



TURKS AND CAICOS ISLANDS FINANCIAL SERVICES COMMISSION

Regulating with Honesty, Integrity and Transparency

3 June 2021

REGULATORY ADVISORY NO. 2 of 2021

OUTSOURCING OF BUSINESS ACTIVITIES, FUNCTIONS AND PROCESSES OF REGULATED ENTITIES

1. OBJECTIVE

This regulatory advisory is intended to provide guidance to regulated entities on the application requirements for the outsourcing of material activities/functions¹.

2. OVERVIEW

The advisory outlines the minimum requirements regulated entities should consider and/or undertake for new and existing outsourcing arrangements.

A regulated entity should maintain the same level of oversight and accountability with respect to the outsourcing of any material function or activity as it would apply to a comparable non-outsourced functions or activities.

This guidance applies to the outsourcing of all material activities and functions, inclusive of AML/CFT related activities. The regulated entity must be able to demonstrate to the Commission its observance of this guidance. The form in Annex 1 must accompany any application to the Commission to outsource any material function or activity.

3. MATERIALITY ASSESSMENT OF OUTSOURCING ARRANGEMENTS

A regulated entity should assess the materiality of its outsourcing arrangements, and without limiting the scope of its assessments, should consider:

- i) The impact of the outsourcing arrangement on its finances, reputation and operations, with specific reference to significant business lines, and considering the impact if the service provider were to fail to perform the service as agreed;
- ii) Its ability to maintain appropriate internal controls and to meet regulatory requirements, particularly if the service provider were to experience difficulties in providing the service(s);

¹**Material function or activity:** a function or activity that, if disrupted (e.g., service failure or security breach), could impact an institution's business operations, reputation, or profitability in a significant way (e.g., prolonged failure of information technology system impacting customers' ability to conduct transactions); or could adversely affect an institution's ability to manage risk; or comply with applicable laws and regulations.



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- iii) The risk of potential loss of access (temporarily or permanently) to important data, and the degree of difficulty and time required to find an alternative service provider or to bring the service/activity 'in-house';
- iv) The short-term and long-term cost of the outsourcing arrangement;
- v) The impact of the outsourcing arrangement on the long-term development of internal capacity.

4. ASSESSMENT AND DUE DILIGENCE OF SERVICE PROVIDERS

A regulated entity must conduct initial and ongoing (at least annually) due diligence on the service provider, considering the nature, scope, complexity, and risks of the outsourcing arrangement. The objective of this assessment is to determine whether the service provider is, and continues to be, fit and proper to effectively perform the outsourced activity. The regulated entity must also assess its own ability to identify and mitigate key risks outsourcing introduces, to ensure outsourced functions are being performed as intended. A record of the due diligence assessment of a service provider **must** be maintained by the regulated entity.

A regulated entity's due diligence process should include, but not be limited to, the assessment of the service provider's:

- i) Human, financial and technical resources (including information technology systems) to effectively undertake the outsourced tasks;
- ii) Ability and capacity to perform the outsourced functions or activities in a reliable and professional manner;
- iii) Ability to safeguard the confidentiality, integrity and availability of entrusted information;
- iv) Corporate governance, risk management, security, internal controls, reporting and monitoring processes, particularly where these processes could impact the outsourced task;
- v) Reputation, complaints or pending litigation;
- vi) Business continuity arrangements and contingency plans;
- vii) Reliance on and success in dealing with sub-contractors;
- viii) Comprehensive and relevant insurance coverage;



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- ix) Policies in general, business culture and how they align with the regulated entity's own policies and culture; and
- x) Ability to identify conflicts of interest and ensure that preventative measures are taken to manage any such conflicts, especially as it relates to the outsourced activity.

5. OUTSOURCING AGREEMENT

A regulated entity should have a detailed, legally binding, written outsourcing service level agreement in place for all material outsourcing arrangements, irrespective of whether such arrangements are with related or unrelated parties, regulated or unregulated. The agreement should explicitly state what is expected of both parties and should include details such as:

- i) Scope of the arrangement, including but not limited to services to be provided, rights, obligations, accountability and expectations of all parties, including the reporting and monitoring arrangements;
- ii) Nature of the relationship;
- iii) Obligation of the service provider to identify, disclose, monitor and manage conflicts of interest;
- iv) Remuneration terms under the agreement;
- v) Contingency plans and business continuity plans;
- vi) Obligation of the service provider to maintain appropriate insurance coverage;
- vii) Dispute and remedy process, including choice-of-law and choice of jurisdiction clauses in the event of any dispute;
- viii) Termination provisions and arrangements for the transfer of the activity back to the regulated entity or to another service provider.
- ix) Obligation to notify the regulated entity in respect of any breach in data/information security; and
- x) Governance and oversight of the service(s), such as:
 - a. The regulated entity should ensure that the outsourcing arrangement does not diminish its ultimate responsibility for effectively overseeing and supervising its



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activities and affairs, and for ensuring that it can meet its legal and regulatory obligations.

- b. Allowance for regular reviews and reporting to the regulated entity in keeping with the level of risks and the nature of the outsourced activity.
 - c. Provisions for the service provider to disclose to the regulated entity any developments that may have a material impact on its ability to carry out the outsourced function or activity effectively, and in compliance with applicable legal and regulatory requirements.
 - d. The inclusion of a stipulation in the agreement that the service provider cooperates to allow it reasonable access to relevant systems (and documents) maintained by the service provider relating to the outsourced function or activity; where that access is deemed fair to allow for effective monitoring of the arrangement.
 - e. Arrangements for the regulated entity to conduct audits on the service provider and its sub-contractors with respect to the function or activity, whether by its internal and/or external auditors or by representative agents.
 - f. A provision to allow relevant governmental or regulatory authorities or their representative to have access to data, information or persons connected to the provision of the outsourced service.
- xi) The agreement should include provisions for indemnification and on how the parties are to address disputes.

6. CONFIDENTIALITY

- i) A regulated entity should be satisfied that a service provider has in place policies, procedures and physical and technological measures to protect information that a customer of a regulated entity might reasonably expect to be confidential, and as required, by law, to remain confidential.
- ii) A regulated entity should be satisfied that the service provider has proper safeguards in place for the collection, storage and processing of customers' confidential information and to prevent unauthorised access, misuse or misappropriation.
- iii) A service provider should not use a regulated entity's proprietary information or its customers' information unless it is a necessary part of providing the contracted service and only for the provision of such service.



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- iv) Any disclosure to a sub-contracted provider by the contracted service provider should require the prior consent of the regulated entity and be subject to applicable law.
- v) Where a service provider or its sub-contractor is required by law (including by legal or judicial authorities) to disclose customer information, it should notify the regulated entity as soon as practicable prior to disclosure, provided notification is allowed in accordance with the laws of the jurisdiction to which the function is outsourced.

7. TERMINATION AND EXIT STRATEGY

A regulated entity should ensure that there is a termination and/or exit strategy in the event that the outsourced function or activity can no longer be effectively carried out by the service provider, a breach of the contract occurs or if the nature of the agreement has changed (e.g., liquidation, change of ownership, poor performance, etc.).

Where a regulated entity is of the opinion that any area of this guidance does not or should not apply to any material outsourcing arrangement, the rationale for such a position should be provided to the Commission for consideration.

Please be guided accordingly.

A handwritten signature in black ink, appearing to read "Nigel Streete".

Nigel Streete
Managing Director



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ANNEX 1

APPLICATION FOR OUTSOURCING ARRANGEMENT

Regulatory Entities are required to clearly maintain records that this advisory was adhered to, as the Commission may from time to time require the submission of the information and/or assess compliance during an onsite examination.

Name of Financial Institution:		
Date of Application:		(dd/mm/yyyy)
1	Name of Service Provider:	
2	Commencement Date/Date of Agreement:	(dd/mm/yyyy)
3	Description of services to be outsourced:	
4	Termination Date (If Applicable)	(dd/mm/yyyy)
5	List close affiliated entities of the Service Provider:	
6	Jurisdiction/Countr(y)ies of Service Provider:	
7	Date approved by the Board of Directors or other relevant approval process.	(dd/mm/yyyy)
8	<p>Confirm that the regulated entity conducted a self-assessment to determine whether it has the ability and capacity to provide effective oversight of the service provider to mitigate any risk to the licensed entity.</p> <p>List key risks associated with the outsourcing arrangement and the main risk mitigation strategy to address those risks.</p> <p>Attach a copy of the assessment of the key risks.</p>	
9	Confirm that the relevant due diligence was performed on the service provider, in compliance with Regulatory Advisory No. 2 of 2021, Section 7 of the AML/PTF Code 2011, and the relevant governing regulatory ordinance, regulation and/or Code.	
10	Confirm that there is no clause in the agreement that could impede the Financial Service Commission and/or any regulatory authority, and/or its agent, as well as the internal or external auditor of the regulated entity from accessing the records of the regulated entity in the possession of the service provider.	
11	Confirm that the regulated entity understands that its regulatory and legal responsibilities cannot be transferred to the service provider, and that appropriate systems were put in place to not impede these responsibilities.	

We hereby certify that the information contained on this form and in any attached or supplemental information is true and correct in all respects.

Prepared by:

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Designation:

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Name and Signature of authorising officer: _____

Date: _____

IMPORTANT NOTES:

- i) Where there is any substantial change/amendment to the information provided in this return and/or to the outsourcing arrangements, or where the outsourcing arrangement was extended and/or terminated, this Return is to be updated and resubmitted to the Commission.
- ii) Maintain a record of the assessments and due diligence conducted on service providers, along with all relevant documentation to provide evidence of compliance with this regulatory advisory and the relevant ordinances, regulation, and/or Codes.
- iii) Where the regulated entity is of the opinion that any requirement of this guidance is not applicable, given the nature of the outsourcing arrangement, a justification must be provided to the Commission, for its consideration, a copy be kept on file, and periodically be reviewed to determine applicability based on changing circumstances.