

Regulations and guidelines 1/2012

Outsourcing in supervised entities belonging to the financial sector

J. No.
7/01.00/2011

Issued
23.2.2012

Valid from
1.4.2012

FINANSSIVALVONTA
tel. 010 831 51
fax 010 831 5328
firstname.surname@finanssivalvonta.fi
www.fin-fsa.fi

Further information from
Prudential Supervision/Operational Risks



Contents

1	Scope of application and definitions	4
1.1	Scope of application	4
1.2	Principle of proportionality	4
1.3	Definitions	5
2	Legal provisions and international recommendations	6
2.1	Legislation	6
2.2	EU directives	6
2.3	FIN-FSA's regulatory powers	7
2.4	International recommendations	7
3	Objectives	8
4	Conditions for outsourcing	9
4.1	Application of the Investment Services Act	9
4.2	Functioning of risk management and internal control	9
4.3	Safeguarding official supervision	10
4.3.1	General	10
4.3.2	Outsourcing to non-EEA states	11
4.4	Conditions for outsourcing investment service activities and the activities of the exchange	12
4.5	Conditions for outsourcing payment service activities	12
4.6	Material activities	13
5	Outsourcing of activities requiring authorisation	15
5.1	General	15
5.2	Provision of investment services through tied agents	15
5.3	Outsourcing of management company activities	16
6	Risk management of outsourced activities	18
7	Outsourcing agreements	20



8	Reporting to FIN-FSA	22
8.1	Supervised entities subject to reporting obligation	22
8.2	Regulatory basis	22
8.3	Contents of FIN-FSA notification	23
8.3.1	Notification concerning the outsourcing of material activities	23
8.3.2	Notification concerning the use of a representative in the provision of payment services	24
9	Revision history	26

1 Scope of application and definitions

1.1 Scope of application

These regulations and guidelines shall be applied to the following supervised entities referred to in the Act on the Financial Supervisory Authority: *(Issued on 4.11.2014, valid from 1.1.2015)*

- credit institutions
- investment firms
- management companies
- managers of alternative investment funds (AIFMs) which provide investment services
- exchanges
- Finnish branches of foreign credit institutions authorised in a non-EEA country (branches of credit institutions of a third country)
- Finnish branches of foreign investment firms authorised in a non-EEA country (branches of investment firms of a third country)
- payment institutions

The Financial Supervisory Authority (FIN-FSA) recommends that other financial-sector entities supervised by FIN-FSA than those referred to above also apply the principles and practices laid down in chapters 4–7 of these regulations and guidelines when outsourcing their activities.

1.2 Principle of proportionality

These regulations and guidelines are applicable to different kinds of supervised entities and various management types. In applying these regulations and guidelines, supervised entities may take into account the nature, scale, complexity and risks of their activities and any other relevant factors in deciding on the appropriate and efficient manner of compliance with these regulations and guidelines.

1.3 Definitions

Outsourcing means an arrangement relating to the supervised entity's activities by which another service provider performs an activity or service which would otherwise be undertaken by the supervised entity itself.

Supervised entity refers to all supervised entities and foreign branches that fall within the scope of section 1.1 of these regulations and guidelines and that are referred to in the Act on the Financial Supervisory Authority.

2 Legal provisions and international recommendations

2.1 Legislation

These regulations and guidelines are related to the following legal acts: *(Issued on 4.11.2014, valid from 1.1.2015)*

- Credit Institutions Act (640/2014)
- Act on trading in financial instruments (748/2012)
- Investment Services Act (747/2012)
- Mutual Funds Act (48/1999)
- Act on Alternative Investment Fund Managers (162/2014)
- Payment Institutions Act (297/2010)

2.2 EU directives

These regulations and guidelines are related to the following EU directives: *(Issued on 4.11.2014, valid from 1.1.2015)*

- Directive 2004/39/EC (32004L0039) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1–44) (Celex 32004L0039)
- Commission Directive 2006/73/EC (32006L0073) of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 26–58) (Celex 32006L0073)
- Directive 2009/65/EC (32009L0065) of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32–96) (Celex 32009L0065)
- Directive 2007/64/EC (32004L0039) of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending



Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing directive 97/5/EC (OJ L 319, 5.12.2007, p. 1—36)(Celex 32004L0039)

- Directive 2011/61/EU (32011L0061) of the European parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1–73) (Celex 32011L0061).

2.3 FIN-FSA's regulatory powers

FIN-FSA's right to issue regulations is based on the following national legal provisions: *(Issued on 4.11.2014, valid from 1.1.2015)*

- Credit Institutions Act chapter 5 section 10 subsection 4
- Act on trading in financial instruments, chapter 2 section 44 subsection 2, paragraph 1
- Investment Services Act, chapter 23 section 1 subsection 1 paragraphs 1 and 2
- Mutual Funds Act section 26 a subsections 5 and 8
- Payment Institutions Act section 23 subsection 6

2.4 International recommendations

In preparing these regulations and guidelines, the following publications have been taken into account: *(Issued on 4.11.2014, valid from 1.1.2015)*

- *Guidelines on outsourcing* issued by the Committee of European Banking Supervisors (CEBS, currently EBA) in December 2006
- *EBA Guidelines on Internal Governance* issued by the European Banking Authority in December 2011
- *Guidelines on certain aspects of the MiFID compliance function requirements* issued by the European Securities and Markets Authority in June 2012

3 Objectives

- (1) Outsourcing of supervised entities' activities is covered by financial market regulation. In arranging outsourcing, supervised entities may seek to increase the efficiency, flexibility and competitiveness of their operations. However, responsibility for the outsourced activities remains with the supervised entity, and therefore supervised entities' internal control and risk management must also extend to outsourced activities. Supervised entities must send FIN-FSA advance notification of intentions to outsource material activities.
- (2) These regulations aim at ensuring that outsourcing does not in any way impair the criteria for the supervised entity's authorisation and that the supervised entity's operations, also with respect to the outsourced activities, have been arranged so that they are in compliance with all obligations laid down in legal requirements and FIN-FSA regulations and guidelines for internal control and risk management.
- (3) The purpose is also to ensure that outsourcing does not impair the possibilities of the supervised entity's management to direct and monitor activities or to obtain an overall picture of the supervised entity's risks. Supervised entities must be able to and capable of managing risks, irrespective of outsourcing.
- (4) Furthermore, the purpose is to ensure that, in using outsourced information technology resources via so-called cloud services¹, supervised entities ensure in particular that the risks involved with the services are managed, the continuity of the services is secured and that data protection is assured. *(Issued on 4.11.2014, valid from 1.1.2015)*
- (5) These regulations and guidelines are designed to ensure that outsourcing does not impair FIN-FSA supervision and inspection of supervised entities' activities.

¹ The supervised entity uses software, hardware or other services offered by an outside provider, via the information network.



4 Conditions for outsourcing

4.1 Application of the Investment Services Act

- (1) According to chapter 5 section 10 subsection 6 of the Credit Institutions Act and section 26 a subsection 8 of the Mutual Funds Act, the Investment Services Act is applicable to the outsourcing of investment services provided by a credit institution and management company. *(Issued on 4.11.2014, valid from 1.1.2015)*
- (2) According to chapter 3 section 2 subsection 3 of the Act on Alternative Investment Fund Managers, the Investment Services Act is applicable to the outsourcing of asset management services provided by an AIFM. *(Issued on 4.11.2014, valid from 1.1.2015)*

4.2 Functioning of risk management and internal control

- (3) Supervised entities to which chapter 5 section 10 subsection 1 of the Credit Institutions Act and section 26 a subsection 2 of the Mutual Funds Act are applicable may carry out their business through representatives or otherwise outsource activities material to their operations, unless this is likely to be detrimental to the institution's risk management or internal control or would significantly hinder the conduct of the institution's business. *(Issued on 4.11.2014, valid from 1.1.2015)*
- (4) According to chapter 7 section 4 subsection 1 of the Investment Services Act, investment firms may outsource their investment services as well as other activities material to their operations, unless outsourcing is likely to be detrimental to the investment firm's risk management or internal control or would significantly hinder the conduct of the investment firm's business and other material activities. Despite the outsourcing, the investment firm is responsible for fulfilling its statutory obligations. *(Issued on 13.2.2013, valid from 1.3.2013)*
- (5) According to chapter 2 section 19 subsection 2 of the Act on trading in financial instruments, the exchange may outsource any activity material to its operations, other than the conduct of exchange activities, unless this is likely to be detrimental to the exchange's risk management or internal control or its business or other material activities. *(Issued on 13.2.2013, valid from 1.3.2013)*
- (6) According to section 23 subsection 1 of the Payment Institutions Act, payment institutions may outsource activities material to the provision of payment services, unless this is likely to be significantly detrimental to the institution's internal control.



4.3 Safeguarding official supervision

4.3.1 General

- (7) Supervised entities to which chapter 5 section 11 of the Credit Institutions Act, section 26 a subsection 7 of the Mutual Funds Act, and section 23 subsection 5 of the Payment Institutions Act are applicable shall ensure that outsourcing partners continuously provide them with all information necessary for official supervision, risk management and internal control, and that they have the right to forward such information to the Financial Supervisory Authority. Furthermore, a credit institution must ensure that it has the right to forward the information to the central body of the amalgamation of deposit banks, if it is under the inspection of the central body. *(Issued on 4.11.2014, valid from 1.1.2015)*
- (8) Section 23 subsection 1 of the Payment Institutions Act stipulates that payment institutions may outsource activities material to the provision of payment services, unless this is likely to be significantly detrimental to the supervision conducted by the Financial Supervisory Authority.
- (9) According to chapter 7 section 4 subsection 1 of the Investment Services Act, outsourcing of the provision of investment service or another function with material impact on the operation of the investment firm may not hinder the supervision of the activities of the investment firm, credit institution providing investment services or management company concerned. According to chapter 7 section 5 subsection 2 of the Investment Services Act, a supervised entity providing investment services must ensure that it receives continuously from the operator of the outsourced function the information necessary for the regulatory supervision, risk management or internal control of the investment firm, and that it has the right to surrender the information further to the Financial Supervisory Authority. *(Issued on 13.2.2013, valid from 1.3.2013).*
- (10) According to chapter 2 section 19 subsection 2 of the Act on trading in financial instruments, the exchange may outsource a function with material impact on its operation, with the exception of the exchange activities, if the outsourcing does not hinder the supervision conducted by the Financial Supervisory Authority. According to chapter 2 section 19 subsection 5 of the Act, the exchange must obtain the information required for the purposes of regulatory supervision and surrender it further to the Financial Supervisory Authority. *(Issued on 13.2.2013, valid from 1.3.2013).*
- (11) By virtue of section 24 subsection 2 of the Act on the Financial Supervision Authority, FIN-FSA shall, confidentiality provisions notwithstanding, have the right to obtain all information that is necessary for supervisory purposes at the place of business of a company which acts as the supervised entity's representative or tied agent as referred to in chapter 7 section 7 of the Investment Services Act or a company which, by order of the supervised entity, performs tasks pertaining to the accounting, information system or risk management or other internal control of the supervised entity.

GUIDELINE (PARAGRAPH 12)

- (12) A clause granting FIN-FSA access to information and right of inspection should be included in outsourcing contracts, as referred to in chapter 7.



4.3.2 Outsourcing to non-EEA states

- (13) According to chapter 7 section 6 subsection 1 of the Investment Services Act, a supervised entity that plans to outsource asset management services for non-professional customers to a service provider in a non-EEA state shall beforehand ensure that the following conditions are fulfilled: *(Issued on 13.2.2013, valid from 1.3.2013)*
- The service provider has been appropriately authorised or registered in its home country and is subject to prudential supervision.
 - The FIN-FSA has signed an MoU on supervisory cooperation with the supervisory authority in the third country concerned.
- (14) Even if the conditions in paragraph 13 are not fulfilled, the supervised entity may, according to chapter 7 section 6 subsection 2 of the Investment Services Act, outsource asset management services to a non-EEA state, provided that the supervised entity notifies FIN-FSA of its intention in advance and FIN-FSA does not oppose the outsourcing arrangements within one month of receipt of notification. FIN-FSA shall compose and publish the principles it applies in consideration of the issue *(Issued on 13.2.2013, valid from 1.3.2013)*.
- (15) According to chapter 7 section 6 subsection 3 of the Investment Services Act, FIN-FSA shall publish a list of all authorities that have signed MoUs with FIN-FSA on supervisory cooperation as referred to in paragraph 18. The list is available on the FIN-FSA website. *(Issued on 13.2.2013, valid from 1.3.2013)*
- (16) Section 26 b subsection 2 of the Mutual Funds Act stipulates that management companies may outsource investment activities to representatives registered in non-EEA states only if adequate provision has been made for cooperation between the relevant foreign supervisory authority and FIN-FSA.

GUIDELINE (PARAGRAPHS 17-18)

- (17) Supervised entities should consider fulfilment of the following conditions with respect to outsourcing as referred to in paragraph 14 above:
- The supervised entity's internal control and risk management systems are set up in compliance with standard 4.1 *Internal control arrangements* and an overall review of risks in compliance with chapter 6 below has been made.
 - The supervised entity's access to information on the outsourced activities has been guaranteed in the outsourcing agreement.
- (18) Cooperation between a relevant foreign supervisory authority and FIN-FSA, as referred to in paragraph 16 above, may be regarded as adequately provided for if the foreign authority has undersigned the *Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* issued by IOSCO in 2002.

4.4 Conditions for outsourcing investment service activities and the activities of the exchange

- (19) By virtue of chapter 7 section 23 subsection 1 paragraph 2 of the Investment Services Act, FIN-FSA issues, for the purposes of implementing Article 14 of the Commission Directive 2006/73/EC, the following regulation in paragraphs 21-24 on conditions for outsourcing investment service activities, as referred to in chapter 7 section 5 subsection 2 of the Act. *(Issued on 13.2.2013, valid from 1.3.2013)*
- (20) With respect to outsourcing of the activities of the exchange, FIN-FSA issues, by virtue of chapter 2 section 44 subsection 2 paragraph 1 of Act on trading in financial instruments, the following regulation in paragraph 25 on conditions for outsourcing exchange activities as referred to in chapter 2 section 19 of the Act. *(Issued on 13.2.2013, valid from 1.3.2013)*

REGULATION (PARAGRAPHS 21–25)

- (21) In outsourcing investment services, supervised entities shall ensure that outsourcing partners have the necessary resources and competence as well as financial capacity and expertise to handle the tasks involved. Supervised entities shall have procedures in place for assessing the performance of outsourcing partners.
- (22) In outsourcing the provision of investment services, supervised entities shall, in their contingency planning, also provide for disruptions in outsourcing partners' services and require that they have contingency plans of their own.
- (23) In outsourcing the provision of investment services, supervised entities shall ensure that outsourcing partners have taken measures to safeguard confidentiality of data related to the supervised entity and its customers.
- (24) In outsourcing the provision of investment services, supervised entities shall maintain key areas of competence relating to outsourced activities, enabling them to resume the management of any outsourced activity (insourcing) or transfer them to another supplier.
- (25) The above regulation in paragraphs 21-24 on the conditions of outsourcing of investment services is applied to the exchange when it outsources material activities other than exchange activities.

4.5 Conditions for outsourcing payment service activities

- (26) According to section 24 subsection 1 of the Payment Institutions Act, payment institutions may provide payment services through a representative acting on the payment institution's responsibility. Issuance of electronic money may not be handed over completely to a representative.
- (27) According to section 24 subsection 2 of the Payment Institutions Act, payment institutions shall ensure with available means that representatives used in the provision of payment services are of good repute and qualified to conduct the activities.
- (28) According to section 23 subsection 5 of the Payment Institutions Act, payment institutions shall ensure that the operator of an outsourced function informs customers that it operates on the payment institution's responsibility. Section 24 subsection 2 of the Payment Institutions Act stipulates that, if payment services are provided through a representative,



payment institutions shall ensure that the representatives inform the customers that they operate on the payment institution's responsibility

- (29) By virtue of section 23 subsection 6 of the Payment Institutions Act, FIN-FSA issues the following regulations payment institutions must adhere to in order to exercise due diligence within the meaning of section 23 subsection 4 of the Act when outsourcing activities material to payment services.

REGULATION (PARAGRAPHS 30-31)

- (30) Payment institutions shall ensure that outsourcing partners have the necessary resources and skills as well as financial capacity and expertise to handle the tasks involved. Supervised entities shall have procedures in place for assessing the performance of outsourcing partners.
- (31) In order to meet the requirement of due diligence, payment institutions shall ensure, for example, that outsourcing partners have the competence, resources and authorisation required by law to perform the outsourced activities. Payment institutions shall also ensure that outsourcing partners have adequately arranged the related internal control and risk management.

GUIDELINE (PARAGRAPHS 32-35)

- (32) Payment institutions should, in their contingency planning, also provide for disruptions in outsourcing partners' services and require that they have contingency plans of their own.
- (33) Payment institutions should ensure that outsourcing partners have taken measures to safeguard confidentiality of data related to the supervised entity and its customers.
- (34) Payment institutions should maintain key areas of competence relating to outsourced activities, enabling them to resume the management of any outsourced activity (known as 'insourcing') or transfer them to another supplier.
- (35) In outsourcing material activities, payment institutions should ensure that outsourcing partners comply, as applicable, with FIN-FSA regulations and guidelines and other legal provisions such as those referring to the marketing of financial services and to customer protection.

4.6 Material activities

- (36) In supervised entities to which chapter 5 section 36 a subsection 2 of the Credit Institutions Act, chapter 7 section 4 subsection 2 of the Investment Services Act, section 26 a subsection 3 of the Mutual Fund Acts, and chapter 2 section 19 subsection 3 of the Act on trading in financial instruments, are applicable, activities are regarded as material if they are of such importance that any failure or weakness in carrying them out could have a significant impact on the supervised entity's ability to comply with legal provisions, regulations or guidelines issued under such provisions, or authorisation criteria, the supervised entity's financial standing or the continued conduct of business. *(Issued on 4.11.2014, valid from 1.1.2015)*



- (37) According to section 23 subsection 2 of the Payment Institutions Act, activities are regarded as material to a payment institution's operations if they are of such importance that any defect or failure in them would materially impair the payment institution's ability to comply with legal provisions, regulations or guidelines issued under such provisions, or authorisation criteria, the payment institution's financial performance or the soundness or the continuity the provision of payment services.

GUIDELINE (PARAGRAPHS 38–39)

- (38) At least the following areas should be regarded as material:
- operations requiring authorisation
 - tasks relating to supervised entity's internal control and risk management
 - internal audit
 - compliance function
 - key information systems for the conduct of business
 - investment services provided through tied agents
 - mutual fund portfolio management, asset value calculation and maintenance of fund unit registers.
- (39) The following areas need not be regarded as material from the point of view of outsourcing:
- administrative functions, such as staff and material management, invoicing, fixed assets maintenance and premises security
 - advisory and other services not integral to the provision of investment services
 - legal services
 - marketing and advertising services not integral to the provision of investment services
 - standardised services, including market information services.

5 Outsourcing of activities requiring authorisation

5.1 General

- (1) In outsourcing activities requiring authorisation, supervised entities shall also take account of regulations and guidelines in chapter 4 on general conditions for outsourcing and requirements in chapter 6 set for risk management.
- (2) Supervised entities to which chapter 7 section 5 subsection 1 of the Investment Services Act, chapter 5 section 10 subsection 6 of the Credit Institutions Act, and section 26 a subsection 8 of the Mutual Funds Act are applicable may outsource investment services requiring authorisation only to suppliers that are appropriately authorised. *(Issued on 4.11.2014, valid from 1.1.2015)*
- (3) Section 26 b subsection 2 of the Mutual Funds Act stipulates that representatives used by management companies to carry out investment activities shall be enterprises that are appropriately authorised or registered and subject to prudential supervision.

GUIDELINE (PARAGRAPH 4)

- (4) Credit institutions may outsource other activities requiring authorisation than investment services either to representatives or entities appropriately authorised.

5.2 Provision of investment services through tied agents

- (5) According to chapter 7 section 7 subsection 2 of the Investment Services Act and chapter 5 section 10 subsection 6 of the Credit Institutions Act, investment firms and credit institutions may provide the following services through tied agents who act on the former's account and responsibility: *(Issued on 4.11.2014, valid from 1.1.2015)*
 - receipt and mediation of customers' instructions and orders concerning investment and ancillary services and financial instruments
 - mediation of financial instruments to customers
 - provision of advisory services to customers in connection with investment firms' or credit institutions' investment and ancillary services and financial instruments
 - marketing of investment firms' and credit institutions' investment and ancillary services.



- (6) According to chapter 7 section 7 subsection 1 of the Investment Services Act and chapter 5 section 10 subsection 6 of the Credit Institutions Act, a tied agent may at one time act on account of only one investment firm or credit institution engaged in the provision of investment services. *(Issued on 4.11.2014, valid from 1.1.2015)*
- (7) According to chapter 7 section 7 subsection 4 of the Investment Services Act, tied agents may, within the scope of authorisation granted to providers of investment services, handle customers' funds or financial instruments on the account and responsibility of the investment firm. A tied agent may act on the account of a Finnish investment firm in another EEA state, provided that such agents are permitted to handle customers' funds and financial instruments in the concerned state. *(Issued on 13.2.2013, valid from 1.3.2013)*
- (8) According to chapter 7 section 7 subsection 5 of the Investment Services Act, investment firms and credit institutions shall keep official registers of their tied agents. Details on agents that are natural persons to be entered are: full name, domicile and business address. For agents that are legal persons, the details are: business name, registration or similar number, domicile and business address. The details entered in the register shall be stored for five years after the grounds for their entry in the register have expired. *(Issued on 13.2.2013, valid from 1.3.2013)*

5.3 Outsourcing of management company activities

- (9) According to section 26 b subsection 1 of the Mutual Funds Act, utilising representatives must not prevent management companies from acting in the interest of unit holders of the mutual funds they manage.
- (10) According to section 26 b subsection 2 of the Mutual Funds Act, management companies that utilise representatives to manage their investment activities shall regularly inform representatives on their basic investment policies.
- (11) According to section 26 b subsection 3 of the Mutual Funds Act, tasks relating to the management of mutual funds must not be assigned to depositories of the mutual funds concerned or to other enterprises whose interests may conflict with the interests of the management company or the unit holders concerned. Any agreement that transfers a management company's responsibilities to a third party is invalid.
- (12) As regards tasks relating to the management of mutual funds and duties of depositories referred to in section 31 subsection 1 of the Mutual Funds Act, a management company or its representative, according to section 26 b subsection 4 of the Mutual Funds Act, may not have any staff in common with a depository of a mutual fund that it manages.
- (13) According to section 26 b subsection 5 of the Mutual Funds Act, fund prospectuses provided by management companies shall include details on the extent to which they utilise external service providers.
- (14) According to section 126 f of the Mutual Funds Act, a management company that, through a branch or without establishing a branch, manages a mutual fund in another EEA state than Finland, is subject to the outsourcing provisions of the Mutual Funds Act.



GUIDELINE (PARAGRAPHS 15–17)

- (15) Management companies should ensure that investment activities are managed in compliance with mutual fund rules and investment policy agreements.
- (16) If the keeping of fund unit registers is fully outsourced, it must be managed by an authorised registrar. If registering of new unit holders is outsourced, management companies should be in charge of the overall maintenance of the fund unit register. Management companies may, for example, keep registers of Finnish unit holders themselves and outsource the registry of foreign unit holders.
- (17) Despite outsourcing, management companies should always retain the right to execute subscription and redemption orders, including registration, in fund unit registers.

6 Risk management of outsourced activities

- (1) Supervised entities to which chapter 5 section 11 of the Credit Institutions Act, chapter 7 section 5 subsection 2 of the Investment Services Act, section 26 a subsection 7 of the Mutual Funds Act, chapter 10 section 2 subsection 4 of the Act on Alternative Investment Fund Managers, chapter 2 section 19 subsection 5 of the Act on trading in financial instruments, and section 23 subsection 5 of the Payment Institutions Act, are applicable, shall ensure that outsourcing partners continuously provide them with all information necessary for official supervision, risk management and internal control. *(Issued on 4.11.2014, valid from 1.1.2015)*

GUIDELINE (PARAGRAPHS 2–10)

- (2) FIN-FSA recommends that the supervised entity's board adopt outsourcing policies and have them regularly updated. The policies should include at least the following information: *(Issued on 4.11.2014, valid from 1.1.2015)*
- operational goals for outsourcing
 - activities that are to be regarded as material within the meaning of section 4.6
 - definition of the types of activity that may be outsourced under the supervised entity's operational policy
 - selection of the outsourcing partner and monitoring of the outsourced activity
 - issues dealt with in the outsourcing agreement
 - safeguarding the continuity of activities
 - decision-making process for outsourcing.
- (3) FIN-FSA recommends that the decision to outsource material activities always be preceded by an overall review of the risks for the project, taking into account the scope and importance of the activities concerned. The review should consider the risks of the new outsourcing project and outsourcing arrangements already made and provide for the management of those risks. Risk reviews should be updated on a regular basis.
- (4) FIN-FSA recommends that supervised entities ensure that outsourcing partners have the necessary resources and skills as well as financial capacity and expertise to handle the tasks involved. Supervised entities should have procedures in place for assessing the performance of outsourcing partners.



- (5) FIN-FSA recommends that supervised entities, in their contingency planning, also provide for disruptions in outsourcing partners' services and require that they have contingency plans of their own.
- (6) FIN-FSA recommends that supervised entities ensure that outsourcing partners have taken measures to safeguard confidentiality of data related to the supervised entity and its customers.
- (7) FIN-FSA recommends that supervised entities maintain key areas of competence relating to outsourced activities, enabling them to resume the management of any outsourced activity (known as 'insourcing') or transfer them to another supplier.
- (8) FIN-FSA recommends that in outsourcing material activities, supervised entities ensure that outsourcing partners comply, as applicable, with FIN-FSA regulations and guidelines and other legal provisions such as those referring to the marketing of financial services and customer protection as well as good practice in the provision of banking and securities services.
- (9) FIN-FSA recommends that supervised entities' risk management systems also handle the following risks attendant on outsourcing: *(Issued on 4.11.2014, valid from 1.1.2015)*
- The supervised entity's and outsourcing partner's strategies and business practices are mutually inconsistent
 - The supervised entity lacks the expertise and experience necessary to steer and control an outsourced activity
 - The supervised entity lacks readiness to resume the management of an outsourced activity or transfer it to another supplier
 - The termination and reorganisation of an outsourcing arrangement involves high costs
 - Risks relating to continuity of the supplier's operations have not been adequately accounted for (e.g. inadequate contingency planning)
 - The outsourcing partner's financial resources and staff skills are inadequate
 - The services provided by the outsourcing partner do not meet the supervised entity's quality criteria
 - Information security of an outsourced activity has not been safeguarded. Secret or confidential information has not been protected or its non-disclosure has not been ensured in a reliable manner, e.g. via encryption of data communications, protection of records, and rights management and access control.
 - The outsourcing partner does not follow binding rules for the activities in question or the code of conduct in the markets concerned
 - The monitoring of the supervised entity's counterparty risk becomes difficult if decision-making on customer relationships is outsourced
 - Uncertainties surrounding cross-border outsourcing where application and interpretation of contractual law is concerned.
- (10) FIN-FSA recommends that supervised entities' risk management be safeguarded in the eventuality that an outsourcing partner passes on outsourced activities to a third party.



7 Outsourcing agreements

- (1) According to chapter 5 section 10 subsection 3 of the Credit Institutions Act, chapter 7 section 4 subsection 3 of the Investment Services Act, section 26 a subsection 4 of the Mutual Funds Act, chapter 10 section 2 subsection 5 of the Act on Alternative Investment Fund Managers, chapter 2 section 19 subsection 4 of the Act on trading in financial instruments, and section 23 subsection 3 of the Payment Institutions Act, a supervised entity shall draw up a written agreement, giving the contents and period of validity of the contract, for each outsourcing project involving material activities. *(Issued on 4.11.2014, valid from 1.1.2015)*

GUIDELINE (PARAGRAPH 2)

- (2) FIN-FSA recommends that an outsourcing agreement concerning material activities include at least the following details: *(Issued on 4.11.2014, valid from 1.1.2015)*
- a description of the outsourced activity and of the required service level
 - a realisation schedule
 - FIN-FSA's rights to inspect and receive information on the outsourced activity
 - the supervised entity's and its auditor's rights to receive information on the outsourced activity
 - the supervised entity's right to forward information to FIN-FSA and the central body of an amalgamation of deposit banks.
 - the outsourcing partner's responsibility to inform the supervised entity of changes having a significant impact on the contractual relationship
 - the outsourcing partner's duty to inform the supervised entity of significant disruptions in the handling of the outsourced activity
 - the outsourcing partner's right to transfer contractual tasks to a third party and a statement on whether this requires the supervised entity's consent
 - the outsourcing partner's secrecy obligation during validity and after expiry of the contract
 - the outsourcing partner's obligations as regards contingency planning, information systems and information security, and the monitoring thereof
 - the counterparties' rights to cancel or terminate the contract
 - the legal right of a management company to terminate an agency relationship without notice, in the interest of unit holders



- applicable legislation and resolution of disputes, when a material activity is subject to cross-border outsourcing.

8

Reporting to FIN-FSA

8.1 Supervised entities subject to reporting obligation

- (1) On the basis of the details in a supervised entity's notification for outsourcing arrangements, FIN-FSA will assess whether the planned outsourcing project is likely to impede the supervised entity's internal control or risk management, conduct of business or any other material activities or hinder efficient supervision by FIN-FSA. Material activities are defined in section 4.6 of these regulations and guidelines.

8.2 Regulatory basis

- (2) If an authorised credit institution intends to conduct business through an agent or otherwise outsource a material activity to an enterprise not belonging to the same consolidation group or amalgamation of deposit banks as the credit institution, chapter 5 section 10 subsection 4 of the Credit Institutions Act stipulates that the credit institution must notify FIN-FSA of the outsourcing plans in advance. According to chapter 5 section 10 subsection 6 of the Credit Institution Act and chapter 7 section 7 subsection 5 of the Investment Services Act, credit institutions must notify without delay FIN-FSA of any tied agents used by them. *(Issued on 4.11.2014, valid from 1.1.2015)*
- (3) If an authorised investment firm intends to outsource the provision of an investment service or some other material activity to an enterprise outside the same consolidation group, chapter 7 section 4 subsection 4 of the Investment Services Act stipulates that the investment firm must notify FIN-FSA of the outsourcing plans in advance. According to chapter 7 section 7 subsection 5 of the Act, investment firms must notify without delay FIN-FSA of any tied agents used by them. *(Issued on 13.2.2013, valid from 1.3.2013)*
- (4) If an authorised management company intends to conduct business through an agent or otherwise outsource a material activity to an enterprise not belonging to the same consolidation group or amalgamation of deposit banks as the management company, section 26 a subsection 5 of the Mutual Funds Act stipulates that the management company must notify FIN-FSA of the outsourcing plans in advance.
- (5) According to chapter 3 section 2 subsection 3 of the Act on Alternative Investment Fund Managers, outsourcing of asset management services provided by an AIFM shall be governed by the provisions of the Investment Services Act. *(Issued on 4.11.2014, valid from 1.1.2015)*
- (6) If an authorised AIFM intends to outsource a material activity, chapter 10 section 2 subsection 1 of the Act on Alternative Investment Fund Managers stipulates that the AIFM must notify FIN-FSA of the outsourcing plans in advance. According to chapter 10 section



2 subsection 5 of the Act, FIN-FSA must be notified without delay of any essential changes in the contractual relationship between the AIFM and the outsourcing partner. *(Issued on 4.11.2014, valid from 1.1.2015)*

- (7) If an authorised exchange intends to outsource a material activity, chapter 2 section 20 of the Act on trading in financial instruments stipulates that the exchange must notify FIN-FSA of its intentions in advance. *(Issued on 13.2.2013, valid from 1.3.2013)*
- (8) According to chapter 5 section 10 subsection 4 of the Credit Institutions Act, section 26 a subsection 5 of the Mutual Funds Act, chapter 7 section 4 subsection 4 of the Investment Services Act and chapter 2 section 20 of the Act on trading in financial instruments, FIN-FSA must be notified in advance of any essential changes in the contractual relationship between the supervised entity and the outsourcing partner. *(Issued on 4.11.2014, valid from 1.1.2015)*
- (9) According to section 23 subsection 5 of the Payment Institutions Act, a payment institution must notify FIN-FSA in advance of outsourcing of an activity material to payment services.
- (10) According to section 24 subsection 3 of the Payment Institutions Act, a payment institution must provide FIN-FSA with information on natural or legal persons acting as representatives in the provision of payment services.

8.3 Contents of FIN-FSA notification

8.3.1 Notification concerning the outsourcing of material activities

- (11) FIN-FSA issues the regulation below concerning the content of a notification by virtue of the following legal provisions: *(Issued on 4.11.2014, valid from 1.1.2015)*
- chapter 5 section 10 subsection 4 of the Credit Institutions Act
 - chapter 7 section 23 subsection 1 paragraph 1 of the Investment Services Act
 - section 26 a subsection 5 of the Mutual Funds Act
 - chapter 2 section 44 subsection 2 paragraph 1 of the Act on trading in financial instruments.

REGULATION (PARAGRAPHS 12–13)

- (12) The notification submitted to FIN-FSA shall provide the following details:
- full name, domicile and business address of a natural person acting as outsourcing partner
 - full name, business number, domicile and business address of a legal person acting as outsourcing partner
 - a description of the type and scope of activity to be outsourced
 - an overall review of the impact of the outsourcing project on the supervised entity's business
 - account of the outsourcing partner's financial capacity to manage the activities to be outsourced

- account of how the intended outsourcing is accounted for in the supervised entity's internal control and risk management
- account of how the continuity and information security of the activity to be outsourced are ensured
- account of how the supervised entity intends to preserve key areas of competence relating to the outsourced activities so that they can be resumed by the supervised entity itself or transferred to another supplier
- specifications of the conditions for cancelling the outsourcing agreement
- in case of cross-border outsourcing to a non-EEA state, clarification of whether the host country's legal framework will permit FIN-FSA to obtain information needed to supervise the activities.

(13) A copy of the outsourcing agreement or a draft thereof shall be attached to the notification.

GUIDELINE (PARAGRAPHS 14–16)

(14) FIN-FSA recommends that, if an outsourced material activity is outsourced further to a third party, the supervised entity notify FIN-FSA of it as prescribed in paragraphs 12 and 13 in the regulation above.

(15) FIN-FSA recommends that notification concerning the use of a tied agent as referred to in chapter 7 section 7 subsection 5 of the Investment Services Act and notification concerning the outsourcing of asset management services as referred to in chapter 3 section 2 subsection 3 of the Act on Alternative Investment Fund Managers also be submitted as prescribed in paragraphs 12 and 13 in the regulation above. *(Issued on 4.11.2014, valid from 1.1.2015)*

(16) FIN-FSA recommends that payment institutions submit a notification concerning the outsourcing of activities material to payment services as referred to in section 23 subsection 5 of the Payment Institutions Act in accordance with paragraphs 12 and 13 in the regulation above.

8.3.2 Notification concerning the use of a representative in the provision of payment services

(17) According to section 24 subsection 3 of the Payment Institutions Act, a payment institution shall provide FIN-FSA with the full name, domicile and business address of natural persons acting as their representatives. If the representative is a legal person, FIN-FSA shall be provided with the representative's full name, business number, domicile and business address.

(18) Section 24 subsections 3 and 4 of the Payment Institutions Act stipulate that the notification submitted to FIN-FSA shall also include the following details:

- names of the representative's board of directors and their deputies, managing director and deputy managing director
- report, submitted with form M of FIN-FSA standard RA6.1, on fitness and propriety of members and deputy members of the board of directors, managing director and deputy managing director

- representative's internal control mechanisms for the prevention of money laundering and terrorist financing:
 - internal guidelines accepted by the representative's management relating to customer due diligence
 - how the representative ensures compliance with the obligation of obtaining information and reporting suspicious transactions included in regulations and guidelines on the prevention of money laundering and terrorist financing
 - account of risk management arrangements relating to the prevention of money laundering and terrorist financing, and of the continuous monitoring of customer relationships and business transactions
 - account of the retention of customer due diligence documents, persons responsible and employee instructions and training.

9

Revision history

These regulations and guidelines have been amended after their entry into force as follows:

Issued on 13.2.2013, valid from 1.3.2013

- chapters 1.1, 2.1, 2.3, 4.1–4.3, 4.5, 5, 6.1–6.3, 7, 8.1.1 and 8.2.1 complemented with the provisions of the new Investment Services Act (747/2012) and Act on trading in financial instruments (748/2012)
- content of chapter 8.1.1 paragraph 3 revised in view of the obligation imposed in the Investment Services Act on supervised entities to file an advance notification to FIN-FSA on outsourcing the provision of an investment service
- order of presentation in chapter 4.2 revised so that the chapter has 12 paragraphs instead of 8.

Issued on 4.11.2014, valid from 1.1.2015

- the title of the regulations and guidelines changed
- chapters 1.1, 2.1–2.4, 3, 4.1–4.4, 4.6, 5.1, 5.2, 5.3, 6, 7, 8.2. and 8.3.1 revised
- order of presentation of sections 5 and 6 on outsourcing and risk management of activities subject to authorisation changed
- section 4.3 divided in two subsections, of which the latter was previously section 6.3