

EBA'S Outsourcing Guidelines: Is Your Firm Ready?

EBA's revised Guidelines on Outsourcing Arrangements (Outsourcing Guidelines) came into force on 30 September 2019 and apply to all outsourcing arrangements entered into, reviewed or amended on or after this date. The Outsourcing Guidelines require relevant firms to carry out an in-depth review of all outsourcing arrangements and put in place appropriate governance frameworks relating to outsourcing. Below we take a look at some of the key requirements set out in the Outsourcing Guidelines and the tasks firms need to undertake in order to comply.

Scope

The Outsourcing Guidelines apply to credit institutions (banks), electronic money institutions (EMIs) and payment institutions (PIs) as well as other firms including designated investment firms and IFPRU investment firms.

FCA and dual-regulated firms (excluding EMIs and PIs) were already subject to the outsourcing requirements contained at SYSC 8 module of the FCA's handbook of rules and guidance. The Outsourcing Guidelines will supplement those existing FCA requirements for firms that are within scope of the Outsourcing Guidelines, namely Credit Institutions and Investment Firms that are subject to the EU regulation on prudential requirements for credit institutions and investment firms (Regulation (EU) No 575/2013 and amending Regulation (EU) No 648/2012).

In this note we refer to the entities to whom the Outsourcing Guidelines apply as "firms" for convenience.

Outsourcing Arrangement Assessment

Firms must review, assess and, where appropriate, amend all of their existing outsourcing arrangements. The Outsourcing Guidelines requires firms to notify their supervising authority e.g. the FCA and/or the PRA if the review is not complete by 31 December 2021, with the measures planned to complete the review or the possible exit strategy from such arrangements.

Risk Management Framework

Firms are required to have a holistic risk management framework which includes identifying and managing risks related to arrangements with third parties. Before entering into an outsourcing arrangement or as part of its assessment of existing arrangements, a firm must carry out risk assessment taking into account specified factors, such as concentration risks e.g. when outsourcing to providers that is not easily substitutable, aggregated risks resulting from outsourcing several functions and the measures in place to manage and mitigate those risks.

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What do Outsourcing Guidelines Replace?

The Outsourcing Guidelines replace Committee of European Banking Supervisors (CEBS) 2006 Guidelines on outsourcing and the EBA's recommendations on outsourcing to cloud services. However, the Outsourcing Guidelines largely re-incorporate the EBA's cloud outsourcing recommendations. The UK firms to which the EBA Outsourcing Guidelines apply also no longer need to comply with the FCA's Guidance for Cloud F16/5.



Designated Outsourcing Function/Role

Outsourcing Guidelines requires firms to establish an outsourcing function, or designate a senior staff member, accountable to the firm's management body who will be responsible for managing and overseeing outsourcing risks and documentation or, where appropriate, to ensure a clear division of tasks and responsibilities for the management and control of outsourcing arrangements and to assign the outsourcing function to a member of its management body.

Outsourcing Guidelines specify minimum contractual requirements for outsourcing agreements

Outsourcing Policy

The firms must maintain an outsourcing policy covering all the main stages of outsourcing. The EBA guidelines prescribe the minimum details which must be covered by the policy, including:

- responsibilities of the management body;
- involvement of business lines and internal control functions;
- the process for identifying critical or important functions;
- risk management;
- business continuity planning;
- approval process for new outsourcing;
- ongoing monitoring and review of outsourced service providers, including independent audits;
- exit strategies and termination process.

Outsourcing Agreements

With respect to outsourcing arrangements of critical or important functions, the written agreements must include certain minimum key aspects, including without limitation:

- a clear description of the outsourced function;
- the start date and end date and the notice periods;
- the governing law;
- financial obligations;
- whether the sub-outsourcing of the outsourced functions is permitted;
- the location(s) (i.e. regions or countries) where the outsourced function will be provided and/or where relevant data will be kept and processed;
- where relevant, provisions regarding the accessibility, availability, integrity, privacy and safety of relevant data;
- the firm's right to monitor the service provider's performance;



- the agreed service levels, including precise quantitative and qualitative performance targets;
- the reporting obligations;
- any mandatory insurance obligations;
- the requirements for business contingency plan implementation and testing;
- provisions to ensure firm's data can be accessed in the case of the service provider's insolvency, resolution or discontinuation of business operations;
- the obligation of the service provider to cooperate with the relevant regulators;
- the unrestricted right of the firm and regulators to inspect and audit the service provider; and
- termination rights.

In addition, the Outsourcing Guidelines specify other minimum contractual requirements with respect to sub-outsourcing of critical or important functions, access, information and audit rights, handling or transfer of personal or confidential data and transfer of outsourced functions.

Conflicts

Outsourcing Guidelines include provisions for identifying and managing conflicts.

Business Continuity

Firms are required to have appropriate business continuity plans (BCP) in place with regard to outsourced critical or important functions which are maintained and periodically tested. BCPs should envisage unacceptable performance, service provider's insolvency and political risk in the provider's jurisdiction, where relevant.

Internal Audit Function

The Outsourcing Guidelines outline the requirements for the firm's internal audit function with respect to independent reviews of outsourced activities.

Outsourcing Register and Other Documentation

Firms are required to keep a register of all of its outsourcing arrangements and to keep other supporting documentation e.g. monitoring information, risks assessments etc. The EBA Guidelines specify minimum information to be maintained in the register, with more detailed information required for outsourced critical or important functions. The register and/or part of it with supporting documentation e.g. the outsourcing agreement may be requested by the regulator.

Regulatory Notifications

Firms must inform its regulator and/or engage in a "supervisory dialogue" with respect to the planned outsourcing of critical or important functions and of material changes or events.

If your firm outsources any of its functions and you would like to discuss these requirements further, do not hesitate to contact our team.

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