



Circular 2018/3

Outsourcing

Outsourcing relationships at banks, insurance companies and selected financial institutions under FinIA



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Legal bases:	FINMASA Article 7(1)(b) BA Article 3(2)(a) FinIA Articles 7-9, 14, 27, 33, 35 FinIO Articles 9(1)(a) and (d), 15–17, 48, 56–57 CISA Articles 14(1)(c), 16, 36, 51 CISO Articles 12b–12d, 14(1), 65 ISA Articles 4(2)(j), 5(2), 14(3), 47(2)

Addressees

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X Banks							
Financial groups and congl.							
Other intermediaries							
X Insurance companies							
Ins. groups and congl.							
Distributors							
Asset management companies							
Trustees							
X Managers of coll. inv. schemes							
X Fund management companies							
X Account-holding investment firms							
X Non-account holding Investment firms							
Asset managers for pension funds							
Trading Venues							
Central Counterparties							
Central depositories							
Trade repositories							
Payment systems							
Participants							
X SICAV							
Limited partnerships for CIS							
SICAF							
Custodian banks							
Representatives of foreign CISs							
Other intermediaries							
SROs							
SRO-supervised institutions							
Audit firms							
Rating Agencies							

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I. Purpose

The present circular shall define the regulatory requirements applicable to outsourcing solutions for banks, insurance companies and financial institutions according to margin nos. 5, 6.1 and 6.2. For these, it sets out the requirements for an appropriate organization aimed at limiting their risk. 1

II. Definitions of terms

Institutions in accordance with Section III of this circular shall be deemed to be companies. 2*

Outsourcing as defined the circular shall exist when a company mandates a service provider to independently perform all or part of a function on an ongoing basis that is significant to the company's business activities. 3

Significant functions shall be those that have a material effect on compliance with the aims and regulations of financial market supervisory legislation. 4

III. Scope of application

This circular shall apply to:

- Banks and securities firms domiciled in Switzerland as well as Swiss branch offices of foreign banks and securities firms; 5
- Insurance companies domiciled in Switzerland and branch offices of foreign insurance companies requiring a license to run a business as an insurance company in accordance with Articles 3 and 6 ISA (initial authorization) or the approval to amend certain elements of their business plan as per Article 4 in conjunction with Article 5 ISA (approval of amendments). 6
- Managers of collective investment schemes domiciled in Switzerland and Swiss branch offices of a foreign managers of pooled assets and fund management companies domiciled and headquartered in Switzerland; 6.1*
- self-managed SICAVs. 6.2*

The requirements shall be implemented taking into account the relevant institution's size, complexity, structure and risk profile. 6.3*

IV. Admissibility

A. Common Provisions

All essential functions may be outsourced, except for the ones listed below (margin nos. 8–13.3). 7

It is not possible to outsource the governing body in charge of guidance, supervision and control, central management functions performed by the executive board and functions that involve strategic decision-making, nor may decisions concerning the commencement and termination of business relationships. 8

Companies in supervisory categories 1 to 3 shall dispose of independent risk control and compliance functions that act as independent monitoring bodies. For companies in supervisory categories 4 and 5, it shall be sufficient to appoint a person in the executive board who shall be responsible for these functions. Operational risk management and compliance tasks may be outsourced in all supervisory categories. 9

B. Insurance companies

According to Article 4(2)(j) in conjunction with Article 5(2) ISA, the outsourcing of significant functions and the partially admissible outsourcing of control functions shall depend on the business plan and therefore are subject to approval. 10

The scope of permitted outsourcing of management and control functions shall be wider for insurance captives than for other insurance companies. The following shall be admissible: 11

- outsourcing the management of direct and reinsurance captives domiciled in Switzerland (incl. central management functions of the executive board) to companies specialized in the management of captives; 12
- outsourcing the management of branch offices of foreign direct insurance captives to a group company or a company specialized in the management of captives. The supervisory function of the general agent (Article 17 and 18 ISO) may not be restricted as a result of this outsourcing. 13

C. Managers of collective investment schemes, fund management companies and SICAVs

Apart from the tasks that cannot be outsourced pursuant to margin no. 8, specifically, the following tasks shall be performed by the financial institution itself: 13.1*

- Managers of collective investment schemes: The portfolio and risk management of at least one collective investment scheme or the assets of at least one employee benefit fund (Article 26(1) FinIA). 13.2*
- Fund management companies: The management of the investment fund and associated tasks such as the valuation of investments or decisions on the issuance of units (Article 35(1) FinIA). In addition, the main office in Switzerland must not be impaired by any outsourcing. The same applies to the self-managed SICAV by analogy. 13.3*

V. Requirements for outsourcing companies

A. Inventory of outsourced functions

An up-to-date inventory of the outsourced functions must be kept. Such an inventory shall comprise a description of the outsourced function, specify the provider(s) (incl. subcontractors) and recipient(s), as well as the person responsible within the company (c.f. margin no. 20). 14

Insurance companies shall keep this inventory in accordance with the Business Plan Form J. 15

Financial institutions as per margin nos. 6.1 and 6.2 as well as securities firms shall maintain this inventory as part of their organizational principles (Article 17(3) FiniO). 15.1*

B. Selection, instruction and monitoring of the service provider

The service specifications shall be agreed in line with the aims of the outsourcing and documented before the agreement is signed. This shall include conducting a risk analysis that takes account of the main economic and operational considerations as well as the associated risks and opportunities. 16

The service provider shall be chosen with due regard to and after review of its professional capabilities as well as its financial and human resources. If multiple functions are outsourced to the same service provider, the concentration risk must also be taken into account. 17

Furthermore, when deciding on outsourcing a function and selecting a service provider, thought must also be given to the possibility of changing the service provider at a later date and the possible consequences this may have. The service provider shall offer a guarantee for a permanent service provision. 18*

An orderly re-integration of the outsourced function or its migration to another service provider must be ensured. 18.1*

The responsibilities of the company and the service provider must be contractually defined and delimited, in particular with regard to contact points and responsibilities. 19

The outsourced business unit shall be integrated into the company's internal control system. The company must be in a position to identify, monitor, quantify and manage the significant risks associated with the outsourcing abroad systematically. A process owner shall be defined within the company who will be responsible for monitoring and controlling the service provider. Its services must be monitored and evaluated permanently so that any necessary measures may be taken in a timely manner. 20

The company shall ensure that the service provider contractually grants it the necessary rights of instruction and control. 21

C. Group-internal outsourcing

With regard to the requirements set out in margin nos. 16–21 and 32–35, relationships within the group or conglomerate may be considered to the extent that the risks typically associated with outsourcing are demonstrably absent or certain requirements are not relevant or are met in some other way. 22

D. Responsibility

The company shall remain accountable towards FINMA as if it were performing the outsourced function itself. Proper business conduct shall be assured at all times. 23

E. Security

Where security-relevant functions are outsourced (particularly in the area of IT), the company and the service provider shall contractually agree security requirements. The company shall monitor the compliance with these contractual requirements. 24

The company and the service provider shall work out a contingency plan that allows the continuation of the outsourced function in emergencies. In doing so, the company shall apply the same degree of care and attention as it would if it performed the outsourced function itself. 25

F. Audit and supervision

The company, its audit firm as well as FINMA must be able to verify the service provider's compliance with supervisory regulations. They must have the contractual right to inspect and audit all information relating to the outsourced function at any time without restriction. 26

Audit activities may be delegated to the service provider's external auditors, provided they are adequately qualified. Where this is done, the company's audit firm may use the findings of the service provider's auditors for its audit. 27

The outsourcing of a function must not make supervision by FINMA more difficult, especially if the function is outsourced abroad. 28

If the service provider is not subject to FINMA supervision, it must contractually commit itself to the company to provide FINMA with all information and documents relating to the outsourced business area necessary for its supervisory activities. If audit activities are delegated to the service provider's external auditors, their report must be made available, upon request, to FINMA, as well as the company's internal auditors and audit firm. 29

G. Outsourcing abroad:

Outsourcing abroad is permitted, provided that the company can explicitly guarantee that it itself, its audit firm and FINMA can exercise and enforce their right to inspect and audit. 30

A restructuring or wind-down of the company in Switzerland shall be assured. Access to the information required for this purpose must be possible in Switzerland at all times. 31

H. Agreement

The outsourcing must be based on a written contract or on another contract in another form that allows for evidence to be provided in writing. In addition to naming the parties and describing the function, it shall contain at least the following (margin nos. 33–34): 32*

The company shall ensure that it is informed well in advance of the involvement or change of subcontractors performing essential functions and has the option of terminating the outsourcing in an orderly manner in accordance with margin no. 18.1. Where such subcontractors are involved, they shall be bound by the service provider's obligations and assurances required to comply with this circular. 33*

The agreement shall include measures to ensure implementation of the requirements set out in this circular, in particular in margin nos. 21, 24, 26, 29, 30 and 31. 34

The company must define the internal approval procedures for outsourcing projects as well as the competencies for the conclusion of such agreements. 35

VI. Conditions and exceptions

In justified cases, FINMA may impose conditions on a company or grant a company partial or total exemption from compliance with this circular. 36

The institutions referred to in Articles 47a to 47e CAO and institutions referred to in Article 1b BA shall evaluate and decide on the relevance and implementation of the provisions in margin nos. 17-18.1 as part of the risk analysis in accordance with margin no. 16. 36.1*

The institutions referred to in Articles 47a to 47e CAO and institutions referred to in Article 1b BA shall be exempt from the requirement in margin no. 18.1 with regard to the re-integration of an outsourced function. 36.2*

For institutions referred to in Articles 47a to 47e CAO and institutions referred to in Article 1b BA, the implementation of margin no. 20 may be accomplished through regular reporting by an independent audit firm in consideration of margin no. 27. These reports shall enable an assessment of the service provider's significant risks and control activities associated with outsourcing. 36.3*

VII. Transitional provisions

This circular shall apply immediately to outsourcing relationships of banks and securities firms concluded or amended after its entry into force. Existing outsourcing relationships entered into by banks and securities firms prior to the circular's entry into force must be adapted within a transition period of five years from its entry into force such that they meet the requirements of the revised circular. 37

For insurance companies, the circular applies to initial authorizations from its entry into force. For amendment to be approved, the circular shall apply from the moment the FINMA is informed of a business plan amendment or such an amendment is submitted. 38

For financial institutions pursuant to margin nos. 6.1 and 6.2 with initial authorizations, the circular shall apply as of its enactment. For approvals of amended authorizations, the circular shall apply from the date on which the amendment is submitted or reported to FINMA for approval, but no later than one year after its entry into force. 39*

List of amendments

The Circular has been amended as follows:

These amendments were passed on 31 October 2019 and shall enter into force on 1 January 2020.

Newly inserted margin nos. 6.1, 18.1, 36.1 – 36.3

Amended margin nos. 18, 33

These amendments were passed on 4 November 2020 and shall enter into force on 1 January 2021.

Newly inserted margin nos. 6.1, 6.2, 13.1, 13.2, 13.3, 15.1, 39

Amended margin nos. 1, 2, 5, margin no. 6.1 becomes margin no. 6.3, 32, 37

Other New title before margin no. 13.1

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