

Pursuant to Article 166 of the Credit Institutions Act (Official Gazette 117/2008), and Article 29 and Article 43, paragraph (2), item (9) of the Croatian National Bank Act (Official Gazette 75/2008), the Governor of the Croatian National Bank hereby issues the

Decision on outsourcing

1 General provisions

Article 1

(1) This Decision lays out in detail the conditions for outsourcing, rules for managing risks related to outsourcing, the scope of internal bylaws related to outsourcing, conditions for access to data and documentation and for carrying out on-site examination by the Croatian National Bank, the minimum contents of agreements with service providers, and the content of the documentation to be assessed by the Croatian National Bank.

(2) The provisions of this Decision shall apply to credit institutions with registered offices in the Republic of Croatia which have been authorised by the Croatian National Bank, and to branches of third-country credit institutions which have been authorised by the Croatian National Bank to provide services.

2 Definitions

Article 2

For the purposes of this Decision:

(1) 'Outsourcing' means a contractual agreement by which external service providers are engaged to perform a credit institution's activities which would normally be undertaken by the credit institution.

(2) 'Activities which would normally be undertaken by the credit institution' means activities enabling the credit institution to provide banking and/or financial services, including the support activities (e.g. the use of information technology, risk management, internal control systems and control functions).

(3) Concluding agreements on the procurement of goods, works and standardised services shall not be considered as outsourcing. For the purposes of this Decision, standardised services shall, for example, be services related to the use of telecommunication infrastructure, advertising services, cleaning services, market research services, etc.

(4) A service provider can be:

1) a member of a group of credit institutions; or

2) any legal or natural person authorised, under the regulations of the country where it is established, or where it has its domicile or normal place of residence, to perform the activities subject to outsourcing.

3 Conditions for outsourcing

Article 3

A credit institution may outsource activities that enable the credit institution to provide banking and/or financial services, including the support activities, provided that the outsourcing does not impair:

- 1) its regular operation;
- 2) its effective risk management;
- 3) its internal control systems; and
- 4) the ability to exercise supervision by the Croatian National Bank.

Article 4

(1) A credit institution may not outsource the provision of the banking and/or financial services for which it is authorised by a competent authority in accordance with the Credit Institutions Act.

(2) A third party liability of a credit institution may in no case be transferred to service providers.

(3) A credit institution may not fully outsource its control functions defined pursuant to the Credit Institutions Act.

(4) By way of derogation from paragraph (3) of this Article, a credit institution may outsource its internal audit function under the conditions and in the manner prescribed by Article 183 of the Credit Institutions Act.

Article 5

(1) A credit institution shall, prior to adopting a decision on outsourcing, estimate the effect of outsourcing, *inter alia*, on:

- 1) its financial results, continuity of operation and reputation;
- 2) its costs, solvency liquidity and capital;
- 3) its risk profile;
- 4) the quality of services provided to clients;
- 5) the complexity of and time necessary for selecting an alternative service provider, or transferring these activities back to the credit institution, where appropriate.

(2) A credit institution shall, prior to adopting a decision on outsourcing, verify whether the regulations of the country or countries in which the service provider operates enable the Croatian National Bank, in order to achieve the objectives of supervision, to carry out on-site examination of a part of the service provider's operation that relates or can be related to

outsourcing, as well as on-site examination of activities which constitute the subject matter of the agreement.

Article 6

(1) Material activities shall be the activities for which it is established, based on the estimate referred to in Article 5, paragraph (1) of this Decision, that:

- 1) they are of such importance that weaknesses or failures in the performance thereof might significantly affect the ability of the credit institution to meet its obligations laid down in existing regulations and/or to continue in business; or
- 2) they have a significant impact on the credit institution's risk management.

(2) Material activities shall also include the management of risks associated with the activities assessed by the credit institution as material in terms of paragraph (1) of this Article.

(3) All activities related to the performance of control functions defined in accordance with the Credit Institutions Act and regulations adopted thereunder shall be considered as material activities.

4 Rules for managing risks related to outsourcing

Article 7

(1) A credit institution shall establish an adequate risk management system related to outsourcing.

(2) General rules for the establishment and implementation of a risk management system in terms of the Credit Institutions Act and regulations adopted thereunder must also be applied to the management of risks related to outsourcing.

(3) Outsourced activities must be adequately covered by a credit institution's internal control system.

5 Internal bylaws related to outsourcing

Article 8

(1) A credit institution shall prescribe procedures related to outsourcing in its internal bylaws.

(2) The internal bylaws referred to in paragraph (1) of this Article shall comprise one or more documents containing, at a minimum, the criteria and procedures related to:

- 1) the process of adopting decisions on outsourcing;
- 2) the assessment of risks associated with outsourcing;
- 3) the due diligence of a service provider;
- 4) the selection of a service provider;

- 5) the procedure for concluding agreements with service providers (negotiation, definition of the content of an agreement, approving and concluding agreements);
- 6) the managing of contractual relationships with service providers;
- 7) the supervision of the carrying out of activities which constitute the subject matter of the agreement;
- 8) monitoring and submitting reports to a credit institution's management board on exposure to risks associated with outsourcing.

Article 9

A credit institution shall, for each individual outsourcing transaction, define:

- 1) the roles and responsibilities of the organisational units or persons in charge of the supervision and management of outsourcing, who must have an appropriate level of professional knowledge and experience;
- 2) the credit institution's exit strategy in the case of an early termination of a contractual relationship and/or inability to meet the contractual obligations.

6 Access to documentation and data

Article 10

A credit institution shall ensure that a service provider gives the credit institution itself, the credit institution's certified auditor and the Croatian National Bank timely and unrestricted access to the documentation and data related to outsourcing which are in the possession of the service provider.

7 On-site examination by the Croatian National Bank

Article 11

A credit institution shall ensure that the on-site examination, carried out by the Croatian National Bank, of a part of the service provider's operation that relates or can be related to outsourcing, as well as on-site examination of activities which constitute the subject matter of the agreement, is in no way and at no time prevented, or rendered difficult.

8 Contractual relationship between a credit institution and a service provider

Article 12

(1) When concluding an agreement with a service provider, a credit institution shall ensure that the scope and content of the agreement provisions are adequate to the risks associated with outsourcing and to the scope and complexity of outsourced activities.

(2) An agreement with a service provider must be concluded in writing, defining clearly all relevant terms, conditions, rights and obligations, as well as the responsibilities of the parties to the agreement, and it must contain at a minimum:

- 1) a detailed description of activities which constitute the subject matter of the agreement;
- 2) place, time and manner of meeting the contractual obligations;
- 3) the credit institution's requirements relating to the level of services and the quality of service provision;
- 4) the manner of supervising the carrying out of activities which constitute the subject matter of the agreement;
- 5) types of reports to be received by the credit institution from service providers and the frequency of their delivery;
- 6) the obligation of banking and business secrecy and the obligation and manner of protecting the confidentiality of data;
- 7) the obligation of the service provider to require a written approval of the credit institution before concluding an agreement with a subcontractor;
- 8) the obligation of the service provider to notify the credit institution in a timely manner of all facts and changes in the circumstances that have, or might have a significant influence on the meeting of the contractual obligations;
- 9) the obligation of the service provider to provide the services in such a way that it fully complies with the existing regulations of the Republic of Croatia;
- 10) the obligation of the service provider to enable the Croatian National Bank to carry out on-site examination in the locality where the services are being provided, or at the service provider's premises, and to provide access to the documentation and data related to outsourcing which are in the possession of the service provider;
- 11) duration of agreement;
- 12) a detailed description of the conditions for the cancellation and/or termination of agreement, including the rights of the credit institution to cancel or terminate an agreement with the service provider, if so ordered by the Croatian National Bank;
- 13) A detailed description of the rights and obligations of the parties to the agreement in the case of a premature termination of the agreement, in order to ensure continuity of service provision;
- 14) the applicable law chosen; and
- 15) the method of dispute settlement.

(3) A credit institution may give the written approval referred to in paragraph (2), item (7) of this Article if it is satisfied that the service provider has ensured the meeting of obligations under this Decision.

9 Notification to the Croatian National Bank

Article 13

(1) A credit institution which intends to outsource the material activities referred to in Article 6 of this Decision shall, within a reasonable time frame, but no later than 90 days before concluding an agreement with a service provider, notify the Croatian National Bank thereof.

(2) The notification referred to in paragraph (1) of this Article must contain an explanation comprising a detailed description of material activities to be outsourced and the reasons for adopting the decision on outsourcing.

(3) The notification referred to in paragraph (1) of this Article shall be accompanied by the following documents:

1) for a service provider which is a legal person:

- a) a certificate from the register of companies or another relevant register, in the form of an original or a certified copy, not older than six months from the date of notification;
- b) a certificate from the register of shareholders (book of shares) and a certificate from the book of holdings, in the form of originals or certified copies;
- c) a list of persons connected with the service provider in the manner referred to in Article 24 of the Credit Institutions Act, and a description of the manner in which they are connected;
- d) audit reports of the service provider for the last two years;
- e) evidence of the prior experience of the service provider in the activities subject to outsourcing;
- f) a draft agreement the credit institution intends to conclude with the service provider relating to the outsourcing of material activities;
- g) the results of the assessment of risks associated with outsourcing;
- h) the results of the due diligence of the service provider;
- i) the results of the estimate referred to in Article 5, paragraph (1) of this Decision;
- j) criteria and procedures relating to the supervision of the carrying out of activities which constitute the subject matter of the agreement, as well as the monitoring of and reporting the exposure to risks associated with outsourcing to the management board.;
- k) a description of the roles and responsibilities of the organisational units or persons to be in charge of the supervision and management of the contractual relationship with the service provider;
- l) the credit institution's exit strategy referred to in Article 9, paragraph (2);
- m) internal bylaws related to outsourcing;
- n) a detailed description of technical and organisational solutions enabling safe and efficient performance of activities intended to be outsourced;
- o) evidence that no bankruptcy proceedings have been initiated or opened against the service provider;
- p) an opinion of the credit institution's supervisory board on the intended outsourcing;
- r) a statement by the credit institution that the outsourcing will not lead to conflicts of interest; and
- s) other documents considered by the credit institution as relevant;

2) for a service provider who is a natural person:

- a) full name, address or domicile, and other identification data on the service provider;
- b) curriculum vitae of the service provider, listing all companies, and their addresses, with which he/she is or was employed, in which he/she is or was a member of the management or supervisory board, or in which he/she is or was a holder of a qualifying holding;
- c) the documents set out in item (1) of this paragraph, under c), e) through n), and p) through s).

(4) Where a service provider has its registered office and/or operates outside the Republic of Croatia, a credit institution shall, in addition to the documents referred to in paragraphs (2) and (3) of this Article, submit evidence that the regulations of a country or countries in which the service provider operates enable the Croatian National Bank:

1) in order to reach the objectives of supervision, to carry out on-site examination of a part of the service provider's operation that relate or can be related to outsourcing, as well as on-site examination of activities which constitute the subject matter of the agreement;

2) to have timely and unrestricted access to the documentation and data related to outsourcing which are in the possession of the service provider.

(5) In addition to the documentation referred to in paragraphs (2), (3) and (4) of this Article, the Croatian National Bank may request any additional documentation that it deems necessary for the assessment whether the conditions for outsourcing laid down in the Credit Institutions Act and this Decision have been met.

10 Transitional and final provisions

Article 14

(1) A credit institution shall assess which material activities have been outsourced before entering into force of this Decision and shall notify the Croatian National Bank thereof by 31 December 2009 at the latest.

(2) A credit institution shall adjust the agreements, identified as material and concluded with service providers before entering into force of this Decision, with the provisions of this Decision by 30 June 2010 at the latest.

Article 15

This Decision shall be published in the Official Gazette and shall enter into force on 1. July 2009.

No.: 22-020/01-09/ŽR
Zagreb, 2 January 2009

Croatian National Bank
Council Chairman
Governor
Željko Rohatinski, m.p.