

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: ¹if responding in a personal capacity	ING Bank N.V. Singapore Branch
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Confidentiality	
I wish to keep the following confidential:	Nil <i>(Please indicate any parts of your submission you would like to be kept confidential, or if you would like your identity along with your whole submission to be kept confidential. Your contact information will not be published.)</i>

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.

We appreciate more guidance from MAS, in the annex(es), that Head Office Support Services (and the use of systems / applications in support of these services) be determined as *relevant* service but not *outsourced relevant* service.

Head Office Support Services refer to intra group services that are motivated by the Head Office's oversight on its branches and subsidiaries, and its need to be able to steer, monitor and oversee its investments in its branches and subsidiaries. For effective steering, control and oversight whilst remaining efficient, branches and subsidiaries are required by Head Office to use group-wide services and its underlying common systems / applications for these Head Office support services.

Should a foreign branch / subsidiary be asked to develop / maintain or implement its own systems / applications, this would result in a patchwork of infrastructure, which is difficult to manage or steer. In addition, it would create additional (operational and reporting) risk for the banking group, as the different systems and applications may use different terminology, records, etc that would have to be reconciled for internal and external reporting purposes.

Examples of Head Office Support Services include consolidation of group accounts, group audit and risk management activities performed on a regional or head office level.

Please note, if the common systems / applications are used for other purposes that are not Head Office Support Services, but for an outsourced service to one of ING's internal service providers, these systems / applications will be subject to / included in any policy, regulation and approval regime for that outsourced service.

Item 2, Part II, Third Schedule of the Banking Act, allows for disclosure of customer information to the Head Office or any branch / related corporation of the bank outside Singapore designated in writing by the Head Office if it relates to the performance of risk management. Customer consent is not necessary and there is also no reliance on Item 3, Part II, Third Schedule of the Banking Act.

We suggest including language to make explicit that Head Office Support Services (and the use of associated systems / applications in relation to these services) do not constitute outsourcing.

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.

The semi-annual (or upon request) submission requirement is reasonable. We would like to indicate that we maintain separate registers for 3rd party and intragroup outsourcing arrangements.

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

In relation to para 4.5 “re-perform the due diligence checks within a year”, we would like MAS to clarify that it means due diligence checks for material ongoing outsourced relevant service be re-performed within 12 months after go-live of the outsourcing arrangement and thereafter at a frequency approved by the bank.

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.

The terms proposed are acceptable and aligned with the control requirements in ING Sourcing Policy guidance. We also welcome that this is not a ‘mandatory requirement’ and will take reasonable steps to negotiate for the inclusion of such terms in the outsourcing agreements where feasible.

We would however like to highlight that foreign bank branches may outsource several of their activities to Head Office. In the event of breach in these outsourcing arrangements with Head Office, it is not practicable for the Singapore Branch to terminate the arrangements. It is more likely that Singapore Branch will work with Head Office to address and rectify the breach. Please refer to our response to Question 9 for more details.

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

No comments.

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

No comments.

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

In relation to para 4.12, can MAS confirm that banks can still rely on item 3, Part II, Third Schedule of the Banking Act in respect of disclosure of customer information to service providers?

In other words, there is no need for banks to obtain written consent from customers so long as the MAS outsourcing requirements are met (including notification to customers where required under MAS Notice 634). It is submitted that there is no compelling reason to distinguish between service provider and subcontractor in this regard. Insofar as banks ensure that the subcontractor will also be subject to the same obligations as the service provider (including such obligations currently prescribed under MAS Notice 634), the safeguarding of customer information can still be maintained.

Conversely, if customer's written consent is required for disclosure to subcontractors, in practice this will drive banks to seek upfront written consent from all customers (to anticipate the future need for subcontracting by its service providers). This is operationally onerous on banks. It is similarly onerous for banks to obtain written consent from customers each time an outsourced activity is to be subcontracted where customer information will be disclosed to subcontractor. The challenge of obtaining written consent will be further increased by the proposed expansion of "customer" definition (please refer to our submission under Question 12 for further details). We request MAS to reconsider this requirement for written consent and submits that the current regime (of compliance with the outsourcing requirements coupled with notification to the customers of the disclosure of their information) is effective for safeguarding customer information.

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

We request MAS to consider exempting intragroup outsourcing arrangements from the 3-year audit requirement given that they usually involve regulated entities which are already subject to regulatory supervision and internal audit within the banking group. These activities are also subjected to periodic internal governance reviews by first and second lines of defence functions as part of Enterprise Risk Management.

Instead, for these intragroup outsourcing arrangements, we suggest a risk-based approach in determining the audit frequency – i.e. allow banks and MBs to consider the nature, extent of risk and impact to the institution to determine the frequency of audit, but no longer than 5 years between audits.

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

For efficiency and control, foreign bank branches may outsource several of their activities to Head Office and to service providers that are selected / managed by Head Office at a group-level basis (i.e. the services are not only provided to Singapore Branch but also to other branches / offices within the group).

While the Singapore branch can incorporate termination clauses granting it full rights to terminate such arrangements in the event of breach(es), the reality is it is not practical nor commercially viable for the Singapore branch to detract from Head Office / group and go forth alone. It may lead to the Singapore branch operating in silo from the Head Office / group, addition / elevation of risks during transition periods, need for more local resources, impacting customers' experience where there is a different set of processes when dealing with Singapore branch vis-à-vis Head Office / group, etc.

Given the challenges mentioned above, it is more realistic that Singapore branch will work with Head Office / group to remediate the issue(s) rather than termination.

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

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.

We propose for MAS to consider making para 4.22 (written undertaking from the supervisor of the ORFI) and para 4.23 (written undertaking by the bank / MB) pari passu options. This will provide banks / MBs the flexibility to decide on the best placed option based on their experience / past dealings with foreign supervisors.

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.

In relation to the expansion of "customer" definition to include companies which carry on banking business, merchant banking business or investment banking business ("bank clients"), this seems inconsistent with the definition of "customer" for the purposes of section 47 of the Banking Act. If bank clients are out of scope for the banking secrecy regime under section 47, then it seems incongruous that banks need to obtain written consent from bank clients for the disclosure of their customer information to subcontractors in the course of the banks' outsourcing. In order to manage our outsourcing obligations under the proposed regime, in the long run this may compel the banks to get written consent from bank clients (on top of the other customers within scope for section 47) for disclosure of their customer information to subcontractors. This is operationally onerous for the banks because the market practice is that no such consent is required from bank counterparties and this can easily double the number of customers that banks need to reach out to for consent to disclose. If MAS is minded to impose the requirement of customer's written consent for disclosure to subcontractors, then we will request that this requirement should not apply to bank clients.

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.

To implement the proposed changes, remediation activities such as customer outreach, contract reviews, contract renegotiations, due diligence on service providers and subcontractors, etc., need to be performed. These are highly time-consuming activities. We propose a transition period of 18 months.

Any other comments:

Nil