

Book III - Service providers

Title I bis - Asset management companies of AIFs

Chapter III - Organisational rules

Section 16 - Outsourcing

General regulation of the AMF

Article 318-61 into force since 03 January 2018

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Article 318-61

I. - Asset management companies that outsource an operational task or function shall remain fully responsible for complying with all their professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code and complying, in particular, with the following conditions:

- 1 • Outsourcing must not result in the delegation by senior management of its responsibility.
- 2 • The relationship and obligations of the asset management company towards its clients must not be altered.
- 3 • The conditions or commitments with which the company must comply in order to be authorised must not be undermined.

II. - Asset management companies shall exercise due skill, care and diligence when entering into, managing or terminating an outsourcing contract for critical or important operational tasks or functions.

In particular, asset management companies must take the necessary steps to ensure that the following conditions are satisfied:

- 1 • The service provider must have the ability, capacity, and any authorisation required to perform the outsourced tasks or functions reliably and professionally.
- 2 • The service provider must carry out the outsourced services effectively. To this end, the asset management company must establish methods for assessing the standard of performance of the service provider.
- 3 • The service provider must properly supervise the carrying out of the outsourced tasks or functions, and adequately manage the risks stemming from outsourcing.
- 4 • Asset management companies must take appropriate action if it appears that the service provider may not be carrying out the functions effectively and in compliance with the professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code applying to them.
- 5 • Asset management companies must retain the necessary expertise to supervise the outsourced tasks or functions effectively and manage the risks stemming from outsourcing and must supervise those tasks and manage those risks.
- 6 • The service provider must disclose to the asset management company any development that may have a material impact on its ability to carry out the outsourced tasks or functions effectively and in compliance with the professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code applying to them.
- 7 • The procedures for terminating outsourcing contracts at the initiative of either party must ensure the continuity and the quality of the activities carried out.
- 8 • The service provider must cooperate with the AMF in connection with the outsourced tasks or functions.
- 9 • The asset management company, its auditors and the relevant competent authorities must have effective access to data related to the outsourced tasks or functions, as well as to the business premises of the service provider.
- 0 • The service provider must protect any confidential information relating to the asset management company and its clients.
- 1 • The asset management company and the service provider must establish and maintain an effective contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the nature of the outsourced task or function.

III. - The respective rights and obligations of asset management companies and service providers shall be clearly defined in a contract.

IV. - Where the asset management company and the service provider are members of the same group, the asset management company may, for the purposes of determining how this Article shall apply, take into account the extent to which it controls the service provider or has the ability to influence its actions.

V. - Asset management companies must provide the AMF, at its request, all information necessary to enable it to supervise the compliance of the performance of the outsourced tasks or functions with the requirements of this Book.

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