

FMA Guidelines 2020/6 – Outsourcing of functions in accordance with the Liechtenstein Insurance Supervision Act (ISA)

Guidelines on the requirements applicable to the outsourcing of functions in general and the outsourcing of critical or important functions in particular

Reference:	FMA GL 2020/6
Addressees:	Insurance and reinsurance undertakings as defined in the ISA
Concerning:	Law on the Supervision of Insurance Undertakings (Insurance Supervision Act, ISA); <i>Gesetz betreffend die Aufsicht über Versicherungsunternehmen (Versicherungsaufsichtsgesetz, VersAG)</i> , Commission Delegated Regulation (EU) 2015/35, Guidelines on system of governance (EIOPA-BoS-14/253 EN ; Governance Guidelines)
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1. Introduction

1.1 General information

These Guidelines provide an overview of the legal basis for outsourcing, the process involved (as regards the facilitation of filing an application see section 3.2) and the required contractual content.

The outsourcing of a function is an arrangement between an insurance undertaking and an outsourcing company (service provider) with the latter taking the form of either a supervised or unsupervised entity. On the basis of the arrangement, the service provider takes care of a process, service or activity that would otherwise be handled by the insurance undertaking itself. The service provider does this directly itself or by means of further outsourcing on its part (see Article 10(1)(14) of the ISA). Whether the service provider is a group company or not is irrelevant.

This means that all typical insurance-related functions or activities that are outsourced by an insurance undertaking are subject to specific controls by the Financial Market Authority (FMA) Liechtenstein.

The key criteria used to identify outsourcing and other contractual relationships are the type of activity affected and, in particular, its scope and duration, and the frequency with which use is made of the contracting partner's services. The terms cannot be quantified in general terms but are dependent on how substantial the respective activity is for the particular insurance undertaking in question.

Further outsourcing from one service provider to another is referred to as "sub-outsourcing". In the event that the service provider outsources the outsourced function to a sub-outsourcing company (sub-service provider), this sub-outsourcing arrangement will also be subject to all of the requirements set out in these Guidelines. This similarly applies to all further sub-outsourcing agreements.

The risks associated with the outsourcing must be identified prior to any outsourcing in the form of a documented risk analysis, and must be analysed, evaluated and appropriately managed. This risk analysis should also include an evaluation of whether an outsourcing concerns critical or important functions as defined in Article 89 of the ISA. Depending on the findings, the FMA will apply different inspection processes (see sections 2 and 3).

In accordance with Article 103(2) of the ISA, third parties (and thus also service providers) are obliged to provide the FMA with information that is required for the latter's supervisory activity.

With regard to the applicable legal basis, see Annex 1.

1.2 Permitted scope and control of the service provider

Subject to the following conditions, all insurance undertakings may engage in outsourcing.

In all cases of outsourcing and sub-outsourcing, the insurance undertaking always retains ultimate responsibility (see Article 89(1) of the ISA). Original management tasks, such as the obligation of the management body (board of directors and executive board) to define and impose the undertaking's strategy, structure and processes, including responsibility for setting up and continuing to develop the risk management and internal control system, may not be outsourced. Service providers may only be involved in these areas in a supporting and advisory capacity. This also applies in the case of intra-group outsourcing.

The responsibility of the entire executive board for compliance with governance rules means that a separation of functions is still required in the event of outsourcing (see Article 89(1) of the ISA). This applies from the service provider's perspective and from the perspective of the insurance undertaking in relation to where the outsourcing officer is based in terms of organisational structure.

Moreover, an insurance undertaking's head office must remain in the Principality of Liechtenstein (Article 89(3) of the ISA). The requirements in relation to the head office must be observed at all times.

If the service provider is located outside of the EEA, the insurance undertaking must pay particular attention to the control framework. The insurance undertaking must also be able to effectively monitor this service provider so that early action can be taken in the event of any breach of the terms of the outsourcing agreement. In particular, it must ensure that access to information about the outsourced functions and insurance activities or to the service provider's business premises is not in any way restricted by the service provider's local supervisory authority or by national rules.

1.3 Policy on the outsourcing of functions

In accordance with Article 274(1) of Commission Delegated Regulation (EU) 2015/35, any insurance undertaking that outsources functions or activities must establish a written outsourcing policy that takes into account the impact of outsourcing on its business and the reporting and monitoring arrangements to be implemented in cases of outsourcing. The undertaking must draw up an internal outsourcing policy dealing in particular with the criteria referred to in Governance Guideline 63. Both of these requirements apply regardless of whether the outsourced function is classed as critical or important (see section 2.2 below).

The written outsourcing policy must take account of the impact the outsourcing will have on business operations and stipulate the process and quality standards to be applied in individual cases when outsourcing, and the reporting and monitoring obligations to be implemented from start to finish. The outsourcing policy must also include an outsourcing strategy.

The written outsourcing policy must be consistent with the insurance undertaking's business strategy.

The written outsourcing policy must include a process for reviewing potential service providers. As a minimum, the written outsourcing policy must cover the following aspects of the process:

- Service provider's financial strength
- Service provider's technical capability
- Capacity of service provider to perform the outsourced services
- Risk analysis (including analysis of insurance undertaking's dependence as a result of individual outsourcing arrangements and based on the outsourcing as a whole)
- Control framework
- Any conflicts of interest

It is up to the insurance undertakings themselves to determine in their written outsourcing policy whether further aspects need to be incorporated into the review process. Such aspects must be adjusted in line with any changes to the situation within the undertaking or to external circumstances.

The outsourcing policy must stipulate how continuity and quality of the outsourced functions and insurance activities will be guaranteed, including in the event of the contractual relationship with the service provider being terminated.

The outsourcing policy must include the obligation to draw up contingency plans for outsourced key functions and insurance activities to cover any disruptions affecting the service provider. Additionally, the outsourcing policy must set out the process and responsibilities for preparing such contingency plans. The contingency plans must take particular account of how important functions and insurance activities that are outsourced could, if necessary, be transferred to a different service provider or re-integrated into the insurance undertaking's business operations.

The risks associated with any outsourcing arrangement must be identified prior to any outsourcing and also subsequently in the form of a documented risk analysis, and must be analysed, evaluated and appropriately managed. A distinction must be made between this analysis and the risk analysis carried out before any outsourcing arrangement.

The undertakings must first determine independently and in a risk-oriented way whether the handing over of an activity is covered by the definition of outsourcing. An evaluation of whether the activity in question

constitutes an important function or insurance activity that is to be outsourced also forms part of the risk analysis that is required prior to any outsourcing.

The basic decision on whether or not to outsource, and taking account of strategic factors, economic and operational arguments as well as the quantitative and qualitative aspects, must also take due account of risk. Relevant risk categories will generally include strategic, operational and reputational risk. Particular attention should be paid to concentration risks if one service provider is being used for the provision of several different functions.

The relevant organisational units must be involved in the risk analysis process. A proportionate approach is needed with regard to the intensity of the risk analysis and how intensely the relevant organisational units are involved.

The results of the risk analysis must be documented. If the risk profile is subject to any material changes that are relevant to the outsourcing, a new risk analysis should be carried out so that a decision can be made on whether to continue or to terminate the outsourcing arrangement.

Reference is made to the fact that the FMA may inspect the corresponding documentation at any time.

1.4 Sub-outsourcing

Sub-outsourcing is permitted as a general rule. The relevant conditions must be defined in the written outsourcing policy. The sub-outsourcing of a critical or important function must be approved in advance by the responsible governing body (board of directors and executive board).

Otherwise the conditions governing service providers apply accordingly to sub-outsourcing.

2. Material requirements

2.1 General information

In accordance with Article 12(2)(m) of the ISA, agreements or other arrangements governing the outsourcing of an insurance undertaking's functions or activities (function outsourcing, outsourcing) have to form part of the licence application. This applies to all outsourcing regardless of whether it is classed as critical or important. As part of the licence requirements, all changes relating to outsourcing pursuant to Article 19(1)(a) of the ISA must be approved by the FMA prior to implementation (see section 3 below).

This having been premised, outsourcing in accordance with Article 90(1) of the ISA may only be permitted subject to the following conditions:

- The service provider must cooperate with the FMA with regard to the outsourced function or activity.
- The insurance undertaking, its auditor, the FMA and other responsible supervisory authorities must have effective access to the data relating to the outsourced functions or activities.
- The FMA and other responsible supervisory authorities must have effective access to the service provider's business premises and be in a position to exercise these rights of access.

2.2 Intra-group outsourcing

With regard to outsourcing within the group, the insurance undertaking must, regardless of whether the outsourcing is classed as critical or important, take account of the possibility of control or influence over the service provider as defined in Article 274(2) of Commission Delegated Regulation (EU) 2015/35. Reference is also made to Governance Guideline 62 and related explanations, the terms of which must be observed and noted. In particular, these contain information on the service provider's place of domicile, the type of outsourcing, the written agreement (service level agreements, SLAs) and the respective responsibilities.

The requirement relating to an insurance undertaking's head office (Article 89(3) of the ISA) must always be observed (see section 1.2).

2.3 Outsourcing of critical or important functions and activities

Critical and important functions have a particular role to play among typical insurance-related functions and activities. It is emphasised that ultimate responsibility lies with the insurance undertaking (see section 1.2; see Article 89(1) of the ISA).

Insurance undertakings must inform the FMA in good time of the outsourcing of critical or important functions or activities and of all related key developments that occur subsequently (Article 91 of the ISA).

In accordance with Article 89(2) of the ISA, critical or important operating functions and activities may only be outsourced if none of the following will occur as a result:

- a) Material negative impact on the quality of the insurance undertaking's governance
- b) Excessive increase in operational risk
- c) Impairment of the FMA's means of monitoring the insurance undertaking's compliance with its obligations
- d) Risk to the quality delivered to policyholders

In selecting the service provider to which critical or important functions are to be outsourced, the responsible body must also ensure that the rules set out in Article 274(3) of Commission Delegated Regulation (EU) 2015/35 are observed.

Whether a particular function or activity is deemed to be critical or important is based on whether that outsourced function or activity is vital to the insurance undertaking. Without critical or important functions or activities, the undertaking would not be able to provide its services to its policyholders. In this regard, account should also be taken of the general comments, definitions and sample lists contained in the Final Report on Public Consultation No. 14/017 on Guidelines on system of governance ([EIOPA-BoS-14/253](#); Final Report) under section 2.290 et seqq. In accordance with Governance Guideline 60, the insurance undertaking must document the classification of a function or activity as critical or important (see section 1.3). This documentation requirement must be included in the written version of the undertaking's outsourcing policy (see Article 274(1) of Commission Delegated Regulation (EU) 2015/35).

When a function or activity is classed as critical or important, all existing and any further planned outsourcing should be assessed in addition to the individual outsourcing arrangement concerned. Several outsourcing arrangements that might not be classed as critical or important when considered in isolation might be classed as critical or important when considered alongside other instances of outsourcing or alongside the insurance undertaking's outsourcing policy in general.

The outsourcing of key functions in accordance with Article 30(3) and Article 41 of the ISA, the outsourcing of the conclusion of insurance policies (underwriting) and the outsourcing of asset management will always be considered to constitute the outsourcing of critical and important functions (see below).

2.3.1 Outsourcing of key functions

In accordance with section 1.4 of the Final Report, key functions are to be assessed as important and critical functions.

When outsourcing key functions, Governance Guideline 14 and related explanations in the Final Report must also be taken into account. These specify in particular that the insurance undertaking must guarantee that the service provider has checked the expertise and personal reliability of all persons working in the function concerned. All information and documents regarding the requirements on expertise and personal reliability (fit and proper documentation) as listed in the checklist for the [FMA Guidelines 2017/18 – Professional](#)

[qualification and personal integrity of executive bodies and function holders](#) must be submitted for all persons employed by the service provider to perform an outsourced key function.

Comments on the benchmark to be used to determine the fitness of these persons are also provided in section 2.61 et seqq. of the Final Report in the explanations relating to Governance Guideline 14. Additionally, in section 2.64 et seqq. of the Final Report and in the explanations relating to Governance Guideline 15, there is a list of points that the insurance undertaking is required to communicate to the FMA, particularly the disclosures in accordance with the FMA Guidelines 2017/18 on assessing the fitness and propriety of the relevant staff.

The insurance undertaking is also required to provide the FMA with the name of a fit and proper person who will bear overall responsibility for the outsourced key function at the insurance undertaking. The FMA will check that this person meets the fit and proper requirements. Reference is made again in this regard to the FMA Guidelines 2017/18. With regard to the internal organisation and governance of the insurance undertaking, measures are required to ensure that the person with overall responsibility for the outsourced key function is sufficiently well qualified and has appropriate processes in place to monitor the service provider properly and to ensure that an appropriate internal control system is in place with regard to the function outsourcing as a whole. This must also be reflected in the internal organisation chart.

2.3.2 Outsourcing of the conclusion of insurance contracts (underwriting)

If insurance contracts are being concluded by service providers (underwriting; particularly underwriters, managing general agents, agents, etc.), the terms of Governance Guidance 61 and related explanations in the Final Report must be adhered to. If the outsourcing of the underwriting also involves transferring some areas of complaints handling to a service provider, the insurance undertaking must ensure that the Guidelines on Complaints-Handling by Insurance Undertakings (EIOPA-BoS-12-069) are fully observed. Measures must also be in place to ensure that the insurance undertaking holds complete, accurate and up-to-date information on its business portfolio at all times.

2.3.3 Outsourcing of asset management

Asset management is a core activity of an insurance undertaking, not least because insurance undertakings are obliged to invest all their assets in accordance with the prudent person principle, while the assets of policyholders must be invested in the best interest of all policyholders and beneficiaries (see Article 35 and Article 80 of the ISA).

2.3.4 Other critical or important outsourcing

With reference to section 2.3 of these Guidelines, the types of outsourcing listed as examples of critical and important functions in section 2.291 et seqq. of the Final Report must also be observed and assessed as such.

Additionally, the insurance undertakings must independently determine whether the respective function or insurance activity is important and document this accordingly. Whether a function or insurance activity is important can only be assessed on a case-by-case basis (see section 1.3 above).

3. Procedures

3.1 Licensing requirement

In accordance with Article 12(1) and Article 12(2)(m) of the ISA, agreements or arrangements that will result in the outsourcing of functions or activities must form part of the application for a licence and as such be submitted during the licensing process. Pursuant to Article 19(1)(a) of the ISA, any changes to the licence application, and thus any new outsourcing or changes to outsourcing, require the consent of the FMA.

The licensing requirement applies to all outsourcing regardless of whether the outsourced function is critical or important.

3.2 Licence application

If an insurance undertaking intends making changes to the licensing requirements (Article 12(2)(m) of the ISA), it must submit a written application to the FMA prior to implementation. The relevant documents may as a general rule be sent by e-mail (scan of the physically signed document). The FMA reserves the right to request delivery of a document containing a qualified signature (see E-GovG) in individual cases.

The application must bear a legally valid signature (physically signed document or document containing a qualified signature according to the E-GovG). If the application is signed by an authorised agent, the power of attorney with a legally valid signature should be attached. If the application is signed by a Liechtenstein lawyer, the lawyer may refer to his or her power of attorney to act for the undertaking.

3.3 Content

Every application must include the following information:

- Draft outsourcing agreement
- Service provider's entry in the commercial register
- Extract from the license register of the supervisory authority responsible for the service provider if the service provider is not a domestic company
- Certificate of good standing¹ from the service provider's supervisory authority if the service provider is supervised by a supervisory authority and does not hold a domestic licence

If key functions are to be outsourced, the following additional information is required²:

- Appointment of a person at the insurance undertaking with overall responsibility, including fit and proper documentation
- Responsible person acting for the service provider, including fit and proper documentation

All applications must also be submitted to the FMA for review using the fully completed and legally signed checklist pursuant to Annex 2.

Upon request by the FMA and on a case by case basis, applicants need to hand in further information.

After receiving and reviewing the application, the FMA shall issue supervisory approval subject to fulfilment of the statutory requirements.

After the function outsourcing agreement has been signed, a copy should be sent to the FMA by e-mail. The transmission by e-mail is sufficient.

3.4 Extension and renewal of outsourcing agreements that have already been approved

The simple extension or renewal of an outsourcing agreement with the same service provider that has already been approved by the FMA does not require renewed approval by the FMA. This also includes amendments to outsourcing agreements that are merely required to implement the extension or renewal but that do not

¹ The certificate of good standing must answer the question of whether the service provider is judged by the responsible supervisory authority to be "of good standing" and thus "unobjectionable". In particular, the certificate must confirm whether the service provider is currently or has ever been the subject of proceedings or investigations or similar on the part of the supervisory authority.

² Insofar as the individual in question has already been confirmed as a fit and proper person by the FMA, the renewed submission of fit and proper information to the FMA is not required in this individual case. The FMA should be consulted on an individual basis to answer this question.

involve any change in content. If an extension or renewal of an outsourcing agreement requires a change to the content, the approval procedure pursuant to section 3 must be carried out again in advance of the change.

3.5 Information obligation in the event of important developments / Approval procedure regarding important changes (e.g. termination)

Insurance undertakings must inform the FMA in good time of the outsourcing of critical or important functions or activities and of all related key developments that occur subsequently (Article 91 of the ISA).

Such developments include, for example, the termination of an outsourcing agreement, amendments to the agreement or changes to the person providing the service (a change to the company, merger, etc.). Changes in approved contracts are also subject to the approval process according to section 3.

4. Ad hoc assessments and ongoing supervision

As part of the ongoing supervision and on a case by case basis, the FMA generally assesses if and to which extend the internal control system of an insurance undertaking meets all requirements in relation to the particularities, the extent and nature of the use of outsourcing by the insurance undertaking. These assessments may take place in form of desk reviews (e.g. during the assessment of the annual reporting and ad hoc reporting, etc.) or on-site visits.

5. Penal provision

In accordance with Article 257(3)(g) of the ISA, the FMA may impose fines of up to CHF 100,000.00 on any party that does not obtain the required permission from the FMA or fails to do so in good time.

Additionally, in accordance with Article 257(3)(k) of the ISA, the FMA may impose fines of up to CHF 100,000.00 on any party that breaches the rules on the outsourcing of functions (Article 89 to Article 91 of the ISA).

6. Entry into force

These Guidelines replace the Guidelines regarding the outsourcing of functions in accordance with the insurance supervisory requirements of 22 February 2016 and will enter into force on 10 June 2020.

7. Data protection

The FMA processes personal data exclusively in accordance with the general data processing principles of the General Data Protection Regulation (Regulation (EU) No. 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC) and in line with applicable data protection law.

Information regarding the processing of personal data, including details about the purpose of processing, the data controller and the rights of data subjects can be found in the FMA Privacy Policy: www.fma.li/en/fma/data-protection/fma-privacy-policy.html

Change directory

Compared to the FMA- Guidelines 2020/6 as of 11 July 2022 the following changes were made:

Section **1.1.:** Changes regarding the facilitation of filing an application and reference to **3.2.**

Section **3.2:** Adaptation to supervisory practices and changes with regard to the E-GovG (qualified signature according to the E-GovG).

Section **3.5:** Clarification, that the approval procedure is also applicable for important changes (e.g. termination). Changes in approved contracts are also subject to the approval process according to section **3.**

Legal basis: Law of 21 September 2022 on electronic commerce with public authorities (*Gesetz vom 21. September 2011 über den elektronischen Geschäftsverkehr mit Behörden; E-Government-Gesetz; E-GovG*)

Annex 2: Adaptation to supervisory practices and changes with regard to the E-GovG (qualified signature acc. to E-GovG).

Annex 1 – Legal basis

Annex 2 – Checklist for outsourcing of functions

Annex 1 – Legal basis

- Law of 12 June 2015 on the Supervision of Insurance Undertakings (*Gesetz vom 12. Juni 2015 betreffend die Aufsicht über Versicherungsunternehmen; Versicherungsaufsichtsgesetz, VersAG* – Insurance Supervision Act, ISA)
 - Article 10(1)(14) of the ISA (legal definition)
 - Article 12(2)(m) of the ISA (basis of licensing requirement)
 - Article 19(1)(a) of the ISA (licence requirement)
 - Article 89 to Article 91 of the ISA (principle, supervision, information obligation)
 - Article 103(2) of the ISA (information and submission obligation)
 - Article 257(3)(g) and (k) of the ISA (penal provision – breaches)
- Ordinance of 25 August 2015 on the Supervision of Insurance Undertakings (*Verordnung vom 25. August 2015 betreffend die Aufsicht über Versicherungsunternehmen; Versicherungsaufsichtsverordnung, VersAV* – Insurance Supervision Ordinance, ISO)
- Law of 21 September 2022 on electronic commerce with public authorities (*Gesetz vom 21. September 2011 über den elektronischen Geschäftsverkehr mit Behörden; E-Government-Gesetz; E-GovG*)
- Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)
 - Recitals 100 and 101 and Article 274 of Commission Delegated Regulation (EU) 2015/35 (standard of assessment, selection process requirements and outsourcing policy)
- Guidelines on system of governance ([EIOPA-BoS-14/253 EN](#)) including Final Report On Public Consultation No. 14/017 on Guidelines on system of governance ([EIOPA-BoS-14/253](#))
 - Governance Guideline 14 including related explanations in the Final Report
 - Governance Guideline 60 including related explanations in the Final Report (classification)
 - Governance Guideline 61 including related explanations in the Final Report
 - Governance Guideline 62 including related explanations in the Final Report (competence documentation)
 - Governance Guideline 63 including related explanations in the Final Report (written policy)
 - Governance Guideline 64 including related explanations in the Final Report (written policy)
- Final Report on public consultation No. 19/270 on Guidelines on outsourcing to cloud service providers ([EIOPA-BoS-20-002](#))
- Law of 11 December 2008 on Professional Due Diligence to Combat Money Laundering, Organized Crime, and Terrorist Financing (*Gesetz vom 11. Dezember 2008 über berufliche Sorgfaltspflichten zur Bekämpfung von Geldwäscherei, organisierter Kriminalität und Terrorismusfinanzierung, SPG* – Due Diligence Act, DDA)
 - Special obligations and requirements applicable in the context of outsourcing of due diligence requirements pursuant to the Liechtenstein Due Diligence Act and the Liechtenstein Ordinance of 17 February 2009 on Professional Due Diligence to Combat Money Laundering, Organized Crime, and Terrorist Financing (*Verordnung vom 17. Februar 2009 über berufliche Sorgfaltspflichten zur Bekämpfung von Geldwäscherei, organisierter Kriminalität und Terrorismusfinanzierung, SPV* – Due Diligence Ordinance, DDO) remain unaffected by these Guidelines.

Annex 2 – Checklist for outsourcing of functions



Anhang 2 -
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