



# CSSF FAQ - Circular CSSF on outsourcing arrangements

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### CONTENTS

1.	Application of Circular OS to IFMs	4
1.1	To what extent does part I of Circular OS apply to IFMs?	4
1.2	Do you have other examples of requirements which may not be relevant for IFMs?	4
1.3	How do Circular OS and Circular CSSF 18/698 interact?	5
1.4	What are the main specific requirements applicable to IFMs when performing ICT outsourcing?	6
1.5	Are IFMs governed by Article 125-1 of Chapter 16 of the UCITS Law subject to Circular OS?	7
2.	Prior notification process	8
2.1	In which cases shall the In-Scope Entity notify the competent authority according to Circular OS?	8
2.2	When shall the In-Scope Entity notify the competent authority according to Circular OS?	8
2.3	How shall the In-Scope Entity notify the competent authority according to Circular OS?	9
2.4	How will the competent authority consider the notification submitted by the In-Scope Entity?	9
2.5	Shall the In-Scope Entity wait for the approval / the non-objection of the competent authority to implement the planned outsourcing arrangements?	10
2.6	What is the impact of the notification process in accordance with points 59 and 60 of Circular OS on ICT outsourcing notified before 22 April 2022?	11

**Context:**

The present document refers to a list of questions & answers (FAQs) in relation to a number of key aspects of Circular CSSF 22/806 on outsourcing arrangements (**Circular OS**) with the objective to bring further clarity on the supervisory expectations of the competent authority.

This document will be updated from time to time and the CSSF reserves the right to alter its approach to any matter covered by the FAQs at any time. The concerned entities should regularly check the website of the CSSF in relation to any matter of importance to them to see if questions have been added and/or positions have been altered.

The present FAQs are to be read in conjunction with the EBA or ESMA questions and answers with respect to outsourcing arrangements, if any. These questions and answers, which will also be updated from time to time, are available on the following websites: <http://www.eba.europa.eu> or <http://www.esma.europa.eu>.

**Definitions, abbreviations and acronyms:**

Unless otherwise specified, terms used and defined in the Law of 5 April 1993 on the financial sector (**LFS**), the Law of 10 November 2009 on payment services (**LPS**), Regulation (EU) No 575/2013 (**CRR**) and Circular OS shall have the same meaning in this document.

## CSSF FAQ - Circular CSSF on outsourcing arrangements

### 1. Application of Circular OS to IFMs

22 April 2022

#### 1.1 To what extent does part I of Circular OS apply to IFMs?

According to point 2 of Circular OS, the latter applies to IFMs *“in full... when performing ICT outsourcing”*.

This means that part I of Circular OS is the framework to be complied with by IFMs, only in relation with one or several specific ICT outsourcing and where the requirement is relevant for IFMs.

For example, section 4.1.3 *“Outsourcing arrangements relating to internal control functions”* and section 4.1.4 *“Outsourcing arrangements relating to the financial and accounting function”* of Circular OS do not apply to IFMs since those sections are not related to ICT.

The assessment whether an arrangement with a third party falls under the definition of “outsourcing” as defined in Circular OS shall be made only in relation to ICT outsourcing.

The assessment whether a function is critical or important under section 4.1.2. of Circular OS shall be made only in relation to ICT outsourcing.

Refer also to FAQ 1.2 for further examples.

In relation with any outsourcing or delegation arrangement which does not fall under the definition of ICT outsourcing under Circular OS (including business process outsourcing), Circular OS does not apply to IFMs. This arrangement shall be analysed in light of article 110 of the Law of 17 December 2010 relating to undertakings for collective investment, as amended (**UCITS Law**) and/or article 18 of the Law of 12 July 2013 on alternative investment fund managers (**AIFM Law**). The delegation framework set out in Chapter 6 of Circular CSSF 18/698 applies.

#### 1.2 Do you have other examples of requirements which may not be relevant for IFMs?

The concepts of “Small entity” and “Significant” In-Scope Entities, as used in Circular OS, do not apply to IFMs. The principle of proportionality as defined in Circular CSSF 18/698 and in Circular OS applies.

### 1.3 How do Circular OS and Circular CSSF 18/698 interact?

In terms of governance, the general provisions set out under Chapters 4 (*"The bodies of the IFM"*) and 5 (*"Arrangements regarding the central administration and internal governance"*) of Circular CSSF 18/698 apply to all IFMs whether they perform ICT outsourcing or not.

However, when an IFM outsources ICT, Chapter 4 (*"The bodies of the IFM"*) and Chapter 5 (*"Arrangements regarding the central administration and internal governance"*) of Circular CSSF 18/698 apply as a baseline and are supplemented by sub-chapter 4.2 *"Governance framework"* of Circular OS. Sub-chapter 4.2 *"Governance framework"* of Circular OS shall be read together with Circular CSSF 18/698 and complied with by IFMs, in relation with one or several specific ICT outsourcing and where the requirement is relevant for IFMs, as explained in FAQ 1.1.

This means for example that section 4.2.4 *"Conflicts of interests"*, section 4.2.5 *"Business continuity plans"*, as well as section 4.2.6 *"Internal audit function"* of Circular OS shall be respected by IFMs when they outsource ICT together with section 5.5.7. *"Management of conflicts of interest"*, section 5.5.2. *"Business continuity"* and section 5.3.3. *"Permanent internal audit function"* of Circular CSSF 18/698.

However, with regards to section 5.1.2. *"Clarifications on technical infrastructure, IT and business continuity"*, Circular OS overrides to some extent Circular CSSF 18/698.

This means for example that:

Point 138 no longer applies. This means that only critical or important contemplated ICT outsourcing shall be notified, applying the notification process and the related notice period in accordance with points 59 and 60 of Circular OS. The monitoring requirements under Sub-chapter 6.2. (Delegation framework) referred to in point 138 are replaced by the ones of Circular OS (see in particular sub-chapter 4.3).

Points 139 and 140 of Circular CSSF 18/698 no longer apply.

The use of a back-up solution of the parent company, as stated in point 141 of Circular CSSF 18/698 *"Where the IFM uses the services of its parent company or of a subsidiary of the parent company, the IFM may rely on the back-up solution of its parent company or this subsidiary, provided that the segregation of the IFM's data is ensured."* is replaced by the provisions of section 4.2.5. Business continuity plans and of sub-section 4.3.2.2. Security of data and systems of Circular OS.

Point 143 of Circular CSSF 18/698 no longer applies as Circular CSSF 17/654 has been integrated into Circular OS.

## 1.4 What are the main specific requirements applicable to IFMs when performing ICT outsourcing?

### 1.4.1 **What are the applicable requirements in terms of “outsourcing policy” as defined under section 4.2.3. of Circular OS?**

When performing ICT outsourcing, IFMs are subject to the requirements in terms of “outsourcing policy” as defined under section 4.2.3. of Circular OS.

This means that the IFM shall implement an outsourcing policy which complies with section 4.2.3. of Circular OS which covers the envisaged ICT outsourcing.

In relation with any outsourcing or delegation arrangement which does not fall under the definition of ICT outsourcing under Circular OS (including business process outsourcing), Circular CSSF 18/698 applies and more specifically sub-section 6.2.3.2. “Establishment of a delegation framework procedure”.

### 1.4.2 **Are IFMs subject to the “Documentation requirements” set out under section 4.2.7. of Circular OS and which outsourcing arrangements shall be recorded in the register?**

When performing ICT outsourcing, IFMs are subject to the “Documentation requirements” set out under section 4.2.7 of Circular OS.

This means that only ICT outsourcing as defined in Circular OS shall be recorded in the register, since Circular OS only applies to IFMs when performing ICT outsourcing as explained in FAQ 1.1.

Any outsourcing or delegation arrangement which does not fall under the definition of ICT outsourcing under Circular OS (including business process outsourcing) is not expected to be recorded in the register. This arrangement shall be analysed in light of article 110 of the UCITS Law and/or article 18 of the AIFM Law. The delegation framework set out in Chapter 6 of Circular CSSF 18/698 applies, as explained in FAQ 1.1.

### 1.4.3 **Are IFMs subject to the “Supervisory conditions for outsourcing” set out under section 4.2.8 of Circular OS?**

When performing ICT outsourcing, IFMs are subject to the “Supervisory conditions for outsourcing” set out under section 4.2.8 of Circular OS.

This means that section 4.2.8 “Supervisory conditions for outsourcing” shall apply only to a contemplated ICT outsourcing. For each critical or important contemplated ICT outsourcing, the notification process and, in particular, the related notice period apply to IFMs in accordance with points 59 and 60 of Circular OS.

Any outsourcing or delegation arrangement which does not fall under the definition of ICT outsourcing under Circular OS (including business process outsourcing) is not subject to this section. This arrangement shall be analysed in light of article 110 of the UCITS Law and/or article 18 of the AIFM Law. The delegation framework set out in Chapter 6 of Circular CSSF 18/698 (including for example the notification obligations defined under section 6.2.1.) applies, as explained in FAQ 1.1.

**1.4.4 Are IFMs subject to the “Outsourcing process” set out under Sub-chapter 4.3 of Circular OS?**

When performing ICT outsourcing, IFMs are subject to the “Outsourcing process” set out under Sub-chapter 4.3 of Circular OS.

This means that Sub-chapter 4.3 “*Outsourcing process*” shall apply only to a contemplated ICT outsourcing.

Any outsourcing or delegation arrangement which does not fall under the definition of ICT outsourcing under Circular OS (including business process outsourcing) is not subject to this sub-chapter. This arrangement shall be analysed in light of article 110 of the UCITS Law and/or article 18 of the AIFM Law. The delegation framework set out in Chapter 6 of Circular CSSF 18/698 applies, as explained in FAQ 1.1.

**1.4.5 Are IFMs subject to the provisions on “Sub-outsourcing” of Circular OS?**

When performing ICT outsourcing, IFMs are subject to the provisions on “Sub-outsourcing” set out under Sub-section 4.3.2.1 as well as to the related provisions on sub-outsourcing of Circular OS.

This means that Sub-section 4.3.2.1 as well as the related provisions on sub-outsourcing shall apply only to a contemplated ICT sub-outsourcing.

Any sub-outsourcing or sub-delegation arrangement which is not linked to an ICT outsourcing, as defined under Circular OS (including business process outsourcing), is not subject to the provisions on sub-outsourcing of Circular OS. This arrangement shall be analysed in light of article 110 of the UCITS Law and/or article 18 of the AIFM Law. The delegation framework set out in Chapter 6 of Circular CSSF 18/698 applies, as explained in FAQ 1.1.

**1.5 Are IFMs governed by Article 125-1 of Chapter 16 of the UCITS Law subject to Circular OS?**

IFMs governed by Article 125-1 of Chapter 16 are not expected to comply with Circular OS. Chapter 1 of part VI of Circular CSSF 18/698 applies.

## 2. Prior notification process

22 April 2022

### 2.1 In which cases shall the In-Scope Entity notify the competent authority according to Circular OS?

In-Scope Entities will be required to perform a simple prior notification for all outsourcing arrangements of a critical or important function (including ICT outsourcing and Business Process Outsourcing) in accordance with points 59 and 60 of Circular OS.

This notification process applies to (a) planned, new critical or important outsourcing arrangements, (b) material changes to existing critical or important outsourcing arrangements and (c) changes to outsourcing arrangements that lead to an outsourced function becoming critical or important.

However, Support PFS and their branches will, under certain circumstances, need to get the prior approval of the competent authority in accordance with point 127 e. of Circular OS. This is the case when:

- support PFS and their branches authorised as OSIRC in accordance with Article 29-3 LFS intend to partially outsource their ICT operator services, i.e. some management/operation services of client ICT systems;
- support PFS and their branches authorised as PSDC in accordance with Articles 29-5 or 29-6 LFS intend to partially outsource the management/operation of the ICT systems supporting partially or exclusively the dematerialisation or conservation services they provide to regulated financial sector clients;
- branches of support PFS intend to provide ICT operation services on client ICT systems or on systems supporting PSDC activities to their registered office.

Reference is made to points 124, 125 and 129 of Circular OS.

### 2.2 When shall the In-Scope Entity notify the competent authority according to Circular OS?

This notification process referred to under points 59 and 60 of Circular OS applies to (a) planned, new critical or important outsourcing arrangements, (b) material changes to existing critical or important outsourcing arrangements and (c) changes to outsourcing arrangements that lead to an outsourced function becoming critical or important.

In the case (a) above, the prior notification shall be done by the In-Scope Entity as early as possible before the planned implementation date of the outsourcing project but, in any case, at least three (3) months or one (1) month before this date.



In the cases (b) and (c) above, the notification shall be done by the In-Scope Entity without undue delay i.e. as early as possible before the planned implementation date and at least three (3) months or one (1) month before this date, where possible.

Material changes and/or severe events regarding the outsourcing arrangements that could have a material impact on the continuing provision of the business activities shall however be notified with no delay as per point 110 of Circular OS. They are not seen as a new outsourcing but as a change or event which may have (risk not materialized) or has (risk has materialized) a significant adverse impact on the continuing provision of the business activities, therefore changing significantly the outsourcing risk assessment. When such a severe event occurs and also triggers a mandatory incident to be reported by the In-Scope Entity to the same competent authority under other applicable rules (e.g. PSD2 incident reporting as per Circular CSSF 21/787), the In-Scope Entity is deemed to have fulfilled the information obligation as per point 110 of Circular OS when submitting such an incident reporting.

### **2.3 How shall the In-Scope Entity notify the competent authority according to Circular OS?**

The In-Scope Entity is expected to ensure that it has appropriate governance and risk management arrangements in place to identify and manage the risks raised by the (planned) outsourcing arrangement. The In-Scope Entity is expected to notify that the (planned) outsourcing arrangement complies with Circular OS. To do so, a notification template should be used. The CSSF will provide notification templates and further instructions on its website.

### **2.4 How will the competent authority consider the notification submitted by the In-Scope Entity?**

Once notified, the competent authority will assess the outsourcing arrangements on a risk-based approach having due regard to the “Title V – Guidelines on outsourcing addressed to competent authorities” of the EBA Guidelines on outsourcing arrangements (EBA/GL/2019/02) to assess the effectiveness of In-Scope Entities governance and management of outsourcing arrangements and their compliance with the applicable legal and regulatory framework. The competent authority may in this context request additional information (such as the output from the due diligence/risk assessments or other as specified) and/or engage in a supervisory dialogue with the In-Scope Entity. In-Scope Entities may be requested to take measures on an ad-hoc basis such as the amendment of the written outsourcing agreement.

In particular, the competent authority should be satisfied that it is able to perform effective supervision, when an In-Scope Entity outsources critical or important functions. Where concerns are identified that lead to the assessment that an In-Scope Entity does not have robust governance arrangements in place or does not comply with regulatory requirements, the competent authority may formulate additional requirements, which may include limiting or restricting the scope of the outsourced functions or requiring exit from one or more outsourcing arrangements.

Under the risk-based approach, the competent authority may not necessarily formulate an opinion or engage in a supervisory dialogue during the notice period. In-Scope Entities that wish to proceed with the go-live of the planned outsourcing may do so at the end of the notice period. However, the absence of a reaction by the competent authority by the end of the notice period does not mean that the outsourcing arrangement is implicitly approved. Please refer to FAQ 2.5.

## **2.5 Shall the In-Scope Entity wait for the approval / the non-objection of the competent authority to implement the planned outsourcing arrangements?**

No. The In-Scope Entity may implement the outsourcing arrangement at the end of the notice period (three (3) months or one (1) month).

In case the In-Scope Entity implements the outsourcing arrangement without reflecting the potential concerns expressed by the competent authority, the competent authority is vested with supervisory powers that entitle it to take supervisory measures in the context of its ongoing supervision. Hence, the competent authority reserves the right to raise any regulatory or supervisory concerns related to outsourcing arrangements proposed by In-Scope Entities at any stage of the outsourcing lifecycle.

## **2.6 What is the impact of the notification process in accordance with points 59 and 60 of Circular OS on ICT outsourcing notified before 22 April 2022?**

In accordance with point 7 of Circular CSSF 22/805, points 59 and 60 of Circular OS related to the prior notification procedure apply, for ICT outsourcings<sup>1</sup> only, with immediate effect, that is 22 April 2022.

ICT outsourcing notifications that were submitted to the competent authority before 22 April 2022, shall be also treated according to the same supervisory approach. This means that the In-Scope Entity may implement the outsourcing arrangement as soon as the notice period (three (3) months or one (1) month) has expired. It is also reminded that FAQ 2.4 and 2.5 fully apply.

The statements in the above paragraphs apply to ICT outsourcing of all In-Scope Entities.

*<sup>1</sup> The term ICT outsourcing covers both cloud computing outsourcing and other (non-cloud) ICT outsourcing. It is defined as per point 1 of Circular OS as “an arrangement of any form between the In-Scope Entity and a service provider by which that service provider performs an ICT process, an ICT service or an ICT activity that would otherwise be undertaken by the In-Scope Entity itself. The services are pure ICT services in nature.” In other words, business process outsourcing and outsourcing of tasks related to internal control functions, even if the services are provided on ICT systems that form part of this global outsourcing are not pure ICT outsourcing and are not concerned.*



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