

FINMA unifies outsourcing for banks and insurance companies

14. February 2017 – The Swiss Financial Market Supervisory Authority FINMA will revise its supervisory practice in the field of outsourcing. The new circular regulates how services outsourced from banks, stockbrokers and now also insurance companies should be handled. This brings with it a certain amount of relief for insurance companies. The circular is expected to come into force in July 2017.

*Principle-based
supervisory practices and
unifying between financial
service providers*

Supervisory focus

The main objective of the revision is to establish principle-based supervisory practice with regard to outsourcing and to effect a unifying between financial service providers. The new circular replaces the previous circular on outsourcing by banks (RS 2008/7) and extends its scope to include stockbrokers and insurance companies. It contains requirements for stockbrokers and insurance companies with regard to appropriate organisation and aims to assure risk limitation and trouble-free liquidation.



What is new?

Internal and external outsourcing are now subject to the same conditions; the regulations on selecting, instructing and controlling service providers have been revised and there are no regulations on the protection of data that is already comprehensively covered by data protection under private law. It is now possible to outsource all essential functions. Essential functions are defined in Rz 5 and Rz 7. Risk management and compliance are also essential in the sense of the circular, although they – analogue to central management and controlling functions – cannot be fully outsourced (Rz 12 and Rz 13). An exception to this rule is the compliance function for companies of categories 4 and 5, whereby operational tasks can be fully outsourced (Rz 14). Outsourcing abroad now requires that the data essential with regard to restructuring, winding up or liquidation be accessible from Switzerland at all times. It should be noted that outsourcing abroad is not permissible until the company has expressly demonstrated by way of an expert's report that the company itself, its auditors and FINMA can exercise and enforce their audit rights.

*In general, all essential
functions can be
outsourced*

What is important?

A comprehensive inventory of the outsourced services must be drawn up; the selection, instruction and control of the service provider must be documented and must include a risk analysis and a representation of the operational considerations that gave reason for outsourcing (Rz 23 to Rz 28). Security requirements are now required to be contractually regulated with regard to outsourcing security-relevant IT operations (Rz 30 and Rz 31). Outsourcing must be based on a written contract, the content of which is redefined in the circular (Rz 39 to Rz 42). System-relevant banks outsourcing critical functions are required to contractually regulate transferability and assurance of non-termination of services (Rz 43 to Rz 45). In contrast to banks, the outsourcing of essential functions by insurance companies represents an element of the respective business plan and must be communicated to FINMA in accordance with the Insurance Supervision Act (Art. 4 Para. 2 Letter j VAG). Outsourcing is considered as approved insofar as FINMA does not initiate a review of the process in accordance with Art. 5 Para. 2 VAG.

The inventory and documentation of selection, instruction and control must be defined in a written contract

What requires your attention?

Particular attention needs to be paid to the outsourcing of sales functions. With regard to collective health insurance agreements and the collaboration with sales partners, it is especially important to clearly define tasks, competences and responsibilities. Particularly critical aspects are managing the data of the insured, collecting premiums, processing benefit payments and settling claims. The circular makes reference in this connection to FINMA Bulletin 63 (2014), in which the additional requirements for outsourcing essential functions to intermediaries are defined: 1) Companies must demonstrate that they fulfil pre-contractual obligations with regard to customer information; 2) Companies must retain control with regard to the acquired insurance portfolio (customer data); and 3) The service and sales contract must unambiguously assign tasks and competences to the insurer and the intermediary. Once the new circular comes into force, it cannot be ruled out that supervisory practices in this sector will be tightened.

Outsourcing sales functions requires heightened awareness

Conclusions

The fact that the new regulations are also applicable to group-internal outsourcing requires a rethink (documentation of the outsourcing inventory (Rz 21); new test methods (Rz 23 – 28); development of a security concept (Rz 31); contractual regulation of outsourcing (Rz 39)). Furthermore, the fact that the data required for restructuring measures must be accessible from Switzerland necessitates adjustments in the IT sector if operations are to be outsourced abroad (Rz 36 – 38). The circular provides for a transition phase of two years for banks to implement the new requirements. With regard to insurance

companies, on the other hand, the circular provides for two scenarios: 1) The scenario of first approval, whereby the new requirements apply from the day on which the circular comes into force; and 2) The scenario of change approval, whereby the new requirements come into force when a business plan change request is submitted to FINMA for approval.

Kreienbühl | Management Consultancy can advise you with regard to all the particularities of outsourcing, help you to identify the associated regulatory implications and implement them within the scope of your governance. We can accompany you through the supervisory approval process or as an outsourcing partner for specific functions.

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We will be pleased to answer your questions or provide additional information. We look forward to hearing from you.

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