

## foreign banks . in switzerland .

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### **FINMA Circular Outsourcing – Comments AFBS**

Sir, Madam

On 6 December 2016 FINMA published the draft revision of its Circular Outsourcing for commentary. We take the opportunity to point out some aspects which are of particular relevance for foreign banks in Switzerland that belong to a foreign group, either as subsidiary or as a branch.

#### **Principle based approach and scope of application**

Our Association welcomes the principle-based approach of the draft revision. Within the specified framework the proposed Circular leaves sufficient room to design an outsourcing policy according to size, activities, legal set-up and risk exposure of each institute. As foreign banks in Switzerland are very often included into their respective group's outsourcing activities, the flexibility of the chosen approach allows to design an outsourcing policy which is compatible both with group-internal parameters and supervisory requirements.

In such group-wide outsourcing projects, many of the requirements on selection, instruction and controls are pre-set, and cannot be modified. It is still useful for the Swiss entity to follow the Circular's procedure, albeit in a formal way. Exception to this rule is Par 2. Banks are required to take into account the concentration risk, if several services are outsourced to the same partner firm. Whenever the outsourcing partner is the whole group, the concentration risk is managed and controlled on group-level; the responsible home country supervisor supervises the group-outsourcing. On the level of the Swiss entity, Business Continuity Plans assure that dependency of the Group is taken into proper account. We propose therefore that the Circular carves out the application of Par 24 to these kinds of projects in a suitable way.

Further, we suggest recognizing explicitly that activities, which a foreign bank undertakes with its branch in Switzerland, does not count as outsourcing. A branch is a dependent unity of a bank, and as such it is integrated into the parent entity in some cases by legal set-up (liquidity management, concentration and large exposure risk management, own capital activities), in other cases by organisational design. In neither case, a specific outsourcing contract is necessary. Of course, any outsourcing activities, which the branch maintains with third parties or with other group entities than its immediate parent company, would count as such and, thus, require the application of the Circular.

## **Data protection and Circular Outsourcing**

We welcome the consistent separation of data protection issues from the outsourcing contract management. We, therefore, propose to clarify the comments in the explanatory report that outsourcing of CIDs (in the footnote the reference is made to mass-CID) is always a “material service”. This view contradicts the proposed separation of data protection from outsourcing aspects. We propose to repeal this requirement, even more so as this obligation is not included in the Circular itself. The report must not go beyond the requirements in the Circular.

We anticipate an increase in intra-group discussions on the outsourcing of all client data to an entity abroad. The Circular seems to allow such outsourcing, be it as full outsourcing or as outsourcing of processing activities (with direct access to process from outside to data stored in a server based in Switzerland). However, it would be very helpful to understand whether or not from FINMA's point of view there are limits of such outsourcing, as such far-reaching outsourcing agreements do not only affect confidentiality rules (i.e. bank secrecy), but possibly touch aspects of supervisory sovereignty.

## **Information on outsourcing of Mass CID's to FINMA**

An information duty to FINMA is stipulated when mass-CIDs are outsourced. The wording raises questions on form and extent of the information: Is it a simple letter or does and will FINMA expect more information on the kind and scope of data, the reason of outsourcing, the granularity of the data? Moreover, the requirement is not easily implemented, as the term Mass-CID is very loosely defined in the Circular Operational Risk. Banks will apply different internal levels to define when information on mass-CID-outsourcing is needed. We are concerned that this leads to unnecessary discussions with auditors on compliance with the Circular.

## **Register**

The Circular requires banks and insurance companies to keep a register. Reference is made to Form J, applicable for insurance companies only. We understand that the register for banks does not have to be more extensive than this form, as the Circular applies to both sectors. We propose that Par 22 explicitly states that banks keep a register equivalent to the Form J. This clarification on the content of the register facilitates the audit process.

## **Transition Period**

Setting up the internal processes to include existing outsourcing agreements into the new framework will initially require time. As the definite features are only known when the Circular is published, it is not possible for banks to immediately apply the new processes to an outsourcing agreement. We propose that financial institutes are given an initial six-months period to allow alignments of processes, internal guidelines and documents. After that period, the new rules apply to new projects, while existing outsourcing projects (including those which were becoming effective in the initial 6 months period) will be aligned to the new requirements within the following 2 years.

We thank you to take note of our proposals.

Best Regards

ASSOCIATION OF FOREIGN BANKS IN SWITZERLAND



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