



March 8, 2019

Outsourcing Workgroup  
Monetary Authority of Singapore  
10 Shenton Way, MAS Building  
Singapore 079117

## **BSA RESPONSE TO THE MAS CONSULTATION PAPER ON OUTSOURCING BY BANKS AND MERCHANT BANKS**

BSA | The Software Alliance<sup>1</sup> (**BSA**) appreciates the opportunity to provide feedback in response to the Monetary Authority of Singapore's (**MAS**) consultation on Outsourcing by Banks and Merchant Banks (**Consultation Paper**) issued on February 7, 2019. As the leading advocate for the global software industry, BSA works closely with governments and regulators around the world to help foster a policy environment that is conducive to digital transformation. Our member companies create cutting edge technologies that drive the digital economy across sectors, including in the banking and finance sector.

BSA recognizes the important task that the MAS has undertaken to provide clearer requirements on banks and merchant banks in relation to their material outsourcing arrangements. However, we are concerned by aspects of the Consultation Paper that deviate from the risk-based approach articulated in the *Guidelines on Outsourcing* issued by MAS on July 27 2016 (**2016 Guidelines**). The 2016 Guidelines encourage financial institutions to manage outsourcing arrangements in a manner that is "commensurate with the nature of risks in, and materiality of" each individual agreement. To that end, the 2016 Guidelines focus primarily on "material outsourcing arrangements," prescribing heightened requirements to outsourcing agreements:

*a) which, in the event of a service failure or security breach, has the potential to either materially impact an institution's—*

*(i) business operations, reputation or profitability; or*

*(ii) ability to manage risk and comply with applicable laws and regulations,*

*or*

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<sup>1</sup> BSA's members include: Adobe, Akamai, Amazon Web Services, Apple, Autodesk, AVEVA, Bentley Systems, Box, Cadence, Cisco, CNC/Mastercam, DataStax, DocuSign, IBM, Informatca, Intel, MathWorks, Microsoft, Okta, Oracle, PTC, Salesforce, Siemens PLM Software, Slack, Splunk, Symantec, Synopsys, Trend Micro, Trimble Solutions Corporation, Twilio, and Workday.

BSA ([www.bsa.org](http://www.bsa.org)) is headquartered in Washington, DC, and operations in more than 60 countries, BSA pioneers compliance programs that promote legal software use and advocates for public policies that foster technology innovation and drive growth in the digital economy.

*(b) which involves customer information and, in the event of any unauthorised access or disclosure, loss or theft of customer information, may have a material impact on an institution's customers.*

The Consultation Paper appears to propose a move away from this risk-based approach in a number of ways. First, the Consultation Paper contemplates “introducing a new section in the Banking Act to empower MAS to impose requirements relating to banks’ outsourcing arrangements,” but fails to qualify that such requirements will be limited to either material agreements, those involving customer information, or some other risk-based activity.

The Consultation Paper further suggests that “all outsourcing arrangements involving disclosure of customer information will be considered material outsourcing agreements, regardless of the tenure of the arrangements and the impact of unauthorised access or disclosure, loss or theft of such customer information.”

### ***Incorporate risk-based considerations by retaining the current definition of “Material Outsourcing Arrangements”***

When read in conjunction, Section 58(A) and Item 3 Part II of the Third Schedule of the Banking Act proposes an expansion of the definition of a “material outsourcing arrangement” to cover all arrangements where customer information is disclosed or otherwise accessible to a service provider or sub-contractor irrespective of underlying risks. While BSA recognizes the need for a high standard of care for customer information, applying the requirements of “material outsourcing arrangements” to *any* service provider that processes customer information would be overly prescriptive and wide in scope, increasing the regulatory burden on the MAS while potentially making it much more restrictive and challenging for software and cloud service providers to offer innovative, secure and scalable products that are in compliance with audit and inspection requirements applied to “material outsourcing arrangements”.

While inspection and audit requirements on third party service providers whose services are essential to a financial institution’s ability to deliver core banking functions may be appropriate, it would be disproportionate to impose such requirements onto outsourcing arrangements that do not pose systemic risks to the continued delivery of such services or to the integrity of customer data. Furthermore, while unauthorized access, disclosure, loss or theft of customer information, would generally result in circumstances that could have material impact on an institution’s customers, this may not always be the case, especially if, for example, the customer information had already been securely encrypted. Therefore, BSA recommends that MAS continue to retain the current definition of “material outsourcing arrangements” that incorporates risk-based considerations. In addition, the definition of “customer information” should also continue to expressly exclude information that has been encrypted securely or otherwise inaccessible.

In addition, where an arrangement constitutes a “material outsourcing”, BSA also recommends that MAS makes clear in the proposed amendments to the Banking Act, that the responsibility and onus should be placed on the banks and merchant banks to select an appropriate service provider, and that service providers and sub-contractors should only be required to use commercially reasonable efforts to provide access to such information, only where practicable, and as agreed contractually with the principal bank or merchant bank.

### ***Clearer scoping of MAS’ enhanced powers to inspect or audit service providers and sub-contractors***

Sections 58A(2b) and 58A(2d) of the proposed amendments to the Banking Act provide MAS the power to direct banks and merchant banks to include in their outsourcing agreements with service providers and sub-contractors, the right for MAS to inspect or audit the service provider and its sub-contractor. Consistent with the risk-based approach of the 2016 Guidelines, we recommend limiting

the authorities of Sections 58A(2b) and 58A(2d) to “*material* outsourcing agreements.” The inclusion of legally binding requirements without a corresponding articulation of risk-based considerations, suggests a wide broadening of MAS’ powers.

The goal of the auditing and inspection provisions is ultimately to ensure that outsourcing arrangements do not interfere with a financial institution’s ability to effectively and securely manage its business activities or otherwise impede MAS in carrying out its supervisory functions and objectives. We therefore recommend, consistent with the 2016 Guidelines’ treatment of service providers, that the requirement for “material outsourcing agreements” to include provisions allowing MAS to access or inspect a service provider should be expressly limited to circumstances where such access is “necessary or expedient”, for example to:

- access and inspect the service provider and obtain records and documents, of transactions, information of the institution given to, stored at or processed by the service provider; and
- access any report and finding made on the service provider, whether produced by the service provider’s and its sub-contractors internal or external auditors, or by agents appointed by the service provider, in relation to the outsourcing arrangement.

In contrast, the proposed amendments to 58A(2b) do not contain similar risk-based considerations, and could therefore benefit from similar clear and narrow scoping of powers, consistent with the 2016 Guidelines, and proportionate to the intended aims of the legislation.

In addition, in relation to 58A(2d), we recognize that where service providers sub-contract portions of outsourced services, it is reasonable that the MAS and the banks and merchant banks have an interest in ensuring that the service providers remain fully responsible under the outsourcing agreement for the services performed by the subcontractor. However, we recommend that the MAS make clear that service providers should retain the flexibility to negotiate its contracts with its subcontractors, depending on the context and the sub-contractors roles and duties. This is particularly important as there are many situations where activities conducted by the sub-contractor do not involve customer information or data, or where the sub-contractor does not have direct access to any data or customer information. Accordingly, BSA further recommends that the references to subcontractors in 58A(2d) be deleted and instead it is required that outsourcing agreements address how to obtain information regarding subcontractors’ performance of the outsourced services, as necessary.

Further, it is very important that any information disclosed to the MAS or the banks and merchant banks, as part of any audit or inspection requirement, be kept strictly confidential and not disclosed to other regulators, enforcement agencies, or third parties. The Banking Act should therefore be amended to contain explicit provisions restricting such disclosures.

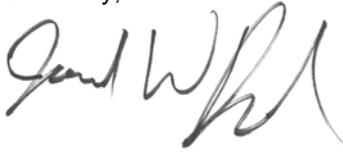
### ***Further consultation and future engagement***

We applaud MAS’ commitment to providing opportunities for meaningful stakeholder engagement and hope such efforts continue in the future. Whether MAS decides to move forward with the Draft Notice 2014 Outsourcing Guidelines, or a different set of Outsourcing Notices, we ask that MAS provide an opportunity for a second round of consultation by allowing an additional comment period once the draft Outsourcing Notice is available.

BSA appreciates MAS’ open and consultative process for the proposed amendments to the Banking Act to enable outsourcing requirements. We hope that our comments will help to support the working group’s efforts to amend the Act and create a more robust outsourcing framework for banks and merchant banks.

Please do not hesitate to contact Jared Ragland at [jaredr@bsa.org](mailto:jaredr@bsa.org) for any further information on this submission. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jared W. Ragland". The signature is fluid and cursive, with the first name "Jared" being more legible than the last name "Ragland".

Jared William Ragland, Ph.D.  
Senior Director, Policy – APAC