

**DIRECTIVES ON MATERIAL OUTSOURCING ARRANGEMENTS BY MARKET INTERMEDIARIES**

**1. APPLICATION AND DEFINITIONS**

**1.1 Application**

These directives apply to material outsourcing arrangements. A material outsourcing arrangement is as described in chapter 4 of the Guidelines on Outsourcing.

**1.2 Definitions**

In these directives, unless the context otherwise requires:-

Back Office functions means back office functions as defined under the Guidelines on Outsourcing.

Bursa means the following entities either collectively or individually as the context shall require.

- Bursa Malaysia Securities Berhad;
- Bursa Malaysia Derivatives Berhad;
- Bursa Malaysia Depository Sdn Bhd;
- Bursa Malaysia Securities Clearing Sdn Bhd; and
- Bursa Malaysia Derivatives Clearing Berhad.

BSZ means Bursa Secured Zone, which is the domain designated by Bursa, in accordance with such requirements as may be determined by Bursa from time to time, to be the domain where, without limitations, Bursa's Information Technology Infrastructure shall reside.

Client(s) means an entity, whether an individual or a body corporate, for whom relevant trading and/or securities account(s), have been opened in accordance with the requirements of the Rules.

Guidelines on Outsourcing means the "Guidelines on Outsourcing for Capital Market Intermediaries" issued by the Securities Commission including subsequent amendments, modifications, variations, supplements or substitutes and any directives or guidelines as may be issued under the Guidelines on Outsourcing.

Market Intermediary means the following:

- Participating Organisation;
- Trading Clearing Participant;
- Authorised Depository Agent;
- Trading Participant;
- General Clearing Participant; or

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- Authorised Direct Member who is also a Market Intermediary as defined in the Guidelines on Outsourcing.

as defined in the Rules, whether collectively or individually, as the context requires, which wishes or has been approved to outsource its Back Office functions in its respective capacities.

ISZ	means Intermediary Secured Zone. The ISZ shall be the designated domain which falls within the purview of the Market Intermediary and where the Market Intermediary shall be responsible for the operations.
outsourced functions	means “outsourced functions” as defined in the Guidelines on Outsourcing.
Rules	means “rules” as defined in the Guidelines on Outsourcing.
Service Level Agreement	means “service level agreement” as defined in the Guidelines on Outsourcing.
Securities laws	means “securities laws” as defined in the Guidelines on Outsourcing.
Service Provider	means “service provider” as defined in the Guidelines on Outsourcing.

## 2. OBLIGATIONS OF THE MARKET INTERMEDIARY

### 2.1 Responsibility of the Market Intermediary

2.1.1 Without derogation to all other responsibilities stipulated in the Rules and the Guidelines on Outsourcing, the Market Intermediary shall continue to retain responsibilities in the following areas:

- a) the compliance and monitoring of the policies pertaining to information technology security;
- b) With respect to disaster recovery, all operational aspects and the facilities, the Market Intermediary shall continue to retain ownership of the business continuity and contingency plans and make explicit arrangements for orderly transition upon expiration or early termination of the outsourcing arrangement with the Service Provider; and
- c) the compliance with the Rules and all other relevant securities laws, regulations and guidelines.

### 2.2 Exemption

- 2.2.1 In relation to paragraph 3.02 of the Guidelines on Outsourcing, a Market Intermediary may outsource a Back Office function that involves decision making or interaction with Clients where the function relates to post trade, financing or custody services.

### **2.3 Service Level Agreement**

- 2.3.1 Where there is more than one Service Provider for the outsourced functions, the Market Intermediary shall enter into separate Service Level Agreements with each of the Service Providers.
- 2.3.2 The Market Intermediary shall ensure that the salient contractual obligations and terms of the SLA in relation to the secrecy and confidentiality of the documents and information of clients imposed on the Service Provider in the course of carrying out the outsourced functions shall be applicable not only for the duration of the SLA but also survives the termination of the SLA.

### **2.4 Confidentiality of Clients' Information**

- 2.4.1 The Market Intermediary shall comply with Sections 43 and 45 of the Securities Industry (Central Depositories) Act 1991.

### **2.5 Interruption and Termination**

- 2.5.1 The Market Intermediary shall define the nature, sensitivity and materiality of any interruption in carrying out of the Back Office functions or termination thereof by the Service Provider including the impact thereof on the Market Intermediary.
- 2.5.2 The Market Intermediary shall formulate and test an effective contingency plan annually in preparation of any possible interruption in the carrying out of the Back Office functions and/or termination thereof by the Service Provider.
- 2.5.3 The Market Intermediary shall be liable for any non performance of the outsourced functions arising from any interruption in the carrying out of the outsourced functions and/or termination thereof by the Service Provider and in this respect the Market Intermediary shall not be exonerated from its responsibilities and obligations under the Rules, directives and/or guidelines issued by Bursa.

### **2.6 Notification of Termination**

- 2.6.1 The Market Intermediary shall notify Bursa not later than ten (10) market days from the date of the termination or the effective date of termination, whichever is earlier, in the event the Service Provider is terminated from providing the outsourced functions.

### **2.7 Review By Internal Audit**

- 2.7.1 The Market Intermediary and its internal audit department or an external auditor shall undertake regular review of the functions performed by the Service Provider and prepare the necessary report on a periodic basis. The Market Intermediary shall ensure the report contains, inter alia, the following:-

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- 2.7.1.1 quality of the performance of the outsourced function by the Service Provider;
- 2.7.1.2 adherence of the Service Provider to the quality standards agreed between the Market Intermediary and the Service Provider;
- 2.7.1.3 adherence of the Service Provider with the obligations stipulated under the Service Level Agreement;
- 2.7.1.4 potential conflict of interest especially where the Service Provider operates within the same industry;
- 2.7.1.5 adequacy of resources and ability of the Service Provider to efficiently undertake the functions especially where the Service Provider performs outsourcing services for multiple entities; and
- 2.7.1.6 identification of risks and strategies for managing such risks.

**3. COMPLIANCE AND ENFORCEMENT**

- 3.1 The Market Intermediary shall ensure that the Service Provider complies with the Rules, guidelines, rulings and directives issued, or as may be issued, from time to time, by Bursa.
- 3.2 In the event there is any breach or non compliance by the Service Provider in relation to the Rules, guidelines, rulings and directives issued, or as may be issued, from time to time, by Bursa, whether the breach is discovered during the tenure of the Service Level Agreement or otherwise, Bursa shall deem such breach to be a breach committed by the Market Intermediary and all provisions in the Rules in relation thereof shall apply.

**4. COMMUNICATIONS**

- 4.1 All Rules, guidelines, rulings, directives, and all other types of communications, whether written or otherwise, in relation to the outsourced functions shall be issued to the Market Intermediary.
- 4.2 The Market Intermediary shall be responsible to ensure that the Service Provider is informed of all Rules, guidelines, rulings, directives and all other types of communications, whether written or otherwise, directed to the Market Intermediary in relation to the outsourced functions and Bursa shall deem that the same is communicated and within the knowledge of the Service Provider.

**5. CONNECTIVITY**

- 5.1 Where Back Office functions are concerned, all physical and logical connections with the BSZ shall be solely performed by Bursa or its appointed agents/vendors/representatives in accordance with the Rules, guidelines, rulings and directives enforced at the time or issued, from time to time.
- 5.2 The Market Intermediary shall clearly define and document the operation of the ISZ in accordance with the, Rules, guidelines, rulings and directives issued by Bursa.

5.3 The Market Intermediary shall clearly define and document all physical and logical connections between the ISZ and the BSZ in respect of all the requirements stated in the Guidelines on Outsourcing.

**6. APPLICATION TO BURSA**

6.1 The Market Intermediary shall submit an application in writing to Bursa at least 30 market days prior to the intended commencement of the carrying out of the outsourced functions by the Service Provider. Such applications shall be addressed to:-

Intermediary Supervision Division  
Bursa Malaysia Berhad  
12 Floor, Exchange Square  
Bukit Kewangan  
50200 Kuala Lumpur.

6.2 The Market Intermediary shall ensure each application is accompanied by the following (where applicable):-

- i) the objectives of the Market Intermediary for outsourcing the functions;
- ii) details on selection criteria of the Service Provider and the manner in which the Market Intermediary shall monitor the performance of the functions by the Service Provider;
- iii) details on the evaluation of risks;
- iv) A copy of the Service Level Agreement;
- v) Letters of Undertaking and Confirmation as follows :
  - a) in respect of the existing clients of the Market Intermediary as at the date of this application, a confirmation that the Market Intermediary has complied with the requirements stipulated under item no. 2.4; and/or
  - b) in respect of future clients of the Market Intermediary, an undertaking that the Market Intermediary shall comply with the requirements stipulated under item no.2.4.
- vi) A full set of the specifications of the functions that is/are outsourced. For subsequent changes, a list of changes, indexed against the previous list should be submitted;
- vii) The location and specifications in respect of connectivity to the BSZ in respect of the Back Office functions;
- viii) User acceptance certification on the function(s) that is/are outsourced in respect of the Back Office functions;
- ix) A copy of the readiness report prepared in respect of the outsourcing of Back Office functions to ascertain the readiness of the Service Provider to assume such Back Office functions under the Service Level Agreement in terms of infrastructure and sufficiency of resources. Such readiness audits shall be carried out by independent bodies such as

the internal audit department in order to preserve integrity and independence of such exercises. In the absence of Internal Audit function, the Market Intermediary may appoint an external auditor to carry out the independent review and report the same to the Bursa.

- 6.3 Bursa may, upon approval given to the Market Intermediary to outsource the functions, impose, add or vary any terms or conditions, as it deems fit in relation to the approval given herein.

**7. REVOCATION OF APPROVAL AND INDEMNITY**

- 7.1 Bursa and the Securities Commission shall have the right to revoke any approval given to an Market Intermediary to outsource its functions and/or to direct the Market Intermediary to discontinue the outsourcing of the functions to the Service Provider immediately, partly or wholly, for any reason whatsoever, including but not limited to, where there is a breach by the Market Intermediary of the requirements of the Rules and/or these Directives.

- 7.2 The Market Intermediary shall also keep Bursa indemnified and shall not hold Bursa liable to any claims made by any party howsoever arising from or in connection with the approval granted by Bursa to the Market Intermediary for the outsourcing of the functions to the Service Provider.

- 7.3 Bursa shall not be held liable either by the Market Intermediary and/or the Service Provider for any claims arising from revocation of approvals granted in respect of the outsourcing of the functions. Consequent to the revocation, the Market Intermediary shall carry out the relevant functions by itself, until and unless a new Service Provider has been appointed and approved by Bursa in accordance with the Rules and/or these Directives.

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**REGULATION**