The Renminbi funds may be received by a bank in or outside of China. MAS will amend the Notices accordingly.

3.14 When a participating bank receives an inward remittance for the purpose of settlement of eligible cross-border trade, the same criteria for eligible cross-border trade apply and the participating bank should conduct the necessary verification of eligible cross-border trade before conducting foreign exchange conversion in China via the Renminbi Clearing Bank. In accordance with the requirements of PBC, the corresponding foreign exchange conversion and remittance transaction must be performed by the same participating bank. This is to mitigate risk that a client may obtain Renminbi by conducting multiple foreign exchange conversion through more than one participating bank for the same eligible cross-border trade.

4 Verification and Retention of Records

Feedback

4.1 Some respondents suggested that besides import or export documents, participating banks can review financial documents, e.g. letter of credit, guarantees etc, and commercial documents, e.g. sales contract, trade invoice etc, to evidence eligible cross-border trade. Some respondents commented that MAS should prescribe a specific list of documents acceptable for evidencing of eligible cross-border trade and the related insurance and freight charges.

MAS Response

4.2 An eligible cross-border trade must involve the delivery of goods to or from China. Therefore, participating banks should evidence Chinese customs declaration (where applicable) when verifying an eligible cross-border trade. MAS agrees that besides reviewing other import or export documents, participating banks can review financial documents, e.g. letter of credit, guarantees etc, and commercial documents, e.g. sales contract, trade invoice etc to evidence eligible cross-border trade. MAS will amend the Notices accordingly.

4.3 MAS is of the view that banks should determine the appropriate documents to evidence given the wide-ranging types of documents as well as the diverse nature of cross-border trade. MAS notes feedback from some respondents that that if a trade is on cost, insurance and freight (CIF) basis, the insurance and freight charges will be included in the invoice amount and there would not be separate documents to evidence insurance and freight charges.

Feedback

4.4 Some respondents suggested that MAS should take a more principle-based stance and allow participating banks to adopt a risk-based approach to verify eligible cross-border trade. For instance, instead of reviewing trade documents or when there is insufficient documentation, a participating bank can be allowed to rely on KYC and due diligence procedures for a selected group of clients to obtain reasonable assurance on the authenticity of a trade.

MAS Response

4.5 MAS agrees that participating banks can adopt a risk-based approach to verify eligible cross-border trade i.e. relying on KYC and due diligence procedures instead of reviewing trade documents for clients which meet

certain pre-determined criteria. Participating banks should carefully consider the appropriate criteria, including but not limited to the profile and track record of the company (e.g. listed vs. non-listed), the company's business relationship with the participating bank group, the company's business model and history of trading with China and the company's trading volume with China as a percentage of its overall business. The selected criteria and the rationale must be clearly documented. Such KYC and due diligence assessment on the clients must also be properly documented. Notwithstanding that the review of supporting trade documents would not be required for each trade that these customers transact; the participating bank should still perform periodic checks on selected trade transactions to verify their authenticity. MAS will amend the Notices accordingly.

Feedback

4.6 Some respondents sought clarification on the responsibility of a participating bank and the Renminbi Clearing Bank in verifying an eligible cross-border trade. Some respondents also noted that there could be instances where the foreign exchange conversion and payment of Renminbi can take place before shipment/delivery of goods.

4.7 Some respondents sought clarification on the verification of eligible cross-border trade for foreign exchange conversion in China via the Renminbi Clearing Bank conducted by a participating bank on behalf of the participating bank's related parties within the participating bank's group as well as other financial institution clients.

MAS' Response

4.8 The responsibility of verifying an eligible cross-border trade lies with the participating bank and the participating bank must complete the verification of the eligible cross border trade in accordance with the requirement set out in the proposed Notices prior to approaching the Renminbi Clearing Bank to conduct the foreign exchange conversion. In the event that a participating bank may require the Renminbi Clearing Bank to facilitate in the verification process, this should be carried out on commercial terms. This does not absolve the participating bank of the responsibility of verifying the eligible cross-border trade. For instances where the foreign exchange conversion and payment of Renminbi take place before shipment/delivery of goods, participating banks should follow-up with clients to verify that the eventual movement of goods is consistent with the documents. MAS will amend the Notices accordingly.

4.9 In the event that a participating bank is conducting the foreign exchange conversion in China via the Renminbi Clearing Bank for an eligible cross-border trade on behalf of the participating bank's related parties within the participating bank's group as well as other financial institutions, the participating bank should verify the eligible cross-border trade and retain documentation according to the same standards as it would if the transaction is conducted directly for the participating bank's client. Therefore, the participating bank is expected to request for relevant documentation from the participating bank's related parties within the participating bank's group as well as other financial institutions to verify the eligible cross-border trade.

Feedback

4.10 Some respondents sought clarification on the approach to procure documents evidencing the eligible cross-border trade and the related insurance and freight charges, e.g. original copy, certified true copy, scanned copy etc, as well as to store the documentation, e.g. hard copy or electronic copy. Some respondents sought clarification on the period of retention of records.

MAS' Response

4.11 Banks should determine the appropriate approach for procuring documents to evidence the eligible cross-border trade and the related insurance and freight charges. While MAS notes that original copies of supporting documents may not be available in every instance, participating banks should adhere to the principle that the documents procured can be reasonably relied upon to verify the authenticity of the trade. Similarly, banks should determine the appropriate approach for retaining the documentation. The documentation must be reasonably accessible by the participating bank and MAS as and when needed. Documentation in respect of the verification of eligible cross-border trade should be retained for a period of not less than five years from the end of the financial year of the participating bank in which the foreign exchange conversion for the eligible cross-border trade was conducted.

5 Reporting Requirements to MAS

Feedback

5.1 Some respondents commented that MAS' proposed quarterly and annual audit and reporting requirements will impose significant operational and compliance burden on participating banks, and suggested for MAS to

amend the requirements. Some respondents pointed out that the requirement for participating banks to indicate in the quarterly declaration that they have been in compliance with all the requirements in the proposed Notices at all times is particularly onerous. Some respondents suggested for the frequency of the audit and reporting to be reduced, while other respondents proposed for the requirement to appoint external auditor for the annual audit to be relaxed.

5.2 Some respondents sought clarification on the parties that should be responsible for the conduct of quarterly as well as annual audit of internal policies, procedures and controls in respect of the verification of eligible cross-border trade.

MAS' Response

5.3 All participating banks are expected to comply with the requirements as set out in the proposed Notices when conducting foreign exchange conversion in China via the Renminbi Clearing Bank for all trade transactions. Taking into consideration feedback from the industry, MAS will make the following changes to the reporting requirements:

a. A participating bank shall carry out an audit of the internal policies, procedures and controls in respect of the verification of eligible cross-border trade for every quarter of the financial year and submit a quarterly declaration signed by its chief executive or any person authorised by its chief executive, declaring that that the participating bank has taken adequate measures, including putting in place the necessary internal controls and conducting sufficient checks on selected transactions (e.g. at least top 10 transactions) which are representative of all foreign exchange conversion conducted, to assure itself that the foreign exchange conversion conducted in the last quarter have complied with the requirements set out in this Notice;

b. A participating bank which conducts foreign exchange conversion in China via the Renminbi Clearing Bank during its financial year shall carry out an audit of the internal policies, procedures and controls by its internal auditors and submit the internal audit report to MAS not later than three months from the end of that financial year.

5.4 The quarterly audit of internal policies, procedures and controls should be carried out by a unit within the participating bank which is independent of

the business unit responsible for the conduct of the foreign exchange conversion. MAS will amend the Notices accordingly.

Feedback

5.5 Some respondents sought clarification on whether a participating bank not conducting foreign exchange conversion in China via the Renminbi Clearing Bank would still be required to carry out quarterly audits of the applicable internal policies, procedures and controls. Some respondents also sought clarification on the extent of checks required during the audit and whether the participating bank can adopt a risk-based approach towards the sampling of transactions during the audit.

MAS' Response

5.6 A participating bank which did not conduct any foreign exchange conversion in China via the Renminbi Clearing Bank during a particular quarter of the financial year shall submit a declaration that it has not done so for that quarter. In such an instance, the participating bank is not required to provide a declaration that it has taken adequate measures to assure itself that the foreign exchange conversion conducted in the last quarter have complied with the requirements set out in this Notice.

5.7 In the event that a participating bank did not conduct any foreign exchange conversion in China via the Renminbi Clearing Bank during that financial year, the internal audit department of the participating bank shall conduct an audit to verify that no such foreign exchange conversion has been conducted and submit a report to MAS not later than three months from the end of that financial year.

5.8 The participating bank should determine the appropriate audit approach, including the conduct of sufficient checks on selected transactions (e.g. at least top 10 transactions) which are representative of all foreign exchange conversion conducted, in order to provide adequate assurance that it is in compliance with the requirements of the Notices, and to properly document the rationale for the audit approach.

6 Others

Feedback

6.1 One respondent sought confirmation that in instances where a bank appoints an agent bank to conduct foreign exchange conversion in China via

the Renminbi Clearing Bank in Singapore for the settlement of an eligible cross border trade, the agent bank will be treated as the participating bank for purpose of the proposed Notices.

6.2 One respondent sought confirmation that the Notices do not impose on banks in Singapore the obligation to use the services of the Renminbi Clearing Bank in Singapore to conduct foreign exchange conversion in China.

MAS' Response

6.3 Where a bank appoints an agent bank to conduct foreign exchange conversion in China via the Renminbi Clearing Bank in Singapore for the settlement of an eligible cross border trade, the agent bank will be deemed as a participating bank and subject to the requirements under the proposed Notices. MAS clarifies that the proposed Notices do not impose an obligation on banks in Singapore to use the Renminbi Clearing Bank in Singapore to conduct its foreign exchange conversion in China.

Non-Compliance

Feedback

6.4 One respondent sought clarification on the measures to be taken by the participating bank should there be non-compliance with the Notices; and whether there will be any penalty imposed by MAS for non-compliance.

MAS' Response

6.5 As the Notices are issued pursuant to the Banking Act and the MAS Act respectively, any non-compliance will be subject to the penalties as prescribed by the relevant provisions under these Acts. In the event that the non-compliance relates to the eligibility of the cross-border trade, e.g. the trade transaction was found not to be eligible, the participating bank should also reverse the foreign exchange conversion as soon as practicable.

Annex

List of Respondents

1. Allen & Overy LLP
2. Chinatrust Commercial Bank
3. Citibank N.A.
4. First Gulf Bank
5. National Australia Bank
6. Rabobank International
7. Standard Bank
8. Standard Chartered Bank
9. Societe Generale
10. Sumitomo Mitsui Banking Corporation
11. The Bank of East Asia
12. United Overseas Bank

10 other respondents requested for confidentiality.