



NOTICE UNDER THE SECURITIES MARKETS ORDER, 2013

NOTICE NO. CMA/N-1/2020/15

NOTICE ON OUTSOURCING FOR CAPITAL MARKETS SERVICES LICENCE HOLDERS

1. INTRODUCTION

- 1.1. This Notice is issued pursuant to section 239(1) of the SMO and applies to any CMSL holder intending to outsource any important operational function.
- 1.2. Any provisions under the SMO which are inconsistent with the requirements in this Notice are deemed to have been varied by this Notice.
- 1.3. This Notice shall take effect on 14 April 2020.

2. DEFINITIONS

- 2.1. For the purposes of this Notice –

“Authority” means Autoriti Monetari Brunei Darussalam;

“back office function” means any administrative or operational function other than a regulated activity as specified under Part II of the Schedule in the SMO;

“CMSL” means capital markets services licence;

“external auditor” means an auditor who is not the current auditor appointed by the CMSL holder;

“external entity” means an entity that is not within a group;

“group” has the same meaning as section 18 of the SMO;

“important operational function” means –

- (a) back office function;
- (b) internal audit function;
- (c) risk management and compliance function;
- (d) any function involving material outsourcing arrangements; and
- (e) any other function as may be determined by the Authority;

“material outsourcing arrangement” means an outsourcing arrangement –

- (a) which, in the event of a service failure or security breach, has the potential to either significantly impact the CMSL holder’s –
 - (i) business operations, reputation or profitability; or
 - (ii) ability to manage risk and comply with applicable laws and regulations; or
- (b) which involves client information and, in the event of any unauthorized access or disclosure, loss or theft of client information, may have a material impact on a CMSL holder’s clients;

“service provider” means an entity within the group or an external entity to which the CMSL holder has outsourced the outsourced functions and includes any subsequent service provider to whom the initial service provider or any subsequent service provider has further contracted the outsourced function;

“SMO” means the Securities Markets Order, 2013 and any regulations or other subsidiary legislation made thereunder; and

“sub-contract” means the act of further outsourcing an outsourced function or a sub-component of that function to another service provider.

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

3 PURPOSE

3.1 The purpose of this Notice is to impose additional requirements to that of section 161(4)(c) of the SMO on all persons specified in paragraph 1.1.

3.2 This Notice is to be read together with Guideline No. CMU/G-1/2020/8 Guideline on Outsourcing for Capital Markets Services Licence Holders as well as the SMO and any regulations, notices, directives or guidelines made thereunder.

4 REQUIREMENTS ON OUTSOURCING

4.1 Any CMSL holder that intends to outsource any important operational function shall notify the Authority 30 days prior to the outsourcing of such important operational function.

4.2 All of the CMSL holder’s important operational functions can be outsourced, subject to the requirements of this Notice.

4.3 CMSL holders shall only outsource the following important operational functions to the following persons –

(a) back office function to a service provider;

(b) internal audit function to its group or an external auditor; and

(c) risk management function and compliance function to its group.

4.4 All CMSL holders shall –

- (a) comply with and adopt any outsourcing principles necessary for outsourcing arrangements;
- (b) ensure that the service provider or sub-contractor agrees, through the outsourcing agreement and/or a letter of undertaking, for the Authority to have access to and allow the Authority to make copies of information, records and documents relating to the important operational function;
- (c) assume responsibility for oversight of any outsourcing arrangements; and
- (d) submit an outsourcing register, reports and any additional information as may be required by the Authority.

4.5 In outsourcing an important operational function, the CMSL holder is also required to –

- (a) ensure that outsourcing of the back office function is not sub-contracted unless the service provider has obtained prior approval of the CMSL holder; and
- (b) not, at any time, allow the sub-contracting of internal audit, risk management or compliance functions.

4.6 Notwithstanding anything to the contrary, the CMSL holders shall be held liable for the acts or omissions of the service provider or sub-contractor relating to the important operational functions being outsourced as if they were the acts or omissions of the CMSL holder.

5. OUTSOURCING REGISTER

5.1 The outsourcing register referred to in paragraph 4.4(d) shall detail the following –

- (a) All planned outsourcing arrangements, including new arrangements and renewal of existing arrangements, for the year the outsourcing register is submitted;

(b) For each planned outsourcing arrangement –

- (i) a brief description of the important operational function to be outsourced;
 - (ii) identification of material outsourcing arrangements, the main factors supporting the materiality of the outsourcing arrangement according to the performance assessment of a service provider as set out in paragraph 3.2.2 (c) of the Guideline on Outsourcing for Capital Markets Services Licence Holders; and
 - (iii) locations of where the important operational function outsourced is to be undertaken, where information is processed or stored and back-up locations; and
- (c) A description of the overall impact of the existing and planned outsourcing arrangements on employment and talent capacity within the CMSL holder, including any measures by the CMSL holder to manage the potential displacement of staff as a consequence of outsourcing arrangements, including up-skilling of staff.

5.2 If it appears to the Authority that the planned outsourcing arrangement provided by the CMSL holder is inadequate, the Authority may request for the CMSL holder to review such arrangement.

6. SUBMISSION OF NOTIFICATION AND OUTSOURCING REGISTER

6.1 A CMSL holder must ensure that it has in place the necessary outsourcing arrangements before submission of the notification referred to in paragraph 4.1 to the Authority. The CMSL holder must submit the outsourcing register to the Authority no later than 3 months after the end of every financial year.

6.2 Any notification for outsourcing must include the relevant forms and documents as determined by the Authority and any other information as may be required.

6.3 All submissions relating to notifications and any correspondence should be addressed to
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**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

**MANAGING DIRECTOR
AUTORITI MONETARI BRUNEI DARUSSALAM**

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