

RESPONSE TO FEEDBACK RECEIVED – CONSULTATION ON ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM (AML/CFT) NOTICES AND GUIDELINES

Introduction

1 In August 2006, MAS released a consultation paper on draft Notices on Prevention of Money Laundering and Countering the Financing of Terrorism (“the Notices”) for each of the following financial sectors – banks, finance companies, merchant banks, money changers and remittance businesses, life insurers, capital markets intermediaries, financial advisers, approved trustees and trust companies. This consultation paper was subsequently followed by an accompanying set of Guidelines to the Notices (“the Guidelines”). MAS invited comments on both the Notices and the Guidelines.

2 A number of useful comments and drafting suggestions have been received and MAS acknowledges and thanks the contributions of all respondents. We have carefully considered the feedback received, and have incorporated the changes where appropriate into the revised Notices and Guidelines.

3 Comments that are of wider interest to the industry, together with MAS’ responses, are set out below. This document is arranged as follows:

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No comments were received on Notice to Approved Trustees for Collective Investment Schemes (Notice SFA13-N01)

Section I General Comments

Note:

The general comments in this Section are relevant to all nine draft Notices and Guidelines. Any reference to Paragraphs (“Paras”) refers to the Paragraphs in draft Notice 626 for banks or the accompanying Guidelines to the draft Notice 626 for Sections I and II and the relevant draft Notices or Guidelines applicable to the other sectors for Sections III to VII.

1 Applicability of the Notices

1.1 The introduction section of the Notices (Para 1.1) stated the applicability of each Notice. The feedback received noted that there may be an overlap between Notices, for example, if a bank licensee also holds a Capital Markets Services license. Industry suggested that financial institutions should only be required to abide by the Notice applicable to their primary license.

MAS’ Response

1.2 MAS agrees that financial institutions are only required to abide by the Notice issued under their primary licence as the Notices all impose similar AML/CFT requirements.

2 Definition of Beneficial Owner

2.1 Industry proposed that the definition of beneficial owner in the draft Notices be amended to adopt the definition used by the Financial Action Task Force (FATF) in its Recommendations.

MAS’ Response

2.2 The definition has been amended to adopt the FATF definition.

3 Identification and Verification Issues

3.1 Identification of Customers vs. Verification of Identity

3.1.1 Para 4.5 specified the information that the financial institution should obtain in respect of a customer. Para 4.10 required such information to be verified. Paras 4.6, 4.8 and 4.9 required the identity of the persons referred to

in these Paras (such as the directors or partners in a company or partnership) to be established in the same way as customers. Industry sought clarification as to whether this meant that all the information specified in Para 4.5 and obtained in respect of persons referred to in Paras 4.6, 4.8 and 4.9 must also be verified.

MAS' Response

3.1.2 MAS does not require financial institutions to verify all the information obtained in Para 4.5 for persons referred to in Paras 4.6, 4.8 and 4.9. The requirement to obtain the information is distinct from the requirement to verify the information. Paras 4.6, 4.8 and 4.9 are to be read in conjunction with Para 20 of the Guidelines to Notice 626, which allows the financial institution to assess and determine, the key persons whose details they consider necessary to verify. Paras 4.6, 4.8 and 4.9 have been amended (and Para 4.7 deleted) to make this clearer.

3.2 Verification of Identity using Independent, Reliable Sources

3.2.1 With reference to Para 4.10, respondents sought clarification over what constitutes "independent, reliable sources".

MAS' Response

3.2.2 The financial institution is given the discretion to determine whether a source is independent and reliable. Examples of such sources can be found in the General Guide to Account Opening and Customer Identification issued by the Basel Committee's Working Group on Cross Border Banking.

3.3 Methods of Verification

3.3.1 The Guidelines to financial institutions (Para 24 of the Guidelines to Notice 626) required them to retain copies of all documentation used for verification of identity. Industry asked if non-documentary methods of identity verification, for example, face to face meetings or interviews, are acceptable.

MAS' Response

3.3.2 It is not MAS' intention to exclude non-documentary methods of identity verification, but as far as possible documentary evidence must still be obtained.

3.4 Identification and Verification of Identity of Persons Appointed to Act on the Customer's Behalf

3.4.1 With reference to Para 4.12, industry sought clarification that the financial institution need only identify those persons specifically appointed to deal with the financial institution on the customer's behalf, as opposed to all persons who are generally authorised to act for the customer.

3.4.2 In addition, there was feedback that it may not be practicable to verify the identity of such authorised persons in the same way as for a customer.

MAS' Response

3.4.3 MAS agrees that financial institutions need only identify persons specifically appointed to deal with the financial institution on the customer's behalf. MAS also agrees that while the financial institution must verify the identity of such authorised persons, it is not required to do so in the same way as for a customer. The Notice has been amended to make this clearer.

4 Beneficial Owner

4.1 Inquiry into Existence of Beneficial Owner

4.1.1 Industry proposed that the requirement to inquire into the existence of a beneficial owner be tied to the perceived AML/CFT risk associated with the customer, that is, a financial institution needed only make such an inquiry if a customer was deemed to present high risk.

MAS' Response

4.1.2 MAS requires a financial institution to take steps to determine if there exists, other than the person *ex-facie* dealing with the financial institution as a customer, any other beneficial owner in relation to the customer. Generally, the financial institution should assess and determine what measures would be appropriate to determine the beneficial owners, if any. The financial institution should be able to justify the reasonableness of the measures taken, having regard to the circumstances of each case. The reasonableness of such measures will depend partly on the financial institution's perception of the risk in dealing with the customer. However, if the financial institution considers that it has gone as far as is reasonable in seeking to identify the beneficial owner, but still remains unconvinced, the financial institution should not proceed with the relationship.

4.2 Subsidiaries of Listed Companies

4.2.1 Industry asked why subsidiaries of listed companies were not included in the list of customers in Para 4.18 who were exempt from an inquiry into the existence of any beneficial owner.

MAS' Response

4.2.2 A subsidiary of a listed company may not be wholly-owned by the listed parent company and may have other beneficial owners, of whom the financial institution is required to inquire.

5 Ongoing Monitoring

5.1 With reference to Para 4.22, industry wished to clarify that the requirement to monitor an account was dependent on the perceived level of risk associated with the customer, that is, monitoring was required only for high risk accounts.

MAS' Response

5.2 Ongoing monitoring is required for all accounts, regardless of the perceived level of risk of the client. The risk-based approach towards ongoing monitoring may be adopted with regard to the intensity of account monitoring, but some monitoring is always required in order to detect unusual and possibly suspicious transactions, even for low risk customers. For low-risk customers, monitoring is needed to verify that transactions match the low risk profile.

6 Deferring the Completion of CDD Measures

6.1 With reference to Para 4.34, which required the termination of a business relationship where the financial institution was unable to complete CDD measures, it was proposed that the word “terminate” be replaced with “consider terminating”.

MAS' Response

6.2 MAS recognises that there may be instances where a financial institution may establish business relations before CDD measures are complete. Para 39 of Guidelines to Notice 626 provides guidance and allows a bank to defer the completion of CDD measures for a reasonable period. However, in the event that CDD measures cannot be completed within this period, MAS requires that the business relationship be terminated.

6.3 Where CDD measures cannot be completed, the financial institution may be required to file an STR under the relevant AML/CFT laws in Singapore, namely the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA) and the Terrorism (Suppression of Financing) Act (TSOFA).

7 Existing Customers

7.1 It was proposed to allow CDD measures for existing customers under the Notice to be conducted in accordance with a financial institution's existing timetable for the periodic review of its customers' information.

MAS' Response

7.2 MAS agrees, provided there are no trigger events such as a material change in the customer's transactions.

8 Simplified CDD

8.1 Countries/Jurisdictions with Adequate AML/CFT Measures

8.1.1 Clarification was sought on how a financial institution may determine which country or jurisdiction has adequate AML/CFT measures.

MAS' Response

8.1.2 Financial institutions may refer to FATF Mutual Evaluation Reports and the IMF/World Bank Financial Sector Assessment Programme Reports/Reports on the Observance of Standards and Codes for guidance on another country's/jurisdiction's AML/CFT measures.

9 Enhanced CDD - High Risk Categories of Customers

9.1 Risk Factors

9.1.1 Industry gave feedback that in taking the risk-based approach to applying CDD measures, jurisdictional risk should not be the only factor taken into account. There were other risk factors as well.

MAS' Response

9.1.2 MAS agrees and has amended the Guidelines. Financial institutions may take into account factors such as the type of customer, the type of product or service that the customer purchases, and the geographical area of operation of the customer's business.

10 Reliance on Intermediaries

10.1 Relay of Information from Intermediary

10.1.1 The draft Notice stated that a financial institution may rely on an intermediary to perform elements of the CDD process provided certain requirements are met. One of the requirements included ensuring that information may be relayed to the financial institution by the intermediary without any delay.

10.1.2 Clarification was sought on whether there was a need for the financial institution to enter into written undertakings with the intermediaries for the release of CDD information.

10.1.3 There was a further query as to whether an exception to this requirement could be made where these intermediaries are bound by confidentiality restrictions like client confidentiality obligations.

MAS' Response

10.1.4 Financial institutions can only rely on intermediaries that are able and willing to provide information that the financial institution would require without any delay. Whether the financial institution enters into a written undertaking with the intermediary is a matter of the financial institution's policy and internal procedure. Financial institutions should address any confidentiality restrictions before relying on the intermediary. The onus is on the financial institution to ensure that the intermediary obtains the consent of the client to release confidential information to the financial institution.

10.2 Reliance on Foreign Intermediaries

10.2.1 Industry sought clarification on whether such an intermediary would be required to perform CDD up to Singapore standards, despite differences in CDD requirements between Singapore and the foreign jurisdiction.

MAS' Response

10.2.2 Where the intermediary is from another jurisdiction, the financial institution should ensure that the standards of this jurisdiction are comparable to the AML/CFT standards set up by the FATF. Notwithstanding the reliance upon an intermediary, the financial institution shall remain responsible for its AML/CFT obligations.

11 Compliance

11.1 It was proposed that the term "compliance officer" be replaced with "compliance function" as the compliance responsibility fell on all business and line departments and was not confined to a designated person/s in Compliance.

MAS' response

11.2 There should be a management level officer appointed as the AML/CFT compliance officer who is responsible for the AML/CFT matters in the financial institution.

Section II Banks, Merchant Banks and Finance Companies

1 Definition of Customer

1.1 Expansion of definition

1.1.1 It was proposed that the Notice include CDD requirements for trust and nominee accounts.

MAS' Response

1.1.2 The definition of customer is broad enough to capture trust and nominee accounts .

1.2 Location of Relationship Management

1.2.1 With respect to Guideline Para 18(b) on Location of Relationship Management, clarification was sought on whether the expectation was for CDD to be conducted up to the standards of these Notices where the bank's relationship with the customer was managed in Singapore, but the account itself was held with an office in another jurisdiction. It was suggested that if the account was booked into another jurisdiction with AML/CFT standards set by the FATF, financial institutions be allowed to rely on the CDD measures performed to the standards of the booking jurisdiction and that no further CDD measures needed to be undertaken.

MAS' Response

1.2.2 In such a situation, the bank could rely on the CDD carried out by an entity located in another jurisdiction provided the requirements in Para 7 on Performance of CDD by Intermediaries are met.

2 Correspondent Banking

2.1 Definition of correspondent banking services

2.1.1 Industry sought clarification on the definition of correspondent banking services.

MAS' Response

2.1.2 Industry may refer to the FATF definition of correspondent banking, which is the provision of banking services by one bank (the "correspondent bank") to another bank (the "respondent bank"). Respondent banks may be provided with a wide range of services, including cash management, international wire transfers of funds, cheque clearing, payable-through accounts and forex services.

2.2 Measures to be taken when providing correspondent banking services

2.2.1 With reference to Para 8.3, it was proposed that the bank be allowed to conduct the due diligence measures on a respondent bank as set out in Para 8.3 using a risk-based approach.

MAS' Response

2.2.2 Whilst a bank may apply a risk-based approach towards the measures set out in Para 8.3, the bank should also be mindful that the correspondent banking relationship gives rise to particular risks in relation to money laundering. Para 8.3 sets out the specific, enhanced CDD measures to be put in place to help offset such risks.

3 **Wire Transfers**

3.1 Risk-based policies, procedures and controls of the Beneficiary Institution

3.1.1 Industry gave feedback that it may not always be practicable to screen all incoming wire transfers to ensure that all the required information as set out in the Notice has been obtained.

MAS' Response

3.1.2 The provisions in the Notice allow for appropriate internal risk-based policies, procedures and controls to be implemented for purposes of identifying and handling in-coming wire transfers that are not accompanied by complete originator information.

3.2 Responsibility of Intermediary Institution

3.2.1 Industry expressed concern that such an institution may not be in a position to validate the authenticity or the accuracy provided under originator information. Therefore, the intermediary institution, while required to maintain such information, should not be made responsible for the authenticity or the accuracy of such information.

MAS' Response

3.2.2 MAS agrees with industry's feedback. That responsibility does not lie with the intermediary institution.

Section III Money Changers and Remittance Businesses

1 Identification and Verification Issues

1.1 Information on Directors or Partners

1.1.1 With respect to Paras 4.5 to 4.8, respondents highlighted it would be difficult to obtain such information and proposed to obtain independent verification of sole proprietorships, partnerships and companies only for:

- a) the directors, partners or sole proprietors who transact with them on behalf of their respective organizations; and
- b) their top 30 customers.

1.1.2 Industry further proposed that Para 4 on CDD measures be limited to their top 30 customers and individual transactions of \$10,000/- and above.

MAS' Response

1.1.3 It is possible for industry to obtain the required information on the directors/ partners from the ACRA business profiles of local companies. As for foreign companies, such information can be obtained from similar profiles of the companies from the relevant foreign business registration authorities.

1.1.4 Money Changers and Remitters (MC/RA) should obtain information on customers for all remittances and money-changing transactions of S\$5,000 and above.

1.2 Implementation of IT Systems

1.2.1 Industry asked for a grace period of six (6) months for licensees to: -

- a) obtain the additional documents and necessary information from its customers and/or independent sources; and
- b) update its IT system to comply with the new requirements.

MAS' Response

1.2.2 MAS will consider a reasonable grace period for licensees to upgrade their IT systems to meet the new requirements but licensees must comply with the other requirements of the revised Notice when it comes into force.

1.3 Where CDD Measures are not completed

1.3.1 With respect to Paras 4.15 and 4.16, respondents noted that if they were not allowed to transact with customers before completing customer due diligence measures, they would not be in a position to file Suspicious Transactions Reports as required under Para 9 of the draft MAS Notice 3001 as they would not have the necessary information to file a report.

MAS' Response

1.3.2 MAS does not allow the performance of the necessary CDD measures to be deferred. The failure to provide the necessary information may be so suspicious as to require the filing of a Suspicious Transactions Report.

2 Non-Face to face Verification

2.1 Respondents highlighted that it would not be practicable for customers to visit their offices for each transaction. Respondents also asked for money changers or remittance businesses licensed by the MAS to be exempted from the requirement to inquire into the existence of any beneficial owners since all local licensees in money changing and remittance business were governed by the regulations set by the MAS. Such licensees would not reveal the details of their customers to industry as these were trade secrets. Hence, respondents proposed that face to face verification be -

- a) required only for the first transaction instead of for each transaction; and
- b) waived for transactions through licensees and FIs supervised by the MAS, including money changers and remittance businesses.

MAS' Response

2.2 Any transaction that does not involve face-to-face contact is not allowed, except that MC/RA can apply to MAS for approval for subsequent non-face-to-face transactions with the same customer if they are able to satisfy MAS that it has adequate controls and policies to address AML/CFT risks. Licensees are expected to conduct CDD on other MC/RA as with other customers.

Section IV Life Insurers

1 Transactions where no policy is issued

1.1 With respect to Paras 4.2(b) and 4.27, industry highlighted that life insurers did not generally transact with people who are not policyholders. Even if policies were submitted for underwriting but subsequently not taken up, the proposer would still have undergone the CDD process.

MAS' Response

1.2 We agree that it is uncommon for insurers to undertake any transactions without a policy being issued. Paras 4.2(b) and 4.27 are not meant for cases where proposals are made but the policies are subsequently not taken up. The intent is to cater for any special instances where life insurers may engage in transactions without a policy being issued.

1.3 Industry also sought clarification on the type of transactions contemplated in Para 4.2(b). If third parties and transactions connected to a policy such as commission payments or fund investment adviser fees to agents, brokers or fund investment advisers were contemplated, industry queried the basis for this requirement as these payments carried little or no risk.

MAS' Response

1.4 Para 4.2(b) is not intended to capture non-policyholder transactions such as fee payment to brokers and other vendor contract payments that may emerge as a result of the company's normal business operations.

2 CDD

2.1 Identification of Customers

2.1.1 The risk of money laundering using term policies issued for business insurance such as keyman insurance and group life contracts to insure employees in the event of death or total & permanent disability was low. Industry therefore queried the requirement to establish the identity of all the directors, partners, sole proprietor and persons having executive authority as if such persons were themselves customers.

MAS' Response

2.1.2 In cases where life insurers are satisfied that the risks of money laundering and terrorism financing are low, they are allowed to perform simplified CDD measures as they consider adequate. Notwithstanding this, life insurers are expected to document their risk assessment and nature of simplified CDD adopted as stipulated under Para 5.4 of the Notice.

3 Verification of Identity

3.1 With respect to Paras 4.9 and 4.10, industry commented that it may not be practical to obtain copies of the identification documentation as the sale of the investment products were usually completed outside office premises without the convenience of a photocopy machine.

MAS' Response

3.2 Life insurers who are unable to obtain copies of any documentation used in identification and verification need to record the information stipulated under Para 22 of the Guidelines. Life insurers should only adopt this approach in exceptional cases.

3.3 Identification and Verification of identity of Representatives

3.3.1 With reference to Para 4.11, industry noted that where the customer is not a natural person, such as for group and keyman insurance, it was common to appoint a person to act on behalf of the customer. As the risk of money laundering was low and the person appointed to act could change due to staff or organisational changes, industry queried whether it was necessary to establish and verify the identity of the person appointed. Industry also asked if this requirement was limited to cases where the appointment of the representative was to conduct policy transactions.

MAS' Response

3.3.2 For cases where the life insurer is satisfied that the risks of money laundering and terrorism financing are low, they are allowed to perform simplified CDD measures as they consider adequate. Notwithstanding, life insurers are expected to document their risk assessment and nature of simplified CDD adopted as stipulated under Para 5.4. Life insurers are expected to establish that any persons claiming to act on behalf of a customer are authorized to do so with regard to any transactions between customer and the life insurer. This would mainly include but is not limited to policy transactions.

4 Inquiry into Existence of Beneficial Owner

4.1 Industry asked if the definition of beneficial owner also applied to individual/personal applicants or only corporate applicants.

4.2 Industry also noted that for individual businesses, the policy owner automatically equaled the beneficial owner of the policy (unless the policy owner specifically requests to appoint a beneficiary). No additional checks were carried out and it was not questioned whether a different beneficial owner behind the policy existed.

MAS' Response

4.3 The determination of beneficial owner applies to both individual and corporate customers .

4.4 Life insurers are expected to determine if a beneficial owner exists even if the customer is a natural person. Life insurers may consider obtaining an undertaking or declaration from the customer on the identity of beneficial owners (if any).

5 Periodic Review of Identification Information

5.1 Industry sought clarification on whether the periodic review required by Para 4.23 was limited only to higher risk categories of customers. If it was not, this appeared to contradict Para 4.33.

MAS' Response

5.2 Para 4.23 requires life insurers to carry out periodic review of identification information for all customers at a level that is commensurate with the risk category of customers.

5.3 Para 4.23 does not contradict Para 4.33. Para 4.33 requires insurers to do a review of their existing customers and policies when the Notice come into force. Para 4.23 requires periodic review of all policies thereafter.

6 Non-Face-to-Face - Verification

6.1 Industry commented that products sold through direct marketing , that is through non-face-to-face channels, were usually lower premium products and hence lower risk. Also, the volume of such business was not significant.

MAS' Response

6.2 For cases where the life insurer is satisfied that the risks of money laundering and terrorism financing are low, they are allowed to perform simplified CDD measures as they consider adequate. Notwithstanding, life insurers are expected to document their risk assessment and nature of simplified CDD adopted as stipulated under Para 5.4.

7 Deferring the Completion of CDD measures

7.1 For subsequent transactions and when involving persons other than the insured, the life insurer is expected to terminate the business relationship if the life insurer is unable to complete the CDD measures . The provisions in current policy contracts do not give life insurers the right to terminate the

business relationship. In addition, termination of the business relationship has serious implications both for the insured and the life insurer.

MAS' Response

7.2 We would like to emphasize that it is not common for life insurers to defer the completion of CDD measures. Should life insurers want to adopt this approach, MAS would expect life insurers to factor in the time limitations stipulated in Para 35 of the Guidelines in order to ensure that money laundering and terrorist financing risks are mitigated.

7.3 Life insurers are also reminded that if they are unable to complete CDD measures, it is required under Para 9.3 that they should consider if the circumstances are suspicious and warrant the filing of an STR. Life insurers are also expected to document the basis of their assessment.

Section V Capital Markets Intermediaries

1 Training

1.1 Industry sought clarification on whether remisiers were required to be regularly trained on AML/CFT matters.

MAS' Response

1.2 Remisiers of a Capital Markets Intermediary are representatives of the Capital Markets Intermediary and are hence required to be subjected to the same training requirements.

Section VI Financial Advisers

1 Reference to Provision of Advice

1.1 It was suggested that Para 2.5 was unnecessarily broad, as the provision of advice without money changing hands should not be caught as a “transaction”.

MAS' Response

1.2 This provision has been removed from the revised Notices as these Notices are intended to target only those transactions in which money has changed hands.

2 Account Opening

2.1 It was proposed that if a transaction was undertaken before the opening or maintenance of an account, then only Paras 4.30 and 4.31 on deferring completion of CDD Measures could apply. It was proposed that Para 4.3(b) be deleted as the concept of non-account holders did not exist for Financial Advisers.

MAS' Response

2.2 MAS agrees that a Financial Adviser should not undertake any transaction for a customer without opening an account for the customer. Para 4.3(b) has accordingly been deleted from the Notice.

Section VII Trust Companies

1 Identification of Trust Relevant Parties

1.1 With reference to Para 4.4(b), industry highlighted that it was too onerous and not practicable for a trust company to establish the identity of every person who subsequently contributed assets to the trust, before the assets were transferred to the trust. Industry also commented that this requirement may not be necessary given that financial assets which were transferred to a bank account held on trust would have been subjected to due diligence checks by the bank that held these assets.

MAS' Response

1.2 MAS agrees and has replaced this requirement with a requirement for trust companies to monitor on an ongoing basis its business contacts with trust relevant parties, as well as scrutinise transactions undertaken to ensure that the transactions are consistent with the trust company's knowledge of the trust relevant party, its business and risk profile and where appropriate, the source of funds.

2 Identification of Companies that are Trust Relevant Parties

2.1 With reference to Para 4.4(d), industry stated that where a company was a trust relevant party, it was frequently a private investment holding company or nominee company with professional service providers named as nominee directors. In such cases, it would be more meaningful to establish the identity of the effective controllers of these companies.

MAS' Response

2.2 MAS agrees and notes that the revised Notice already requires a trust company to identify and verify the identity of any effective controller in relation to a trust relevant party who is a settlor or a trustee.

3 Identification of Effective Controllers

3.1 With respect to Para 4.16, industry highlighted that it was impossible for trust companies to fulfill this requirement in relation to the periodic contribution of trust assets. Further, it was suggested that to be consistent with the other Notices, CDD measures on effective controllers should be limited to settlors.

MAS' Response

3.2 MAS is of the view that CDD measures should be performed on any effective controller in relation to a trust relevant party who is a trustee, as the trustee is the legal owner of the trust assets and thus has discretion over the

management of the trust assets. As stated earlier, MAS has replaced the requirement to identify periodic contributors with a requirement for trust companies to monitor on an ongoing basis, its business contacts with trust relevant parties, as well as scrutinise transactions undertaken to ensure that the transactions are consistent with the trust company's knowledge of the trust relevant party, its business and risk profile and where appropriate, the source of funds.

4 Periodic Review of Identification Information

4.1 With respect to Para 4.25, industry stated that trust companies were not always able to review a transaction for arm's length as there may be no objective yardsticks with which to determine whether certain transactions were at arm's length or at an under or over value.

MAS' Response

4.2 MAS agrees and has removed the above requirement to achieve consistency with the other Notices.

MONETARY AUTHORITY OF SINGAPORE
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