

RESPONSE TO CONSULTATION PAPER

Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. As such, if respondents would like:

- (i) their whole submission or part of it (but not their identity), or
- (ii) their identity along with their whole submission,

to be kept confidential, please expressly state so in the submission to MAS. MAS will only publish non-anonymous submissions. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.

Consultation topic:	Notices to Banks and Merchant Banks on Management of Outsourced Relevant Services
Name¹/Organisation: ¹if responding in a personal capacity	Microsoft Operations Pte Ltd.
Contact number for any clarifications:	
Email address for any clarifications:	
Confidentiality	
I wish to keep the following confidential:	N/A <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 Your contact information will not be published.)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.

None

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.

None

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

None

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.

Please see comments below regarding the required terms to be included in outsourcing agreements.

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

Microsoft agrees with the general principle of requiring banks/MBs to ensure certain issues are covered in outsourcing agreements; however, we recommend that MAS avoids requiring specific provisions and/or language to be included, especially in the case of the mandatory Notices. The outcome should focus on increasing service provider accountability towards banks/MBs rather than specifying steps for compliance.

While Microsoft generally agrees with the principle of requiring service providers to enter into written agreements with their subcontractors, (i) this is a due diligence/compliance issue, which is not suited to be a required contractual commitment in an outsourcing agreement; and (ii) given the volume and confidentiality of such subcontractor agreements, to which the bank/MB is not a party, service providers should not be required to share such agreements with the bank/MB.

Further, if the service provider is willing to accept legal responsibility for its subcontractors' compliance with the outsourcing agreement terms, there should not be any need to prescribe any form of subcontract, or any specific terms.

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

Microsoft understands that the term "customer information" refers to customers of the banks/MBs. For context, it is important to understand that hyperscale cloud service providers (CSPs) acting as data processors generally handle all of the bank's/MB's data to the same high standard. They do not as a general rule have visibility into the content of the data and therefore do not and cannot treat certain categories of the bank's/MB's data differently. This fact is relevant to our comments on Question 7 below.

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

This is Microsoft's primary concern with respect to the proposed Notices. As drafted, the requirements will almost certainly block or deter cloud adoption by Banks/MBs.

- (1) Disclosure: The concept of bank secrets and related laws in many jurisdictions should be updated to reflect how data is used today. The term "disclosure" should be clearly defined within that context. If data is not readable or

usable by humans then the provision alone of data (e.g. for processing) should not constitute “disclosure” considering the harm that Section 47 of the Banking Act is seeking to address. Microsoft recommends that the term disclosure be clarified – in a definition and/or in sections 3.1(b), 5.1(c), 6.1, 6.2(b), and 7.1(c) -- to exclude the provision of data where the service provider/subcontractor does not have access to human readable customer information as a necessary part of performing the service.

- (2) Subcontractors: The nature of hyperscale cloud computing involves the use of subcontractors in some capacity. Microsoft understands from previous industry association discussions with MAS that the term “subcontractors” with respect to CSPs is intended to mean companies that the CSP retains to take over performance of a substantial part or all of a cloud service. We understand it is not intended to apply to augmented/contingent staff, although such individuals may not be employees of the CSP. We recommend that the definition of subcontractors be clarified accordingly if that is indeed the intended meaning of the term with respect to CSPs.
- (3) Need for Banks’/MBs’ customers’ consent: The proposed Notices will require written consent by all customers of every Bank/MB customer of a CSP if customer information is “disclosed” to any subcontractor of the CSP. Even if the definitions of “disclosure” and “subcontractors” are appropriately clarified, this is simply not a feasible option for Banks/MBs using hyperscale cloud services, nor is it necessary. For example, CSPs may subcontract support services. These subcontractors will need to be able to process or handle the Bank’s/MB’s data, which may or may not contain customer information. As a general rule, neither Microsoft nor its subcontractors have visibility of the data content.¹ It is not feasible, or meaningful, to obtain blanket written consent in advance from all customers of all banks/MBs using a cloud service. On the face of section 6.1 as currently drafted, even if it were feasible for every bank/MB to seek to obtain written consent from all its customers, if a single customer refused to consent, then the bank would not be able to use the cloud service provider’s services for that customer (which de facto may mean not being able to use the service at all).

Microsoft recommends that instead of a written consent requirement it should be sufficient for CSPs to contractually commit to take legal

¹ In the rare situation that visibility into content may be required, e.g., in a particular troubleshooting situation, Microsoft or its subcontractor providing support services must request access to view certain content. Such limited access can only be provided with consent from the bank/MB (which in turn would be responsible for ensuring it has adequate consent or other grounds for providing such access, if any customer information is implicated). Requiring blanket written consent in advance from all bank customers is therefore not necessary.

responsibility for subcontractors' compliance with all requirements, including privacy, confidentiality, and data protection requirements, in the outsourcing agreement. Accordingly we recommend amending 6.1(b) to read "where the sub-contracting arrangement requires the disclosure of customer information, the service provider is legally responsible for the sub-contractor's compliance with the terms in [6.2(b)]."

Microsoft welcomes the opportunity to discuss this issue further with MAS, as it is of crucial importance to enable Banks/MBs to use cloud services.

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

Banks/MBs will be required to have independent audits conducted on all material ongoing outsourced relevant services at least every 3 years. The consultation paper states that Banks/MBs may rely on "pooled audits or third-party certification performed by independent parties." Microsoft recommends that MAS clarify that the latter category includes third-party audits that CSPs have conducted typically on an annual basis, e.g. SOC 2 audits. Specifically, it would be helpful to add a sentence at the end of section 9.1 similar to the following: "Banks may rely on third-party independent audits procured by service providers."

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

7.1(g) prescribes broad bases for termination that must be included in the outsourcing agreement. This is different from APRA CPS 231 or the EBA's Outsourcing Guidelines, which require outsourcing agreements to cover bank's termination rights but do not mandate the specific provisions that must be included. The bases for termination under EBA and APRA are also narrower than those prescribed in the Notices. We recommend that this section be revised to be less prescriptive in terms of substance.

In addition, 7.1(g)(iv) addresses termination in the event of "deterioration" in the ability of the outsourced service provider to provide the service. This is a subjective and vague term which could be used to terminate on the basis of mere dissatisfaction. We recommend that if such provision must be included that it is limited to "material and demonstrable deterioration."

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

None

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.

None

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.

See comments above in response to Question 7.

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.

None

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

None

Any other comments:

1. Section 6.2(b)(i): Sec 6.2(b)(i) of the Notice requires cloud service providers to contractually commit to provide notices to each of their subcontractors for

each individual Bank/MB that uses their service of the Bank's/MB's obligations of confidentiality under Singapore law. However, hyperscale cloud service providers typically engage subcontractors to provide services across their entire customer base in different sectors and geographies. The content and nature of data processed by CSPs for financial institutions and other customers is not visible to CSPs, and therefore all of the data is handled in accordance with the same standards, policies, and processes both for a single financial institution and across all of the CSP's customers. Therefore these types of notices would not only be administratively burdensome, but they are also unlikely to achieve their intended purpose, as the subcontractor would not typically be able to distinguish the services they provide on an individual bank basis.

2. Section 6.3(a): The requirement to notify Singapore banks within 30 days of the engagement of a sub-contractor (typically on a global basis), as set forth in section 6.3(a), is arbitrary and unnecessarily prescriptive. For various reasons it may not always be possible for a CSP to notify a bank of engagement of a subcontractor precisely within a 30-day timeframe of the engagement. Presumably the purpose is to provide time for the bank to determine whether any assessment or other measures are necessary once the subcontractor is identified. We recommend amending the language to reflect this principle, as follows: "(a) the bank is notified of the engagement of a subcontractor within a reasonable amount of time in advance of advance of the subcontractor's authorization to perform services that may involve access to customer information."