

# OUTSOURCING

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## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	Information in Section 2.6 on notification updated.

## 1. Legislation

### Section 76J - Outsourcing\*

- (1) Subject to the other provisions of this section, a credit union may by an agreement in writing entered into with any person (in this section referred to as a 'service provider') and upon such terms and conditions as may be specified in the agreement, provide for the performance by that person, subject to such terms and conditions (if any) as may be so specified, of such process, service or activity (in this section referred to as 'outsourced activities') of the credit union as may be so specified.
- (2) The respective rights and obligations of the credit union and of the service provider shall be clearly allocated and set out in a written agreement.
- (3) A credit union shall exercise due skill, care and diligence when entering into, managing or terminating any outsourced activities with a service provider.
- (4) A credit union shall not enter into an agreement with a service provider for the performance of any of the functions exercisable by the board of directors of the credit union under section 55(1) but, subject to any matter that may be prescribed by the Bank, this shall not prevent the credit union from entering into an agreement under subsection (1) with a service provider for the provision of services in respect of any business activity (other than any such function) that is preliminary to or consequential upon the exercise by that board of the function concerned.<sup>1</sup>
- (5) The following conditions shall form part of every agreement to provide outsourced activities between a credit union and a service provider:
  - (a) the service provider has the ability, capacity and any authorisation required by law to perform those activities reliably and professionally;
  - (b) the service provider will carry out those activities effectively;
  - (c) the service provider shall properly supervise the carrying out of those activities, and adequately manage the risks associated with the outsourcing;
  - (d) appropriate action shall be taken by the credit union if it appears to it or to the

<sup>1</sup> The Central Bank has not yet prescribed Regulations under this subsection.

Bank that the service provider may not be carrying out those activities effectively and in compliance with any applicable laws and regulatory requirements;

(e) the service provider shall disclose to the credit union any development that may have a material impact on its ability to carry out the outsourced activities effectively and in compliance with applicable laws and regulatory requirements;

(f) the credit union may terminate the arrangement for outsourcing, where necessary, without detriment to the continuity and quality of its provision of services to members;

(g) the service provider shall, when required, co-operate with the Bank in connection with the outsourced activities;

(h) the credit union, its auditors and the Bank shall have effective access to data related to the outsourced activities, as well as to the business premises of the service provider;

(i) the Bank shall have without notice the right of access to the business premises of the service provider for the purposes of paragraph (g);

(j) the service provider shall keep any confidential information relating to the credit union or its members in a safe and secure manner.

(6) For the purposes of every agreement to provide outsourced activities between a credit union and a service provider, the credit union shall—

(a) ensure that the service provider has no conflicts of interest in relation to the outsourced activity,

(b) retain the necessary expertise to supervise the outsourced activities effectively, manage the risks associated with the outsourcing and supervise those activities and manage those risks,

(c) establish methods for assessing the standard of performance of the service provider, and

(d) be capable of resuming direct control over any outsourced activity or ensure

that alternative arrangements are in place to provide the outsourced activities without detriment to the proper operation and functioning of the credit union or the continuity and quality of its provision of services to members.

(7) Where—

- (a) an agreement under this section has been entered into between a credit union and a service provider, and
- (b) it is necessary having regard to the activities that have been outsourced,

then the credit union and the service provider shall both establish, implement and maintain a business continuity plan and the credit union shall ensure that such plan is integrated, as necessary, within the business continuity plan referred to in section 76I.

(8) An outsourced activity shall not impair—

- (a) the orderliness of the conduct of the credit union's business,
- (b) the credit union's ability to manage and monitor its business,
- (c) the ability of the board of a credit union to undertake its functions,
- (d) the ability of the credit union to comply with requirements imposed under financial services legislation,
- (e) the supervision of the credit union by the Bank, and
- (f) the quality of the credit union's internal controls.

(9) Where a credit union has outsourced activities, the credit union remains legally responsible for compliance with requirements imposed under financial services legislation in respect of those activities.

(10) Nothing in this section shall be construed—

- (a) as applying to any person in his or her capacity as an officer of the credit union, or

- (b) as affecting any contract (whether oral or in writing) entered into between the credit union and any person for the performance by that person of any minor non-business activity where a defect or failure in its performance could not impair—
- (i) the continuing compliance with the conditions and obligations of the credit union's registration or its other obligations under the financial services legislation,
  - (ii) the credit union's financial performance,
  - (iii) the soundness or continuity of the credit union's financial performance, or
  - (iv) the soundness or continuity of the credit union's business.
- (11) (a) A credit union shall notify the Bank, in writing—
- (i) when it is proposed to outsource to a service provider a material business activity, or
  - (ii) of any material development affecting the service provider and his or her ability to fulfil its obligations.
- (b) In this subsection and subsection (12) 'material business activity' means an activity where a defect or failure in its performance would materially impair—
- (i) the continuing compliance with the conditions and obligations of its registration or its other obligations under the financial services legislation,
  - (ii) its financial performance,
  - (iii) the soundness or continuity of its financial performance, or
  - (iv) the soundness or continuity of its business.

- (12) (a) The Bank may prescribe the matters that a credit union shall have regard to when selecting a service provider.<sup>2</sup>
- (b) Without prejudice to the generality of paragraph (a), requirements for the purposes of that paragraph may include any of the following:
- (i) the formalities to be involved in engaging a service provider for the purposes of a proposed outsourced activity including, for the purposes of subsections (1) and (2), the nature and content of written agreements to be entered into between the credit union and the service provider prior to commencement of the outsourcing activity;
  - (ii) the arrangements for notifying the Bank in writing when a material business activity is proposed to be outsourced;
  - (iii) the arrangements for notifying the Bank in writing of a material development affecting a service provider and what constitutes a material development.
- (13) In prescribing matters for the purposes of this section, the Bank shall have regard to the need to ensure that the requirements imposed by the regulations made by it are effective and proportionate having regard to the nature, scale and complexity of credit unions, or the category or categories of credit unions, to which the regulations will apply.

#### **Section 55 – Functions of board of directors\***

*(This Chapter has not reproduced the entirety of section 55 – please consult the Credit Union Act, 1997 for the full provision.)*

- (1) Without prejudice to the generality of section 53(1), the functions of the board of directors of a credit union shall include the following:
- ...
- (o) approving, reviewing and updating, where necessary, but at least annually, all plans, policies and procedures of the credit union, including the following:
- ...
- (xiv) outsourcing policies;
- ...

<sup>2</sup> The Central Bank has not yet prescribed Regulations under this subsection.

## 2. Guidance

### 2.1 Exercising due skill, care and diligence

Before making a decision on outsourcing, a credit union should carry out an assessment of the following at a minimum:

- the available options for outsourcing;
- the business case for outsourcing the business activity, including the financial analysis and underlying assumptions supporting the business case;
- whether outsourcing the business activity could impair the credit union in relation to the matters set out in section 76J(8) of the 1997 Act; and
- the operational risks involved in outsourcing a business activity to a service provider which may include the following at a minimum:
  - loss of control over the service;
  - interruption of service due to financial or other difficulties experienced by the service provider;
  - legal risk including the precision and enforceability of the agreement between the credit union and the service provider, especially where foreign jurisdictions are involved; and
  - risks associated with the adequacy of ongoing monitoring of the service provider.

Where the credit union decides to outsource a business activity, it should ensure at a minimum:

- that the outsourcing arrangement does not impair the credit union in relation to matters set out in section 76J(8) of the 1997 Act;
- that any operational risks identified are managed and mitigated in accordance with the risk management system;
- that it carries out a due diligence review of the service provider to ensure that the service provider has the ability, capacity and any authorisation required by law to perform the outsourced activity reliably and professionally; and
- that the internal audit function, the risk management system and the compliance programme are updated to take account of the outsourced activity.

### 2.2 Outsourcing agreement

Notwithstanding section 76J(5) of the 1997 Act, the outsourcing agreement should cover the following at a minimum:

- the nature and scope of the business activity that is to be outsourced;
- clearly defined roles and responsibilities for the credit union and the service provider;
- service level and performance requirements; and

- reporting and monitoring arrangements to enable the credit union to effectively monitor the performance of the service provider.

The outsourcing agreement should be reviewed on a regular basis, at least annually, to ensure the continued appropriateness of the agreement. The outsourcing agreement should be sufficiently flexible to accommodate changes that may be required to outsourced activities such as those arising from changes to the strategic plan and legal and regulatory requirements and guidance.

### **2.3 Outsourcing policy**

The outsourcing policy should cover the following at a minimum:

- the objectives of the outsourcing policy;
- organisational arrangements setting out the roles and responsibilities of officers involved in outsourcing, including those responsible for monitoring and managing each outsourcing arrangement;
- the decision making process for the outsourcing of business activities;
- the selection process for service providers;
- the processes for the ongoing supervision and management of the risks associated with outsourcing;
- business continuity plan for outsourced activities;
- procedures for:
  - notification to the Central Bank (i) where it is proposed to outsource to a service provider a material business activity or (ii) where any material development affects the service provider and his or her ability to fulfil their obligations;
  - appropriate monitoring and assessment by the credit union of the service provider's financial performance and changes in the service provider's organisation structure;
- reporting arrangements, including the frequency, form and content of reporting on outsourcing to the board of directors; and
- the process and timelines for the approval, review and update of the outsourcing policy by the board of directors.

Any significant deviations from the outsourcing policy, the reasons for these deviations and proposed action to address the deviations should be communicated to the board of directors in accordance with the reporting arrangements set out in the outsourcing policy.



## 2.4 Business continuity plan

The business continuity plan, required under section 76I of the 1997 Act,<sup>3</sup> should include the business continuity arrangements in relation to outsourced activities where a defect or failure in its performance would materially impair:

- the continuing compliance with the conditions and obligations of the credit union's registration or its other obligations under the financial services legislation;
- the credit union's financial performance;
- the soundness or continuity of the credit union's financial performance; or
- the soundness or continuity of the credit union's business.

## 2.5 Supervision of outsourced activities

The credit union should ensure that it retains the necessary expertise to supervise outsourcing arrangements. The credit union should review the performance of service providers on a regular basis, at least annually, to ensure that the outsourced activities are performed in accordance with the service level and performance requirements set out in the outsourcing agreement. The credit union should take any steps necessary to address any deficiencies identified in the review in a timely manner. The credit union should ensure that the outcome of the review, and any action taken or proposed to be taken, is reported to the board of directors.

## 2.6 Notification requirements to the Central Bank

The Central Bank should be notified in writing by the credit union:

- where the credit union is proposing to outsource a material business activity, prior to entering into an agreement with a service provider; and
- within one working day where there is a material development affecting the service provider. A material development is any development which would materially impair:
  - the continuing compliance with the conditions and obligations of the credit union's registration or its other obligations under the financial services legislation;
  - the credit union's financial performance;
  - the soundness or continuity of the credit union's financial performance; or
  - the soundness or continuity of the credit union's business.

Please see the 'Reporting Requirements' area in the credit union section of the Central Bank website for details on notifying the Central Bank in line with requirements referred to above.

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<sup>3</sup> See the Chapter on "Operational Risk".

## **2.7 Review by the board of directors**

The board of directors should review the credit union's outsourcing policy on a regular basis, at least annually, ensuring that it takes account of any changes to the following at a minimum:

- legal and regulatory requirements and guidance; and
- the credit union's strategic plan. This should include any proposals in relation to new products and services, material modifications to existing products and services and major management initiatives, such as transfers of engagements or amalgamations.