

Outsourcing by TCSPs

This document sets regulatory practices desirable for the regulation of outsourcing by TCSPs, in support of the Standard established by the Group of International Finance Centre Supervisors (“GIFCS”).

Key Objective

The key objectives of the Standard in respect of outsourcing are:-

- To maintain real presence by limiting the extent of outsourcing;
- To maintain the regulator’s ability to supervise effectively, and
- To maintain standards of protection for customers. This includes protection against errors and operational failings by the provider of outsourced services.

Principal themes of the regulation of outsourcing

Responsibility for outsourced functions must always be retained by the regulated firm. The outsourcing of a function does not relieve a regulated firm of the regulatory responsibilities for its authorised activities or the function concerned. The regulated firm should put in place appropriate monitoring and controls to that end.

The principal themes of the regulation of outsourcing can be grouped under the headings of identifying key functions, and management controls around the outsourced function.

- **Scope provisions – “key functions”:** Regulations should focus on controls around the outsourcing of key functions. Regulations should provide that:-
 - Key functions are defined – this is considered in more detail below;
 - Any core functions which must not be outsourced are defined;
- **Controls:** Regulators should address TCSPs’ controls over outsourcing. Regulation should provide that:-
 - The TCSP assesses the risks attached to outsourcing;
 - Proposals from providers are properly assessed;
 - Outsourcing is governed by a written agreement between the TCSP and the provider of outsourced services;
 - The TCSP has arrangements to oversee and manage the relationship with the provider of outsourced services;
 - The TCSP has a contingency plan against the failure of the provider of outsourced services;
 - The terms of the outsourcing agreement do not hamper the regulator’s ability to access information relevant to its supervision of the TCSP.

Other considerations

In addition to the principal themes above, other considerations include how to interpret “key functions” in the context of local law and practice, and any situations in which the regulator would be more (or less) inclined to take a favourable view of a proposal:-

- **Key functions:** Regulators should consider how to define key functions. This definition, or its interpretation, may take into account the nature and scale of a TCSP’s activities. Areas which could be considered key include:-
 - Exercise of management and compliance functions in the TCSP itself;
 - Provision of regulated services to the vehicles which the TCSP manages or administers; and
 - Provision of support services which are critical to the delivery by the TCSP of its services to client vehicles. This last area can be problematic in view of the mission-critical role of IT, and the widespread extent of IT outsourcing in the current business environment.

- **Benefits of outsourcing:** Regulators could consider what stance to take in respect of benefits which can derive from outsourcing, particularly for smaller businesses, such as:-
 - Ability to access skill sets which cannot be supported in-house;
 - Increased resilience and back-up compared to in-house provision.

- **Situations:** Regulators could consider:-
 - Whether to differentiate between intra-group outsourcing and outsourcing to third party providers;
 - Whether to regard any services as special cases – for example whether buying-in limited company formation services from agents overseas should be regarded as outsourcing.