



Bermuda Bankers Association
Cumberland House, 7th Floor
1 Victoria Street, Hamilton HM11

4 January 2019

Bermuda Monetary Authority
43 Victoria Street, Hamilton, HM12

RE: Consultation Paper dated 5 November 2018 – **Outsourcing Guidance**

Via E-Mail to outsourcing@bma.bm

The Bermuda Bankers Association (BBA) is taking this opportunity to share its views with you on the referenced Consultation Paper (CP). The BBA is steadfastly supportive of clear and well-coordinated rules around significant activities such as Outsourcing and all BBA members will employ their best efforts to comply with this revised guidance. The BMA may also receive individual replies from our member institutions addressing specific issues and or concerns identified in their respective review of the CP.

We note that the actions contemplated within this CP are sweeping in nature and precedent setting in scope. As such, the BBA would have expected this action to have been communicated through a statement of policy or a specific regulation as opposed to a guidance document. This is particularly evident when the CP references terms such as ‘critical activities’ and ‘materially impair continuing regulatory compliance’ within a guidance document. Additionally, the BMA’s inclusion of a pre-approval standard for future outsourcing arrangements needs to be augmented with expected supervisory processing timeframes¹ and the utilization of a standardized reporting form so as to provide our members with the feedback needed to conduct implementation efforts in a timely manner.

The following additional comments are provided to the Authority in the hope of making the final guidance clearer so that BBA members can gain confidence in the process put forward by the BMA to review and approve outsourcing arrangements:

¹ Based on the receipt of a completed submission.

1. General Inquiries

Please clarify if respondents are to seek Authority approval in cases where:

- a. The originally approved contract with the material service provider is being renewed under the same terms and conditions,
- b. There is a change of ownership of the material service provider,
- c. The terms of the outsourcing agreement are not in full compliance with the new BMA guidance but the Relevant Licensed Entity (RLE) is bound under a long-term contract term,
 - i. will the BMA require re-negotiation and modification?
- d. Contractors are retained in lieu of hiring a full-time person,
- e. An outsourced service has to be obtained to meet a critical and time sensitive business need,
 - i. will the Authority allow for emergency placement of the service pending a subsequent review?
 - ii. will a procedure be incorporated to address such situations?

Other general inquiries and observations:

- f. Given that the Bermuda Stock Exchange (BSX) is covered in this CP, the BBA would seek clarification that the BSX will be implementing this guidance in its business capacity and not that of a supervisory body,
- g. Some outsourced functions are required by law or regulation (i.e. fund administration, custodial services) and the BBA would ask the Authority to limit the application of this guidance in those situations,
- h. It is highly advised that the Authority consider proportional application of this guidance to the smaller RLEs so as not to burden them with reporting requirements that are designed for large and more highly resourced entities,
- i. It would be very helpful for smaller RLEs if the Authority would expand its discussion of the relevant risk factors it was seeking to assess in its assessment of both existing and new outsourcing arrangements,
- j. The BBA would encourage the Authority to provide an expanded discussion of its relevant assessment factors concerning technology-related outsourcing with specific inclusion of cloud computing, artificial intelligence, machine learning and software as a service arrangements.

2. Comments on Specific Sections

- a. Section I - Executive Summary – Item #5 – the CP requires that all outsourcing arrangements conducted by a RLE and defined as ‘material outsourcing’ be subject to

- prior approval by the Authority; however, later in that section the term ‘critical activities’ is used to further define what a material outsourcing is. The BBA respectfully asks that the BMA provide additional clarity and examples of activities of where potential material arrangements may not necessarily be critical activities, as this would help in conducting self-assessments and making internal determinations;
- b. Section II – Proposed Guidance – Item #4 – the Authority makes provision for the CEO of each RLE to attest that existing material outsourcing complies with all aspects of this new guidance; however, our members have asked that the BMA provide more detail as to what would be expected within this attestation submission and the BBA requests that this be included in the final guidance document;
 - c. Section II – Proposed Guidance – Item #7 – in the definitions provided, the BMA has not addressed staff augmentation arrangements where the RLE may contract with either a related entity or a third party to provide staff resources for a particular function. Under these arrangements, the RLE retains procedural and systems oversight, managerial control and overall responsibility for the underlying function and the BBA would not view these arrangements in the same manner as third party outsourcing contemplated in the CP. In addition, the Authority should address the differences in approach and supervisory expectations when the outsourcing is contracted to an affiliated company or a well-known local firm as opposed to an unrelated overseas provider;
 - d. Section II – Proposed Guidance – Item #7 (2) – the Authority defines Critical Activities as being those that materially impact a licensed entity but then provides a list that contains both operational and performance risks in the same vein as reputational issues and the ability to manage risk; where the latter two can be materially impacted in a manner that is not deemed critical. For example, an outsourced function (i.e. HR) may generate initial negative local press due to the manner in which it handles local redundancies, but this potential reputation risk is not commensurate with an operational or control risk (that has regulatory consequences) and should not be placed in the same category. The BBA would also ask that the Authority better clarify and differentiate the respective use of the terms ‘Critical’ and ‘Material’ as this would assist in the outsourcing assessment required in Item #8.
 - e. Section II – General Guidance – Item #11 – the Authority provides for proportional application of the guidance in cases where the RLE does not view activity being outsourced as critical; however, this again invites confusion due to the aforementioned conflation of the terms Critical and Material and requires further clarification to include the use of an illustrative example.
 - f. Section II – General Guidance – item #16 and #21– in this section the Authority discusses the areas that should be included in the RLE’s due diligence review. However, as noted in b. above, the RLE’s will need additional guidance as to how much of its due diligence efforts should be provided in the approval submission and the BBA asks that this be included in the final guidance document.

The foregoing comments are provided with the utmost respect for the Authority's goal to provide fundamentally sound rules over an important activity and the BBA welcomes the opportunity for discussion and further dialogue to ensure that this guidance serves the jurisdiction through a fair, transparent and accountable process.

Kind regards,

Thomas J. O'Rourke

Thomas O'Rourke
Chief Executive Officer
Bermuda Bankers Association