

Newsletter

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MAS Issues New Guidelines on Outsourcing and Guidance on Use of Cloud Services

Background

On 27 July 2016, the Monetary Authority of Singapore ("MAS") issued new Guidelines on Outsourcing Risk Management ("**Guidelines**") to financial institutions ("**FIs**"), following extensive industry and public consultation which started in September 2014. MAS also issued its response to feedback received from the public consultation, clarifying the proposals that have been incorporated in the Guidelines, as well as its policies and expectations on the application of the Guidelines.

FIs are given a three month period to conduct a self-assessment of all existing outsourcing arrangements against the Guidelines, and will need to rectify any deficiencies identified by 26 July 2017.

MAS will also be issuing a new Notice on Outsourcing at a later date, but will engage the industry prior to the issuance of the Notice, where necessary.

Key Changes and MAS' Policies and Expectations

A summary of the key changes to the Guidelines and MAS' policies and expectations with respect to the application of certain requirements are set out below:

1. **Application of the Guidelines to all FIs:** The Guidelines will apply to all financial institutions defined under Section 27A of the Monetary Authority of Singapore Act, thereby extending the guidelines to FIs such as licensed financial advisers, licensed trust companies, registered insurance brokers, registered fund management companies, exempt corporate finance advisers, money changers and remittance licence holders, and stored value facilities holders.
2. **Removal of pre-notification requirements:** FIs no longer need to notify MAS before commencing any material outsourcing arrangements. Instead, MAS will continue to assess and monitor the robustness of the institution's outsourcing risk management frameworks, while institutions continue to be responsible for ensuring the safety of all of their outsourcing arrangements.
3. **Materiality of outsourcing:** Outsourcing arrangements that involve customer information and may have a material impact on the FIs' customers in the event of any unauthorised access or disclosure will, by default, be regarded as material. (Customers information that is public, made anonymous or encrypted securely will not be regarded as customer information.)
4. **Additional guiding examples of outsourcing arrangements:** MAS has provided additional non-exhaustive examples of arrangements that would generally be regarded as outsourcing arrangements. These include: (a)

white-labelling arrangements such as trading and hedging facilities, (b) information systems hostings (e.g. software-as-a-service, infrastructure-as-a-service, platform-as-a-service), investment management (including research and sub-advisory arrangements), management of policy issuance and claims operations by managing agents and support services related archival and storage of data and records. Further, certain low-risk arrangements that were previously excluded as outsourcing arrangements should no longer be automatically excluded. These include mail, courier service, printing service, purchase of goods, software and other commodities, credit and background investigations and employment of contract or temporary personnel.

5. **Maintenance and submission of outsourcing register:** FIs will need to maintain an updated register of all outsourcing arrangements in the prescribed format available from the MAS website, and submit this to the MAS at least annually or upon request.
6. **Enhancing the responsibility of the Board and Senior Management:** The new Guidelines illustrate a heightened emphasis on adequate oversight and governance, internal controls and institution wide risk management. The board should be responsible for setting a suitable risk appetite to define the nature and extent of risks that the FI is willing and able to assume from its outsourcing arrangements, and for ensuring the senior management establishes appropriate governance structures and processes for sound and prudent risk management.
7. **Application of the Guidelines to material and non-material outsourcing:** Certain risk management practices will apply only to material outsourcing arrangements. These include the requirements to: (a) perform periodic reviews on at least an annual basis; (b) incorporate contractual clauses to allow the FIs and MAS to be granted audit access and access to information and any report or findings made on the service provider and its sub-contractors; and (c) ensure that outsourcing arrangements with overseas service providers are conducted in such manner so as not to hinder MAS' supervisory efforts. Otherwise, FIs are expected to apply the risk management practices to all outsourcing arrangements in a manner that is commensurate to the risks involved.
8. **Outsourcing risks evaluation criteria:** In evaluating the risks of outsourcing arrangements, FIs should analyse the FI's and the FI group's aggregate exposure to the outsourcing arrangement, to manage concentration risk. FIs may rely on its head office or parent company for this analysis, but will ultimately be responsible for its own aggregate exposure.
9. **Due diligence on service providers:** FIs are expected to conduct more rigorous due diligence on service providers. In particular, FIs should conduct a risk-based assessment on whether employees of the service providers meet the FIs hiring policies for the role they are performing, consistent with the criteria applicable to the FIs' own employees. FIs should also take a risk-based approach in determining whether to conduct onsite visits. Further, FIs should assess the service provider's technology risk management even for non-IT outsourcing, where IT risks could manifest in the non-IT outsourcing arrangement.
10. **Data security and confidentiality:** MAS continues to expect FIs to protect the confidentiality of customer information, and ensure strong controls and safeguards are implemented. MAS clarified that logical segregation of data is acceptable.

11. **Monitoring and control:** All material outsourcing arrangements must be subject to an annual review, at minimum. Review and audit dates and a high level record of reviews performed should be captured in the outsourcing register. While monitoring may be carried out by business units, the FIs should establish a central function or committee, which is sufficiently senior and has the necessary expertise to maintain an institution wide view of the risks and ensure an optimal level of consistency in the management and control on all of the institutions outsourcing arrangements.
12. **Audit and inspection:** MAS has not adopted the previous proposal for audits to be carried out at least every three years. However, MAS expects FIs to conduct audits or expert assessments for all outsourcing arrangements on a regular basis. The frequency should be commensurate to the nature and extent of risks and impact on the FI. For material outsourcing, FIs must ensure that MAS has the right to access any report or findings made on the service providers and its sub-contractors.
13. **Indemnity:** MAS has not adopted the previous proposal to require FIs to indemnify and hold MAS harmless from any liability, loss or damage to the service provider and its sub-contractors arising out of any audit and inspection on the service providers and its sub-contractors.
14. **Notification of adverse development:** FIs are required to notify the MAS as soon as possible of any adverse development in their outsourcing arrangements that could impact the FIs. The outsourcing agreement should specify the types of events and circumstances under which the service provider should report to the FI, in order for the FI to take prompt risk mitigation measures and notify MAS of such developments.
15. **Outsourcing agreement:** In addition to ensuring that outsourcing agreements with service providers contain certain mandatory clauses, FIs should ensure that the outsourcing agreements are legally enforceable, even if it relates to outsourcing within the group.
16. **IT outsourcing:** The new Guidelines supersede the Information Technology Outsourcing Circular issued by the MAS on 14 July 2011. FIs are no longer expected to consult and submit the completed MAS Technology Questionnaire for Outsourcing to the MAS before making any significant IT outsourcing commitment.
17. **Use of cloud services:** MAS has also introduced a set of guidance on its expectations on the use of cloud computing services by FIs, including the use of public cloud. Please refer to the article [below](#) for further details.

Further Comments

A copy of the new Guidelines may be found [here](#).

If you have any queries as to how the new Guidelines would apply to your business, please contact us.

MAS Issues Guidance on Use of Cloud Services

Background

The new Guidelines on Outsourcing Risk Management ("**Guidelines**") issued by the Monetary Authority of Singapore ("**MAS**") on 27 July 2016 also contained a set of guidance ("**Guidance**") specifically on the use of cloud services.

Several financial institutions ("**FIs**") in Singapore have successfully rolled out cloud solutions in the past two years, with the most recent example being DBS Bank. In late July, the bank announced two major cloud computing deals with Amazon Web Services and Microsoft.

Amidst the many advantages that cloud services has to offer, FIs are reminded to adopt appropriate risk management practices in leveraging on and reaping the benefits of cloud services.

Guidance on Outsourcing Cloud Services

MAS considers cloud services operated by services providers as a form of outsourcing. FIs should therefore perform the necessary due diligence and apply sound governance and risk management practices set out in the Guidelines when subscribing to cloud services.

A summary of the new Guidelines may be found in the article [above](#).

FIs are reminded to take active steps to manage risks that may arise from characteristics typical to cloud services, such as multi tenancy, data commingling and the higher propensity for processing to be carried out in multiple locations. The areas of risks that use of cloud services are susceptible to include data access, confidentiality, integrity, sovereignty, recoverability, regulatory compliance and auditing.

In particular, FIs should ensure that service providers are able to clearly identify and segregate customer data using strong physical or logical controls, and have in place robust access controls to protect customer information which services the tenure of the outsourcing contract.

Ultimately, a risk-based approach should be taken by the FIs to ensure that the level of oversight and controls are commensurate with the materiality of the risks posed by cloud services.

Further Comments

A copy of the new Guidelines may be found [here](#).

If you have any queries as to how the new Guidelines would apply to your business, please contact us.

MAS' Proposals to Enhance Regulatory Requirements on Protection of Customer's Moneys and Assets

Background

On 19 July 2016, the Monetary Authority of Singapore ("MAS") issued a consultation paper on Enhancements to Regulatory Requirements on Protection of Customer's Moneys and Assets ("**Consultation Paper**").

Currently, capital markets services licence holders ("**CMS Licensees**") are subject to rules under Part III of the Securities and Futures (Licensing and Conduct of Business) Regulations ("**SFR**"), to the extent that they receive or hold customers' moneys and assets. Among others, CMS Licensees are required to place customers' moneys and assets in trust or custody accounts maintained with regulated deposit-taking institutions or custodians, segregate their own moneys and assets from those of their customers, keep proper records of their customers' holdings and furnish periodic statements of accounts to their customers. These rules also apply to licensed banks, merchant banks and finance companies which conduct regulated activities under the Securities and Futures Act, Cap 289 ("**SFA**").

MAS is proposing to enhance the rules relating to safeguarding, identification and use of customer's money and assets, and disclosures to customers, as detailed below¹.

Proposed Enhanced Rules

1. **Expanding the scope of customers' moneys.** Currently, "customers' moneys" covers only moneys received from or on account of the customer. MAS proposes to expand the definition of "customers' moneys" to cover contractual rights arising from transactions entered into by CMS Licensees on behalf of a customer (e.g. futures contracts) or with a customer (e.g. contract for differences). There will be no corresponding change to the definition of "customer's assets".
2. **Due diligence and ongoing monitoring on third party deposit-taking institutions and custodians.** Currently, CMS Licensees are required to conduct due diligence on the suitability of the custodian that will be appointed to hold customers' assets. MAS proposes to extend this to deposit-taking institutions with whom the CMS Licensees intend to open a trust account to hold customers' moneys. MAS further proposes to introduce a requirement for CMS Licensees to carry out periodic reviews on the suitability of deposit taking institutions and custodians with whom the CMS Licensees maintain trust and custody accounts to keep their customers' moneys and assets respectively. CMS Licensees will also be required to take into account a list of prescribed factors when assessing suitability.
3. **Acknowledgement from foreign custodians / trustees.** Currently, CMS Licensees are required to obtain an acknowledgment from domestic

¹ However, these proposed rules would not apply to non-centrally cleared OTC derivatives, which would be covered under MAS' Consultation Paper on Margin Requirements for Non-Centrally Cleared OTC Derivatives issued in October 2015 (see our client alert on this [here](#).)

financial institutions confirming that the accounts maintained by the financial institutions to keep the CMS Licensees' customers moneys and assets are designated as customers' trust accounts, the moneys and assets are held on trust for the customers and segregated from the CMS Licensees' own moneys and assets, and the domestic financial institution will not use the moneys and assets in those accounts to set off against any debt owed by the CMS Licensees to the domestic financial institutions. MAS proposes to extend the requirement to obtain acknowledgement from overseas financial institutions who are appointed by CMS Licensees to safe-keep the CMS Licensees' customers' moneys and assets.

4. **Enhancing information and record keeping requirements.** In addition to the existing rules on maintaining sufficient and proper records on each customer's moneys and assets (including any transfers, deposits, withdrawals, hypothecations and balances), MAS is seeking to require CMS Licensees to maintain information systems and controls that can promptly produce information on:
 - a. The location of the moneys and assets, how they are held (i.e. by the CMS Licensee, affiliate or third party) and the identity of all relevant depositories;
 - b. The type of segregation (omnibus or individual) at all levels of a holding chain and the effects of the segregation on the customer's ownership rights;
 - c. The applicable customers' moneys and assets protection rules, and whether the protection rules, resolution and insolvency regime of any foreign jurisdiction would apply to the customers' moneys and assets; and
 - d. Details of outstanding loans of customers' securities arranged by the CMS Licensee.
5. **Enhanced disclosures to customers.** MAS intends to require CMS Licensees to disclose, in advance to customers in clear, simple and easy to understand language:
 - a. The manner in which the customers' moneys and assets are held, including the type of segregation (e.g. omnibus or individual segregation), the existence of any holding chain, and the risks associated with the arrangements adopted (such as the effect of the pooling of assets in the event of insolvency and how any short fall would be dealt with); and
 - b. If applicable, the material differences between the customers' moneys and asset protection regimes in Singapore and the relevant foreign jurisdiction, and potential consequences of such differences.
6. **Daily computation of trust and custody accounts.** MAS proposes to extend the existing requirements for daily computation to all customers' moneys and assets (currently, this requirement applies only to CMS Licensees that trades in futures contracts or carries out leveraged foreign exchange trading)
7. **Risk disclosures on using customers' assets.** MAS proposes to require CMS Licensees to provide risk disclosures to and obtain consents from customers prior to using the customers' assets, including

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mortgaging, charging, pledging or re-hypothecating. Currently, the disclosure and consent requirement only applies to the lending of customers' securities. Such agreement can be obtained through an agreement governing the customers' account.

8. **Responding promptly to customers' requests for statement of accounts and imposing reasonable fees.** MAS proposes to require CMS Licensees to respond reasonably promptly to customers who request for their statement of accounts. Any fees imposed, while permitted, should be reasonable. However, no indication was given on what would be considered "reasonably promptly".
9. **Disapply current exemption to place customer's moneys and assets in any account directed by the customer.** Currently, CMS Licensees are allowed to deposit customers' moneys and assets in: (a) a trust account; or (b) any other account directed by the customers. MAS is proposing to disapply the exemption under (b) to retail customers. MAS noted the practice of obtaining customers' consents via a clause in the account agreement to deposit customers' moneys and assets in any account as determined by the financial institutions in order to rely on exemption (b) and said this is not the policy intent of the regulations.
10. **Disapply customers' moneys rules for banks, merchant banks and finance companies.** MAS proposes to disapply the rules pertaining to customers' moneys for banks, merchant banks and finance companies which conduct regulated activities under the SFA. This is in recognition of the fact that customers moneys will be held in a deposit account maintained under the customer's own name. The rules pertaining to customers' assets under Part III of the SFR (and as amended following the proposals) will continue to apply to banks, merchant banks and finance companies.

Further Comments

The MAS has invited interested persons to provide comments to the April 2016 Consultation Paper by **19 August 2016**. If you have any feedback on the Consultation Paper or any queries as to how these proposals would apply to your business, please contact us.