**Annex 2 – Checklist for the outsourcing of functions**

Please note:

If it is not possible to provide a declaration for one of the named points, written justification must be submitted to the FMA.

Please note that, in accordance with Article 257(2)(c) of the ISA, a custodial sentence of up to six months or a monetary penalty of up 180 daily rates may be imposed on anyone who gives false information to the FMA, particularly if such information is provided for the purposes of acquiring permission for an undertaking to make changes to its licensing requirements (Article 19 to Article 22 of the ISA).

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.li/en/fma/data-protection/fma-privacy-policy.html](https://www.fma-li.li/en/fma/data-protection/fma-privacy-policy.html)

Please tick as applicable, provide references for the outsourcing agreement (section, article, etc.) where necessary, and enclose the signed checklist with the application for a licence change:

|  |
| --- |
| **Name of insurance undertaking[[1]](#footnote-1)** **submitting the application:**       |
|  |
| **Contact person at the insurance undertaking:**Name:       | E-mail:       | Telephone:       |
|  |  |  |
| **I. Formal information**  |  |
| 1. Submission of a duly signed[[2]](#footnote-2) application for approval of a change to the licensing requirements pursuant to Article 19(1)(a) of the IAS in conjunction with Article 12(2)(m) and of the underlying function outsourcing agreement | Physically attached [ ] Electronically attached [ ]  | Application of (date)      Agreement as last amended on       |
| 2. Notification of all changes as a result of requested outsourcing to existing outsourcing arrangements or service providers (renewal, extension or termination of an outsourcing agreement) |       |
| 3. Names of contracting parties (insurance undertaking and service provider) including details of business addresses and submission of an up-to-date[[3]](#footnote-3), official extract from the commercial register for the service provider | Up-to-date commercial register extract enclosed [ ] Reference in agreement:       |       |
| 4. For the outsourcing of activities that require a licence (e.g. asset management), please enclose proof of a licence being held for this activity. | Outsourcing of an activity subject to licensing:Yes [ ] No [ ] Name of activity:      Evidence of approval from the supervisory authority responsible for the service provider[[4]](#footnote-4) enclosed [ ] Good standing certificate issued by the supervisory authority of the service provider[[5]](#footnote-5) enclosed [ ]  |       |
| 5. Contractual agreement on remuneration at market rates | Justification of market rates:        | Reference in agreement:       |
| 6 Applicable law and place of jurisdiction |       | Reference in agreement:       |

|  |  |
| --- | --- |
| **II. General confirmation regarding function outsourcing in accordance with Article 90(1) of the ISA** | **NB:** |
| Precise definition of outsourced activity | Name of outsourced activity (e.g. Claim management):       | Reference in outsourcing policy:       |
| In the event of a function being outsourced pursuant to Article 89 of the ISA, an insurance undertaking must guarantee that the following conditions are met in accordance with Article 90(1) of the ISA: | The terms of Article 90(1)(a) to (c) of the ISA are fulfilled:Yes [ ] No [ ]  |
| a) The service provider must cooperate with the FMA with regard to the outsourced function or activity. |       | Precise reference[[6]](#footnote-6) in the agreement:       |
| b) The undertaking, its auditor, the FMA and other responsible supervisory authorities must have effective access to the data relating to the outsourced functions or activities. |       | Precise reference in the agreement:       |
| c) 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. |       | Precise reference in the agreement:       |
| **III. General confirmations and declarations regarding the function outsourcing pursuant to Article 274(1) and (2) of Commission Delegated Regulation (EU) 2015/35:** | **NB:** |
| 1. The undertaking has a written outsourcing policy as defined in Article 274(1) of Commission Delegated Regulation (EU) 2015/35 and Governance Guideline 63. | Yes [ ] No [ ]  | Name of outsourcing policy:      |
| 2 If the undertaking and the service provider belong to the same group, the undertaking shall take account when outsourcing critical or important operational functions or activities of the extent to which the undertaking controls the service provider or is able to influence its actions (Article 274(2) of Commission Delegated Regulation (EU) 2015/35 and Governance Guideline 63 including explanations in the Final Report).  | Requirements are met Yes [ ]  No [ ] n/a [ ]  |       |
| **IV. Confirmations and declarations in relation to critical and important function outsourcing pursuant to Article 89(1) of the ISA and Article 274(3) to (5) of Commission Delegated Regulation (EU) 2015/35:** | **NB:** |
| A critical and important function is being outsourced: Yes [ ] No[[7]](#footnote-7) [ ]  |       |
| Detailed information on why the outsourcing relates to a critical and important function. | Description of outsourced activity (e.g. internal audit):       | Reference in outsourcing policy:       |
| 3. In selecting the service provider to which critical or important functions or activities are to be transferred, the insurance undertaking shall, in accordance with Article 274(3) of Commission Delegated Regulation (EU) 2015/35, ensure: |  |
| 1. that a careful check is carried out to guarantee that the service provider being considered has the ability, capacity and, if applicable, statutory permission required to perform the functions or activities transferred to it in a satisfactory way taking into account the undertaking’s objectives and needs;
 | Requirements met [ ] Requirements not met [ ]  | Precise reference[[8]](#footnote-8) in the agreement:       |
| 1. that the service provider does everything in order to guarantee that no explicit or potential conflicts of interest jeopardise its fulfilment of the outsourcing undertaking’s needs;
 | Requirements met [ ] Requirements not met [ ]  | Precise reference in the agreement:       |
| 1. that a written agreement is concluded between the undertaking and the service provider in which the respective rights and obligations of both parties are clearly defined;
 | Requirements met [ ] Requirements not met [ ]  | Precise reference in the agreement:       |
| 1. that the general terms and conditions of the outsourcing agreement have been clearly presented to the administrative, management or supervisory body and duly approved by it;
 | Requirements met [ ] Requirements not met [ ]  | Information on documentation and implementation:       |
| 1. that no statutory rules, and in particular no data protection rules, are breached as a result of the outsourcing;
 | Requirements met [ ] Requirements not met [ ]  | Precise reference in the agreement:       |
| 1. that, with regard to the security and confidentiality of information relating to the undertaking, its policyholders or its beneficiaries, the service provider is subject to the same rules as the undertaking itself.
 | Requirements met [ ] Requirements not met [ ]  | Precise reference in the agreement:       |
| 4. In the written agreement to be concluded between the undertaking and the service provider in accordance with Article 274(3)(c) of Commission Delegated Regulation (EU) 2015/35, the following elements in particular will be clearly defined in accordance with Article 274(4) of Commission Delegated Regulation (EU) 2015/35: |  |
| 1. The obligations and responsibilities of both parties involved
 | Requirements met [ ] Requirements not met [ ]  | Precise reference in the agreement:       |
| 1. The service provider’s obligation to comply with all applicable legal and administrative rules and guidelines and with the strategies defined by the insurance or reinsurance undertaking, and to cooperate with the FMA in relation to the outsourced function or activity
 | Requirements met [ ] Requirements not met [ ]  | Precise reference in the agreement:       |
| 1. The service provider’s obligation to disclose any development that could have a material negative impact on its ability to perform the outsourced functions and activities effectively and in compliance with the applicable legal and administrative rules
 | Requirements met [ ] Requirements not met [ ]  | Precise reference in the agreement:       |
| 1. The applicable notice period if the agreement is terminated by the service provider, with such notice period being long enough to enable the insurance or reinsurance undertaking to find an alternative solution
 | Requirements met [ ] Requirements not met [ ]  | Precise reference in the agreement:       |
| 1. That the insurance undertaking may end the outsourcing agreement if necessary without this being to the detriment of the continuity and quality of service for policyholders
 | Requirements met [ ] Requirements not met [ ]  | Precise reference in the agreement:       |
| 1. That the undertaking reserves the right to be briefed by the service provider on the outsourced functions and activities and their performance, and also reserves the right to provide the service provider with general guidelines and single instructions on the aspects to be taken into account when performing the outsourced functions and activities
 | Requirements met [ ] Requirements not met [ ]  | Precise reference in the agreement:       |
| 1. The service provider’s obligation to protect all confidential information relating to the undertaking and its policyholders, beneficiaries, employees, contracting partners and all other persons
 | Requirements met [ ] Requirements not met [ ]  | Precise reference in the agreement:       |
| 1. That the undertaking, its external auditor and the FMA have effective access to all information regarding the outsourced functions and activities, and that, among other measures, on-site inspections of the service provider’s business premises may be carried out
 | Requirements met [ ] Requirements not met [ ]  | Precise reference in the agreement:       |
| 1. That, insofar as appropriate and necessary for supervisory purposes, the FMA may submit questions to the service provider directly, which is required to respond
 | Requirements met [ ] Requirements not met [ ]  | Precise reference in the agreement:       |
| 1. That the undertaking may receive information about the outsourced activities and issue instructions regarding the outsourced activities and functions
 | Requirements met [ ] Requirements not met [ ]  | Precise reference in the agreement:       |
| 1. Where applicable, the conditions under which the service provider may sub-outsource the outsourced functions and activities
 | Requirements met [ ] Requirements not met [ ]  | Precise reference in the agreement:       |
| 1. That the obligations and responsibilities of the service provider arising from the arrangement entered into with the undertaking will remain unaffected by a sub-outsourcing pursuant to (k)
 | Requirements met [ ] Requirements not met [ ]  | Precise reference in the agreement:       |
| 5 The requirements referred to in Article 274(5) of Commission Delegated Regulation (EU) 2015/35 are met: |  |
| 1. The undertaking shall ensure that relevant elements of the service provider’s risk management system and internal control system are suitable in order to comply with Article 49(2)(a) and (b) of Solvency II.
 | Requirements met [ ] Requirements not met [ ]  | Information on documentation and implementation:       |
| 1. The undertaking shall take due account of the outsourced activities in its risk management system and internal control system in order to guarantee compliance with Article 49(2)(a) and (b) of Solvency II.
 | Requirements met [ ] Requirements not met [ ]  | Information on documentation and implementation:       |
| 1. The undertaking shall check that the service provider has the necessary financial means to fulfil the additional tasks appropriately and reliably, and that all employees of the service provider involved in the performance of the outsourced functions and activities are suitably qualified and reliable.
 | Requirements met [ ] Requirements not met [ ]  | Information on documentation and implementation:       |
| 1. The undertaking shall ensure that the service provider has appropriate contingency plans in place to deal with critical situations or interruptions to its operations and, where necessary, carry out regular testing of back-up facilities taking account of the outsourced functions and activities.
 | Requirements met [ ] Requirements not met [ ]  | Information on documentation and implementation:       |
| 6. The undertaking shall ensure that the requirements of Governance Guideline 61 including the explanations in the Final Report on underwriting are guaranteed. | Requirements are met [ ]  Requirements are not applicable as no underwriting involved in this instance [ ]  | Description of which specific measures are taken to comply with the requirements:       |
| **V. Additional requirements upon the outsourcing of key functions in accordance with Article 30(3) and Article 41 of the ISA**  |  |
| 1. The undertaking shall ensure that the service provider or sub-service provider has checked the expertise and personal reliability of the person assuming a key function for the insurance undertaking (section 2.61. of the explanation on Governance Guideline 14).  | Check carried out and requirements guaranteed [ ]  |       |
| 2. Notification of name of person assuming a key function for the insurance undertaking at the service provider | Name:      Fit and proper documentation pursuant to [FMA Guidelines 2017/18](https://www.fma-li.li/de/aufsicht/bereich-versicherungen-und-vorsorgeeinrichtungen/versicherungsunternehmen/regulierung-rechtsgrundlagen.html) enclosed[[9]](#footnote-9) [ ]  |       |
| 3. Notification of name of person with overall responsibility at the insurance undertaking for the outsourced key function as defined in Governance Guideline 14 | Name:      The FMA has confirmed that the person is a fit and proper person. [ ] Fit and proper documentation pursuant to [FMA Guidelines 2017/18](https://www.fma-li.li/de/aufsicht/bereich-versicherungen-und-vorsorgeeinrichtungen/versicherungsunternehmen/regulierung-rechtsgrundlagen.html) enclosed [ ]  |       |

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Place and date: physically signed or qualified signature (see E-GovG) by two authorised signatories

 (Name and signature)

\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Place and date: physically signed or qualified signature (see E-GovG) by two authorised signatories

 (Name and signature)

1. For the purposes of this document, the term insurance undertaking is understood as referring to both insurance and reinsurance undertakings. [↑](#footnote-ref-1)
2. See section 3.2 of the FMA Guidelines 2020/6. [↑](#footnote-ref-2)
3. Up to date means no older than three months. [↑](#footnote-ref-3)
4. Please enclose an extract from the license register of the supervisory authority in the state in which the service provider is licensed. [↑](#footnote-ref-4)
5. Good standing certificate issued by the supervisory authority responsible for the service provider if the service provider is not a domestic company. 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. [↑](#footnote-ref-5)
6. Please provide all paragraph references from the draft outsourcing agreement that specifically relate to the matter in question. Please avoid simply listing sections. [↑](#footnote-ref-6)
7. If no critical or important function is being outsourced, no further information is required under sections IV. and V. [↑](#footnote-ref-7)
8. Please provide all paragraph references from the draft outsourcing agreement that specifically relate to the matter in question. Please avoid simply listing sections. [↑](#footnote-ref-8)
9. 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. [↑](#footnote-ref-9)