



Circular 2008/7

Outsourcing

Outsourcing of business areas within the banking sector

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2 Other Languages

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Circular 2008/7 Outsourcing - Banks

Outsourcing of business areas within the banking sector

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Legal bases:	FINMASA Article 7(1)(b) BA Article 3(2)(a) BO Article 12 SESTA Article 10(2)(a) SESTO Articles 19, 26 DPA Articles 6-7, 12-13 DPO Articles 8 et seqq.
Appendix:	Examples of Outsourcing

Addressees

	BA	ISA	SESTA	CISA	AMLA	OTHERS
<input checked="" type="checkbox"/> Banks						
<input checked="" type="checkbox"/> Financial groups and congl.						
Other intermediaries						
Insurers						
Insurance groups and congl.						
Insurance intermediaries						
Stock Exchanges and participants						
<input checked="" type="checkbox"/> Securities dealers						
Fund management companies						
SICAVs						
Limited partnerships for CISs						
SICAFs						
Custodian banks						
Asset managers CISs						
Distributors						
Representatives of foreign CIS						
Other intermediaries						
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I. Purpose

The present circular describes the prerequisites that outsourcing solutions must meet in order to adequately comply with the requirements of an appropriate organization, banking secrecy and data protection. 1

II. Definition

Outsourcing (of business areas) as per the present circular exists if a company mandates another company (service provider) to independently and on an ongoing basis perform services that are significant for the former company's business. "Significant" as described in the circular are services which specifically affect the capture, mitigation and monitoring of market, credit, default, settlement, liquidity and reputational risks as well as operational and legal risks. Examples of outsourced services that are subject to or exempt from this circular are listed in the Appendix. 2

On the one hand, outsourcing encompasses the outsourcing of services that previously were provided by the institution itself. On the other hand, it also encompasses new services that the institution obtains from a service provider without having performed these in-house before. 3

III. Scope of application

A. SUBSTANTIVE SCOPE OF APPLICATION

This circular applies to banks and securities dealers organized under Swiss law as well as Swiss branch offices of foreign banks and securities dealers, hereinafter called "institutions". 4

The circular is also applicable to group companies that require consolidation in accordance with capital adequacy requirements. Real estate companies are excluded. 4a

B. GEOGRAPHIC SCOPE OF APPLICATION

Institutions, provided they are organized pursuant to Swiss law, must ensure that their foreign group companies and branch offices that require consolidation also follow the principles set out in the present circular, 5

- if the magnitude and significance of the outsourcing arrangements are not so insignificant as to have no impact on the risks as per margin no. 2,
- if no local foreign regulation exists.

C. PARTIAL APPLICABILITY OF THE CIRCULAR

Principles 1-4, 7 and 9 (cf. chapter V) are not applicable to outsourcing arrangements 6

- by branch offices of foreign institutions to their head office (or vice versa) or to other branch offices, 7
- within a group or a central organization of institutions, or 8

- with service providers organized pursuant to Swiss law, which are held jointly by a group of institutions, the sole business purpose of which consists of providing services to these institutions. 9

In the cases set out in margin nos. 7-9, the exemption applies only if the service provider

- has the services they provide for the benefit of the outsourcing institutions audited by a FINMA-recognized audit firm; and 10
- commits itself to disclose all requested information to its auditor, the outsourcing institutions and their internal audit departments, their external audit firms and to the FINMA, as well as making available, upon request, the audit report to the FINMA as well as the outsourcing institutions' internal audit departments and external audit firms. 11

FINMA may prohibit an institution from outsourcing any business areas to a service provider if the latter does not comply with the provisions of margin nos. 10 and 11 of this circular. 12

IV. Admissibility

In principle, any business area can be outsourced without the approval of the FINMA. However, compliance with the Federal Act on Data Protection (Data Protection Act, DPA; SR 235.1) of 19 June 1992 as set out in margin no. 30 et seqq. and requirements for secure outsourcing set out below is a prerequisite and, in the case of outsourcing abroad, the required supporting documentation must be provided. 13

If an institution cannot fulfill these requirements, it must submit a substantiated application to the FINMA for individual exemptions prior to the outsourcing. 14

Should approval be required for the outsourcing of a particular area by virtue of other FINMA circulars, these provisions take precedence over the present circular. 15

The ultimate management, supervision and control by the board of directors as well as other central executive functions of the management may not be outsourced. The only aspects that are excepted from this rule are general directives and decisions taken in regard to the group's supervision, provided the institution is part of a group active in the financial sector which is subject to adequate consolidated supervision by a regulator (Article 7(4) BO). Decisions about entering into or discontinuing business relationships may also not be outsourced. 16

Activities may be outsourced to a service provider which either belongs to the group or which is legally and economically independent. In both cases, the service provider can be a bank or securities dealer or also be from a different industry. 17

The following conditions for secure outsourcing, however, must be applied irrespective of the legal or economic position and origin of the service provider. 18

V. Conditions

A. PRINCIPLE 1: DEFINITION OF THE BUSINESS AREA TO BE OUTSOURCED

The business area to be outsourced must be defined. 19

The requirements for the provision of services must be specified and documented in detail in accordance with the outsourcing's objectives. The service provider's performance must be measurable or assessable based on predefined qualitative and quantitative characteristics. 20

B. PRINCIPLE 2: SELECTION, INSTRUCTION AND MONITORING OF THE SERVICE PROVIDER

The institution is required to carefully select, instruct and monitor the service provider. 21

A service provider may use subcontractors, provided they comply with this circular's principles and that it obtains the institution's written consent. 21a

The criteria and factors for selecting and collaborating with a service provider must be defined prior to entering into a contractual relationship. The prospective service provider's professional capabilities as well as its financial and personnel resources must be carefully considered and assessed. The service provider must be able to guarantee the secure and stable provision of services. 22

The competencies of the institution on the one hand and the service provider on the other hand must be clearly defined and delimited. Points of liaison, responsibilities, duties and liability issues are to be regulated by contract. 23

The outsourced business area must be integrated into the institution's internal control system. A responsible position is to be defined within the institution that will be in charge of monitoring and controlling the service provider. Its services must be monitored and evaluated on an on-going basis so that any necessary measures may be taken immediately. 24

The institution has to ensure that the service provider contractually grants the necessary right of inspection, instruction and control. 25

C. PRINCIPLE 3: RESPONSIBILITY

As far as the FINMA is concerned, the responsibility for the outsourced business area remains with the institution. 26

The institution remains responsible to the FINMA on the outsourced business areas as if it were operating these itself. 27

D. PRINCIPLE 4: SECURITY

The company and the service provider define security requirements and establish a security framework. 28

The institution and the service provider must define the security requirements that the service provider must fulfill. These must be set out in a contract and the institution must monitor their compliance. The institution and the service provider must also develop a security framework that will permit the continuation of the outsourced business area in case the service provider, for whatever reason, is unable to provide the services. Proper conduct of business operations must be ensured at all times. 29

In developing and applying the security framework, the institution must use the same care and diligence that it would have done if it had provided the service itself. The security framework must cover all foreseeable emergencies. 29a

Client data must be protected against unauthorized processing through appropriate technical and organizational measures. 30

In order to ensure an adequate level of data protection, both the institution and the service provider arrange for the confidential handling, the accessibility and the accuracy of the data. In particular, systems must be protected from unauthorized or unintentional destruction, unintentional losses, technical errors, falsifications, theft or illegal use, unauthorized changes, copying, access or other unauthorized actions. 31

The technical and organizational measures must take into account the following criteria: 32

- purpose of data processing,
- type and extent of data processing,
- assessment of possible risks for the clients involved, and
- current status of technology.

The measures have to be reviewed periodically. In the case of automated processing of client data, the service provider must take appropriate technical and organizational measures, particularly concerning the monitoring of physical access, client data carriers, transport, communication, storage, user access, logical access and input (cf. Article 7 DPA and Articles 8-9 of the Ordinance of 14 June 1993 to the Federal Act on Data Protection, DPO; SR 235.11). 33

E. PRINCIPLE 5: BUSINESS AND BANKING SECRECY, DATA PROTECTION

A Swiss service provider must be made subject to the outsourcing institution's business secrecy rules and, if client data is revealed to it, the institution's banking and professional secrecy rules. The Swiss service provider must explicitly commit to maintain the ensuing confidentiality. 34

Outsourcing abroad requires appropriate technical and organizational measures to ensure compliance with banking secrecy and data protection provisions stipulated by Swiss law. 35

Should the service provider offer its services to several institutions, then it must ensure by means of special technical, personnel or organizational measures that it not only maintains the data confidential towards third parties, but also between the different client institutions. 36

F. PRINCIPLE 6: INFORMATION PROVIDED TO THE CLIENT

The institution's clients must be informed if their data is transmitted to a service provider as a result of an outsourcing arrangement. 37

The clients must be informed of the outsourcing arrangement before their data is transmitted to the service provider in a general form, e.g. in the General Terms and Conditions, in safe custody regulations, account statements, informational brochures or by letter. The information must contain specific details on the outsourced areas. 38

Before client data is transferred abroad in the context of an outsourcing arrangement (cf. Principle 8), clients must be informed in detail by separate letter, detailing the security measures taken. In this regard, the client must be offered the opportunity to discontinue the contractual relationships within a reasonable timeframe and without any disadvantages. The special duty to provide information is not applicable if it is impossible to draw any conclusions as to the clients' identity from the data outsourced abroad. 39

G. PRINCIPLE 7: AUDIT AND SUPERVISION

The outsourcing company, its internal and external auditors and the FINMA must be able to inspect and audit the outsourced business area at any time, in its entirety and without restrictions. 40

Audit activities may be delegated to the service provider's external auditors, provided they possess the necessary technical competence to perform such an audit. Delegating audit activities to the external auditors of the service provider is not subject to the FINMA's approval. 41

The internal audit and the external audit firm of the institution must be in a position to review compliance with the provisions of the banking or stock exchange laws on the service provider's premises. By contract, they must be given the full and unrestricted right of inspection and examination in order to perform their audit procedures at all times. The provisions of margin no. 36, however, must be taken into account with respect to the right of inspection and examination. 42

The financial institution's internal audit and external audit firm must have access to all documents, data carriers and systems at the service provider, provided these are relevant to the outsourced business area. 43

They may, in particular, rely on activities of the service providers' auditors if they are organized pursuant to Swiss law and who fulfill the conditions of margin nos. 10 and 11 of this circular. 44

They must coordinate their auditing activities with the service provider's external audit firm. 45

The outsourcing of a business area may not interfere with the regulation and supervision by the FINMA, in particular if a business area is outsourced abroad or to group companies located abroad. 46

A service provider that is not subject to the supervision of the FINMA must contractually commit to provide the FINMA with all information and documents relating to the outsourced business area necessary for its supervisory activities. In the event that audit activities are delegated to the auditors of the service provider, their report must be made available, upon request, to the FINMA and the internal audit and external audit company of the outsourcing institution. 47

H. PRINCIPLE 8: OUTSOURCING ABROAD

Outsourcing abroad is to be made conditional upon the explicit proof of the ability to audit. 48

If outsourcing a business area abroad, the institution must demonstrate that it, its external auditor under bank and stock-exchange law and the FINMA can assume and legally enforce its auditing rights. 49

Supporting evidence may be produced, for instance, in the form of legal opinions or confirmations of a relevant regulatory authority. The banking and stock-exchange law audit company must audit this evidence prior to outsourcing. 50

I. PRINCIPLE 9: AGREEMENT

The institution and the service provider must conclude a clear agreement in writing. 51

Each outsourcing solution must be based on a written contract that at least meets all the aforementioned general requirements in their entirety. 52

The institution must define the internal approval process for outsourcing projects as well as the competencies for the conclusion of related agreements. 53

VI. Reporting of Banking and Stock Exchange Law Audit Companies

Audit firms are to audit the compliance with the provisions of this circular according to the FINMA circ. 13/3 "Auditing" and present the findings of their audit procedures in the audit report. 54*

VII. Exceptions

In some cases, the FINMA may impose on an institution other conditions and/or completely or partially exempt it from having to comply with this circular. 55

Appendix

Examples of Outsourcing

The following list contains examples of outsourcing arrangements that are subject to or exempt from this circular. This list is not exhaustive. 1

Legend to the symbols used in the table: 2

- Outsourcing subject to this circular.
- o Outsourcing exempt from this circular.

I. Securities Trading and Administration

- Entire securities administration to one service provider exclusively 3
- o Participation in securities settlement systems

II. Payment Transactions and Circulation of Bank Notes

- Settlement of all payments using a single service provider or a single correspondent bank 4
- o Participation in payment systems
- o Relationships with correspondent banks
- o Physical cash deliveries and securities transports
- o Stocking up of automated teller machines

III. Information Technology Systems and Maintenance

- Data storage 5
- Operation and maintenance of databases
- Operation of information technology systems
- o Preparation of information technology projects for the subsequent integration into the bank's operations

Appendix

Examples of Outsourcing

- o Commission of software development
- o Acquisition of software licenses
- o Software support
- o Maintenance of technical equipment, systems (information technology, etc.) and software

IV. Risk management

- Compliance functions 6
- Internal money laundering office
- Individual functions for credit risk monitoring and credit analysis
- Monitoring of trading and credit limits

V. Administration of Master Data and Accounting

- Financial reporting 7
- Updating client addresses and compiling client profiles (exception: non-recurring activities)

VI. Back-Office/Mid-Office Functions

- Printing and dispatching banking documents (exception: non-recurring activities) 8

Appendix

Examples of Outsourcing

VII. Human Resources

- o Payroll processing including bonuses for employees 9
- o Employment of (temporary) workers through body leasing
- o Support services for expatriates

VIII. Logistics

- o Canteen and restaurant service 10
- o General support and assistance, such as cleaning, accident prevention, fire protection, etc.
- o Technical and physical safety of bank premises
- o Administration, maintenance and sale of bank-owned real estate

IX. Other

- o Credit card business 11
- o Debt collection
- o Legal and tax consulting

List of amendments

The circular is amended as follows:

These amendments were passed on 6 December 2012 and enter into force on 1 January 2013.

Amended margin no. 54

The references to the Banking Ordinance (BO) have been adapted to the version entering into force on 30 April 2014.

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