



**GUIDELINE NO. CMU/G-1/2020/8**

**GUIDELINE ON OUTSOURCING FOR  
CAPITAL MARKETS SERVICES LICENCE HOLDERS**

## **1. INTRODUCTION AND APPLICABILITY**

- 1.1 This Guideline is issued pursuant to section 32 of the Autoriti Monetari Brunei Darussalam Order, 2010.
- 1.2 The objective of this Guideline is to –
- (a) provide guidance to CMSL holders on the requirements for the outsourcing of important operational functions provided in Section 161(4)(c), SMO 2013; and
  - (b) ensure that CMSL holders have proper controls in place to address any negative consequences due to an outsourcing arrangement that may lead to business disruptions and affect investor's interest.
- 1.3 This Guideline sets out guidance for CMSL holders that intend to outsource any of the following important operational functions –
- a) back office function to a service provider;
  - b) internal audit function to its group or an external auditor;
  - c) risk management function and compliance function to its group;
  - d) any function involving material outsourcing arrangements; and
  - e) any other function as may be determined by the Authority.
- 1.4 This Guideline is not exhaustive and subject to revision from time to time as deemed necessary by the Authority.
- 1.5 This Guideline is to be read together with Notice No. CMU/N-1/2020/15 - Notice on Outsourcing for Capital Markets Services Licence Holders as well as the SMO and any regulations, notices, directives or guidelines made thereunder.
- 1.6 This Guideline shall take effect on 14 April 2020.

## 2. DEFINITION OF THE TERMS

2.1 For the purpose of this Guideline –

<b>Term</b>	<b>Definition</b>
“Authority”	means Autoriti Monetari Brunei Darussalam;
“back office function”	has the same meaning as the Notice on Outsourcing for Capital Markets Services License Holders;
“CMSL”	means capital markets services licence;
“compliance officer”	means the person responsible for compliance function as per regulation 37, SMR;
“external auditor”	has the same meaning as the Notice on Outsourcing for Capital Markets Services License Holders;
“external entity”	has the same meaning as the Notice on Outsourcing for Capital Markets Services License Holders;
“group”	has the same meaning as section 18 of the SMO;
“important operational functions”	has the same meaning as the Notice on Outsourcing for Capital Markets Services Licence Holders;
“material outsourcing arrangement”	has the same meaning as the Notice on Outsourcing for Capital Markets Services Licence Holders;
“service provider”	has the same meaning as the Notice on Outsourcing for Capital Markets Services Licence Holders;
“SMO”	means Securities Markets Order, 2013 and any regulations or other subsidiary legislation made thereunder;
“SMR”	means Securities Markets Regulations, 2015; and
“sub-contract”	has the same meaning as the Notice on Outsourcing for Capital Markets Services License Holders.

2.2 Any expression used in this Guideline shall, except where expressly defined in this Guideline or where the context requires, have the same meaning as in the SMO.

### **3. OUTSOURCING PRINCIPLES**

3.1 Any CMSL holder that wishes to outsource any of its important operational functions –

- (a) may appoint any person as a service provider;
- (b) where applicable, must approve any appointment of a sub-contractor by a service provider.

3.2 Any CMSL holder that wishes to outsource any of its important operational functions is required to ensure that it complies with and adopts any outsourcing principles necessary for outsourcing arrangements. The below principles are provided as best practices which should be considered for the outsourcing arrangement.

#### **3.2.1 Due Skill, Care and Diligence on Selection Process**

- (a) A CMSL holder should consider and act in the interest of its clients when appointing a service provider or approving a sub-contractor.
- (b) A CMSL holder should, in appointing a service provider or approving a sub-contractor, consider the service provider's or the sub-contractor's –
  - (i) ability to employ a high standard of care in its performance of the important operational function and meet regulatory standards as expected of the CMSL holder;
  - (ii) ability to comply with outsourcing agreements that regulate the outsourcing arrangement;
  - (iii) adequacy of resources and ability to efficiently conduct the important operational function, especially when performing important operational functions for multiple CMSL holders;

- (iv) adequacy of security and control environment;
  - (v) policies and procedures in preventing breach of clients' confidentiality and abuse of clients' confidential information;
  - (vi) business continuity plan;
  - (vii) ability to identify and effectively manage any risk and conflict of interest; and
  - (viii) current and potential litigation proceedings, which may have potential impact on its performance of the important operational function.
- (c) In addition to paragraph 3.2.1 (b) above, the CMSL holder should also perform the following where a service provider or a sub-contractor is located outside Brunei Darussalam –
- (i) analyse the economic, legal and political conditions of the country that the service provider and/or the sub-contractor are operating from, which may impact the undertaking of any important operational functions;
  - (ii) refrain from outsourcing to jurisdictions where the Authority may be hindered from having prompt access to information;
  - (iii) commit to retrieve information readily available from the service provider and/or the sub-contractor should the Authority request for such information; and
  - (iv) inform the Authority if any foreign regulatory authority were to seek access to its clients' information.

### **3.2.2 Continuous monitoring mechanism**

- (a) A CMSL holder should have policies and procedures to effectively monitor the service delivery, performance reliability and processing capacity of the service provider which should, among others, include the following –
- (i) Periodically assess and update the outsourcing agreement;

- (ii) Periodically assess the performance of a service provider; and
  - (iii) Holding regular meetings to discuss performance of the service provider, sub-contractor and regulatory matters.
- (b) Where an important outsourcing function is sub-contracted, a CMSL holder should ensure that the service provider has adequate policies and procedures to monitor the conduct of the appointed sub-contractor.
- (c) The CMSL holder's assessment of a service provider mentioned in paragraph 3.2.2 (a)(ii) should include –
  - (i) the service provider's adherence to the following material outsourcing arrangement criteria –
    - i. The financial, reputational and operational impact on the CMSL holder in the event of a default or failure of the service provider;
    - ii. The potential impact of the outsourcing arrangement on the CMSL holder's services or support rendered to its clients;
    - iii. The impact of the outsourcing arrangement on the CMSL holder's ability and capacity to comply with regulatory requirements including effectively managing risk and any conflicts of interest; and
    - iv. The degree of difficulty and time required to select an alternative service provider or to bring the important operational function in-house if the appointed service provider is not able to perform the important operational function;
  - (ii) the service provider's policies and procedures in monitoring conduct of the sub-contractor, if any; and
  - (iii) any new material risk arising from the outsourcing arrangement and strategies for managing such risk.

- (d) A CMSL holder should submit a report of the assessment referred to under paragraph 3.2.2(a)(ii) to its board of directors and senior management.
- (e) The assessment of the service provider in paragraph 3.2.2(a)(ii) should be performed by the CMSL holder's internal audit or external auditor and the report referred to in paragraph 3.2.2(d) should be submitted to the Authority, as and when requested.
- (f) In adherence to paragraph 3.2.2(a)(i), an outsourcing agreement should, among others, include the following –
  - (i) Roles, responsibilities and obligations of the service provider;
  - (ii) Scope of the outsourcing arrangement;
  - (iii) Terms and conditions governing the relationship;
  - (iv) Provisions for proper reporting and monitoring mechanisms between service provider and CMSL holder;
  - (v) The rights of the CMSL holder to conduct examination, inspection and to have access to books, records and documents relating to the outsourced important operational functions;
  - (vi) Provisions relating to the maintenance of books, records and documents for the time period stipulated in the SMO, any notices, directives or guidelines issued thereunder and any other relevant laws;
  - (vii) Provisions relating to the termination of contract, minimum period to execute a termination, ownership of intellectual property following termination and specifications relating to transfer of information back to the CMSL holder;
  - (viii) Protection of confidentiality and security of CMSL holder and clients' information and requirement for immediate notification (if there is a breach);
  - (ix) Risk and liability of the service provider for unsatisfactory performance or other breach of agreement of the outsourced important operational functions;

- (x) Duty and responsibility of the service provider to report any adverse development to the CMSL holder in a timely manner, in order to allow the CMSL holder to notify the Authority of such developments;
  - (xi) Mechanism to resolve disputes which may arise under the outsourcing arrangement;
  - (xii) Co-operation with the Authority as well as auditors; and
  - (xiii) Limitation or condition, if any, on the service provider's ability to sub-contract (if applicable).
- (g) For a sub-contracting arrangement, a CMSL holder should ensure that –
- (i) the outsourcing to a sub-contractor will not affect the CMSL Holder's ability to comply with Section 161(4)(c), SMO;
  - (ii) the terms of the sub-contracting agreement do not contradict the initial outsourcing agreement signed between the CMSL holder and the service provider; and
  - (iii) the service provider's ability to comply with obligations under the outsourcing agreement will not be impaired by the sub-contracting arrangement.
- (h) In the event where the appointed service provider, who has sub-contracted the important operational function, does not meet paragraph 3.2.1(b)(i) of this Guideline, the CMSL holder should, within 21 days of the event causing such inability, dismiss and replace the sub-contractor.
- (i) A CMSL holder should have the right to terminate the outsourcing agreement in the event of default or under circumstance that include a breach of security or confidentiality and demonstrable deterioration in the ability of the service provider to perform the contracted service.
- (j) In the event of any adverse development, variation or termination to the outsourcing agreement and/or sub-contracting agreement, the CMSL holder should notify the Authority of such event as soon as practicable.

### **3.2.3 Outsourcing compliance function to group**

- (a) Where the compliance function is outsourced within a group, a CMSL holder should ensure that the service provider –
  - (i) assigns at least one authorized compliance officer to perform the compliance function, who should not be involved in any daily business functions; and
  - (ii) provides the compliance report on a regular basis to the board of directors and senior management of the CMSL holder.

## **4. RESPONSIBILITY FOR OVERSIGHT**

- 4.1 A CMSL holder is responsible to ensure compliance and adherence to requirements under all applicable laws including, in particular, the SMO and any regulations, notices and directives made thereunder. While the responsibility and oversight over any outsourcing arrangement is on the CMSL holder, the board of directors and the senior management of the CMSL holder should at all times –
  - a) be responsible and accountable for any important operational function carried out by a service provider or a sub-contractor;
  - b) ensure that any outsourcing arrangement does not jeopardize or prejudice clients' interests;
  - c) ensure that any outsourcing arrangement does not in any way interfere with the ability of the CMSL holder to fulfil its legal and regulatory obligations;
  - d) ensure that any outsourcing arrangement does not impede the Authority from carrying out their regulatory oversight functions over the CMSL holder; and
  - e) ensure that policies and procedures are in place to maintain confidentiality of clients' information and, where there is a need to do so pursuant to any written law or contractual obligation, seek approval from or notify clients that their information may be disclosed to a service provider or a sub-contractor, as the case may be.

**5. SUBMISSION**

- 5.1 All submissions relating to outsourcing arrangements should be submitted and addressed to –

**Managing Director,  
Autoriti Monetari Brunei Darussalam,  
Level 14, Ministry of Finance and Economy Building,  
Commonwealth Drive,  
Bandar Seri Begawan BB3910,  
Brunei Darussalam.**

**(Attention: Head of Capital Market)**

or email at [capmarket@ambd.gov.bn](mailto:capmarket@ambd.gov.bn)

**MANAGING DIRECTOR  
AUTORITI MONETARI BRUNEI DARUSSALAM**

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