



Swiss Financial Market Supervisory Authority FINMA revises outsourcing regulations

The Swiss Financial Market Supervisory Authority FINMA revises its outsourcing circular 2008/7 "Outsourcing – banks" and put the new version out for consultation. The revised circular now also covers insurance companies.

Background

The rules governing outsourcing solutions in the insurance sector are not set forth in a formal FINMA circular yet: According to article 4 (2)(j) Swiss Insurance Supervision Act (ISA) insurance companies have to provide FINMA (as part of their business plan, Form J) with the contracts or other agreements under which important functions are to be outsourced. Any intended changes in the outsourcing landscape of an insurer may, thus, qualify as a change to the business plan which also needs to be submitted to FINMA. An outsourcing is deemed approved by FINMA if FINMA does not initiate an in-depth review of the outsourcing at issue within four weeks following the notification (article 5 (2) ISA). The "Explanatory notes to the business plans submitted by insurance companies" published by FINMA provide some practical guidance with respect to the regulatory requirements of outsourcing solutions in the insurance sector. In addition, FINMA guidance no. 63 provides further details on the outsourcing of core functions of an insurance company to insurance intermediaries.

Key points of the revised circular

The following key points in the completely revised circular can be highlighted from the perspective of an insurer:

1. **New formal basis of outsourcing requirements for insurers:** The revised circular brings together the existing outsourcing requirements for insurers in a formal circular;
2. **Insurers slightly benefit from the harmonisation of the outsourcing requirements:** The revised circular intends to harmonise the requirements for banks, securities dealers and insurance companies. As a result, insurance companies benefit from a slightly more generous regulation in some specific areas (e.g. no restriction with respect to the outsourcing of core functions anymore);
3. **Specific provisions for captives:** According to the revised circular more far-reaching outsourcing solutions are possible for captives (in accordance with FINMA's previous practice);
4. **Data protection:** In order to avoid duplication the revised circular has been aligned with the Data Protection Act (and certain data protection provisions in the previous version of the circular have been deleted);
5. **Transitional measures:** The revised circular shall only apply to outsourcing solutions that are submitted/notified to FINMA after it took effect.

The revised circular will now be put out for a period of consultation which will end on 31 January 2017.

Practical relevance for insurers

FINMA has been very keen in the recent past on ensuring that the regulatory requirements for outsourcing solutions in the insurance sector are met. Insurers are well advised to closely follow the development and implementation of the revised outsourcing circular. In order to enable a smooth transition insurers better make sure that their outsourcing solutions already comply with the regulatory requirements as set forth in the revised circular.

References (in German only):

<https://www.finma.ch/de/~media/finma/dokumente/dokumentencenter/anhoerungen/laufende-anhoerungen/rs-outsourcing/20161206-ent-rs-outsourcing-anh.pdf>

<https://www.finma.ch/de/~media/finma/dokumente/dokumentencenter/anhoerungen/laufende-anhoerungen/rs-outsourcing/20161206-eb-rs-outsourcing.pdf>

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