

**Methodological Instruction  
of the Banking Supervision Division No. 6/2004  
on the utilisation of outsourcing by banks**

**Purpose**

The increasing complexity of the banking and financial services and technologies gives rise to new risks in the Slovak banking sector. The operational risk of a bank, which includes also the outsourcing risk, is one of them. The National Bank of Slovakia is issuing this Methodological Instruction related to the prudential procedures of banks or branches of foreign banks (hereinafter "a bank") for such cases when outsourcing is utilised.

This Methodological Instruction is classified as "Risk management process".

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  - a. [pursued by the entity, which is subject to supervision on a consolidated or solo basis in any European Economic Area \(hereinafter "EEA"\) country;](#)
  - b. [pursued by the entity, which is subject to supervision on a consolidated or solo basis in a non-European Economic Area \(hereinafter "non-EEA"\) country, or which is not subject to supervision.](#)

**Definition of outsourcing**

1. Outsourcing shall mean the long-term ensuring of the services supportive for the conduct of banking activities for a bank by another person (hereinafter "service provider") on a contractual basis with the aim of achieving higher effectiveness of the conduct of banking activities.
2. The activities ensured by means of outsourcing should be ensured on a regular and/or ongoing basis; the one-off conduct of certain activities shall not mean outsourcing.

**Prudential undertaking of a bank when utilising outsourcing**

3. The obligation of a bank to be prudent when conducting its activities and managing its risks is stipulated in Article 27 of Act No. 483/2001 Coll. on banks as amended (hereinafter "Banking Act") so as not to harm the interests of a bank's clients or to pose any threat to the security and health of a bank.
4. A bank shall be obliged to meet obligations stipulated in the relevant legal form of undertaking for all activities, including those ensured by outsourcing.

**Management of the risks connected with outsourcing**

5. Management of the risks connected with outsourcing should be a part of the overall risk management under the responsibilities of the Board of Directors.
6. A bank should have prepared a strategy for the management of risks connected with outsourcing. This strategy should include the main principles implemented by the bank when assessing and managing the risks connected with outsourcing. The strategy should include how the outsourcing would assist in ensuring the activities of the bank, stipulating also the terms of reference connected with outsourcing. A bank's Board of Directors should approve the strategy of the outsourcing risk management.
7. A bank should have the internal rules prepared in compliance with the approved strategy of management of the risks connected with outsourcing. The bank's Board of Directors, or a unit or an employee of a bank authorized by this Board, should approve the internal rules related to the management of the risks connected with outsourcing, including annexes. All the concerned employees of a bank should be informed about the internal rules related to outsourcing.
8. The members of a Board of Directors, members of an authorized unit or an employee of the bank, as mentioned in the preceding paragraph, or the persons having a special relationship to them (pursuant to the Civil Code), should not exert any direct influence on the part of the contractual party providing the outsourcing services.
9. The contractual relationship between a bank and a service provider (see Part 5 for the recommended requisites of a contract) is not by itself a sufficient precondition for the adequate management of the risks arising from outsourcing. A bank should systematically analyse the risks connected with outsourcing. The risk analysis should be conducted at the bank's level and at the level of various organizational units and should include the risks arising from the existing outsourcing, the risks arising from changes and the risks arising from new forms of outsourcing.
10. Prior to closing a contractual relationship, a bank should review the quality of the services provided by a service provider, and by means of subsequent regular control of the quality of services should ensure control of proper fulfilment of the contractual relationship on the part of the service provider.
11. The internal control and internal audit unit should, on a regular basis in the intervals approved by a bank, control the performance of the audited activities as stated in the contract closed with the service provider.

#### **Banking secrecy and personal data protection in the case of outsourcing**

12. Pursuant to Articles 89-93 of the Banking Act, any information and documents related to the affairs connected with a client which are not publicly disclosed, in particular the information on trades, balances of accounts and/or deposits, are subject to banking secrecy. The information on the personal data of a client is subject to Act No. 428/2002 on personal data protection, as amended.
13. The information and documents related to the affairs protected by banking secrecy can be provided to third persons (a service provider) only with the written consent of the client concerned. Despite a client's consent, a bank should not provide information on personal data of the client, information on trades, balances of accounts and/or deposits to the service provider for any other purpose than for the purpose of their processing within the scope of an effective written contract closed between a bank and a service provider. The obligation in regard of a client's data protection remains with the bank. A service provider should ensure the protection of data on clients and should only treat them in the manner determined by the bank.
14. If a bank has a contractual relationship with a client and the client has not agreed in writing for provision of his personal data, the bank should prepare an annex to the contract signed by the client in which he agrees for the provision of his personal data and the data covered by banking secrecy to a third person (a service provider).
15. A bank, via its contractual relationship with a service provider, should ensure keeping of banking secrecy in the affairs related to a client. A bank should take measures towards prevention of the unauthorized release or utilisation of the data, which the service provider has on a client.
16. A bank, via its contractual relationship with a service provider, should ensure that the obligation to keep secrecy on the data covered by banking secrecy shall also be maintained, on the part of the provider, when its contractual relationship with the bank is finished.
17. Via the contractual relationship with a service provider, a bank should ensure the security of personal data on its clients and the data covered by banking secrecy on the part of a provider if this service provider provides outsourced services to more institutions, of which at least one is a bank, or if the services of more service providers are used.

18. A bank, via its contractual relationship with a service provider and for the protection of the data covered by banking secrecy and personal data on clients, should ensure that the service provider carries out the separate handling of the information on the clients of the bank if the service provider has ensured the outsourced activities for more banks at the same time.

### **Contractual relationship between a bank and a service provider**

19. The contract on the outsourcing of services supporting the conduct of banking activities, in addition to the general requirements arising from the generally binding regulations, should include:
  - a. A detailed specification of the outsourced activities,
  - b. Specified requirements in regard of the conduct of activities,
  - c. Responsibility in the event of deficiencies and the sanctions arising thereto,
  - d. Defined ownership of the data, access to them and a system of data processing by the service provider who respects this ownership,
  - e. Modality for changing the agreed terms,
  - f. A possibility for a bank to terminate a contract or to rescind a contract if the contract is repeatedly or seriously breached,
  - g. Protection of the personal data of a client and the data covered by banking secrecy and modality for their treatment (including the case if this service provider provides outsourced services to more institutions, of which at least one is a bank),
  - h. The obligation to keep secrecy on the data covered by banking secrecy, also after termination of the contractual relationship,
  - i. Separate handling of information on a bank's clients if the service provider has ensured the outsourced activities for more banks at the same time,
  - j. The authorization to monitor activities of the service provider,
  - k. A prior consent to the selection of a sub-contractor of a service provider,
  - l. Detailed requirements regarding the quality of the outsourced services,
  - m. The consent of a service provider to the control and audit of the conduct of provided services during the contractual period for:
    - Internal control and internal audit unit
    - Auditor,
  - n. The possibility for banking supervisors of controlling a service provider, including its sub-contractors, in particular with respect to the access to data.

### **Contingency plan**

20. In the event of possible termination of the contractual relationship of a service provider with a bank, the bank should have prepared a contingency plan in order to ensure continued conduct of the outsourced activities until the bank finds another service provider.
21. The contingency plan should also include a plan for ensuring continuity of the conduct of outsourced activities in the event of any unforeseeable events, such as force majeure, withdrawal of a licence from the bank, failure on the part of the service provider, etc.

### **Attitude of the Banking Supervision of the NBS to outsourcing**

22. The Banking Supervision considers it necessary that a bank, while utilising the outsourcing, ensures by legal or other means adherence to all obligations arising for the bank from the relevant regulations, in particular the adherence to the prudential regulations and the protection of banking secrecy and risk management regulations.
23. The Banking Supervision does not grant a bank a prior approval for ensuring the activities supportive to the conduct of banking activities via outsourcing.
24. A bank should submit to the Banking Supervision written information on its intention to outsource any of the activities supportive to the conduct of banking activities by another person.
25. The Banking Supervision assesses in particular if a bank:
  - a. Has prepared the internal rules related to outsourcing and the management of risks thereof,
  - b. Before introducing the outsourcing has prepared the background material on outsourcing,

- c. Has analysed risks connected with utilising the outsourcing and set the modalities or methods for the identification, measuring, monitoring and control of these risks,
  - d. Has prepared a plan of procedures for contingencies and unexpected events arisen from any form of termination of a contractual relationship regulating the utilisation of outsourcing,
  - e. Has not concluded an outsourcing contract with clearly unfavourable legal and economic conditions,
  - f. Has received a position of the internal control and internal audit unit pursuant to the provision of Article 23 paragraph 2 of the Banking Act, and
  - g. Has prepared a contract on the utilisation of outsourcing that contains the terms mentioned in Part 5 of this Methodological Instruction.
26. If necessary, Banking Supervision, for the purpose of assessment of the intention to utilise outsourcing, may ask a bank for additional information and written documents, or it can discuss the notified intention of the utilisation of outsourcing with the representatives of the bank.
27. A bank should inform the Banking Supervision in writing in particular of:
- a. Outsourcing the activities important for the bank, where a failure may have a clear impact on the bank's activities,
  - b. A failure of those outsourced activities which have a clear impact on the bank,
  - c. Serious problems with a service provider.
28. The Banking Supervision distinguishes between the outsourcing conducted by an entity which is subject to supervision on a consolidated or solo basis in any EEA country and the outsourcing conducted by an entity subject to supervision on a consolidated or solo basis in any non-EEA country, or which entity is not subject to supervision.

**Outsourcing conducted by the entity which is subject to supervision on a consolidated or solo basis in any country of the EEA**

29. The outsourcing of the activities supporting the conduct of banking activities by the entity subject to supervision on a consolidated or solo basis in any EEA country, while meeting Article 27 on prudential undertaking and Articles 89-93 on banking secrecy of Banking Act, is also possible within the scope covered by the banking licence. The Banking Supervision, however, does not recommend outsourcing, in particular:
- a. internal audit and internal control
  - b. a compliance officer position
  - c. a head officer position

The outsourcing of the activities supporting the above-specified activities is, however, possible.

30. The outsourcing of other activities by the entity subject to supervision on a consolidated and solo basis in any EEA country, is conducted in the extent of the prudential conduct of a bank's activities and in the modality that considers and minimizes the risks.

**The outsourcing conducted by the entity which is subject to supervision on a consolidated or solo basis in any non-EEA country, or which is not subject to banking supervision**

31. The outsourcing of the activities supporting the conduct of banking activities by the entity which is subject to supervision on a consolidated and solo basis in any non-EEA country, or which is not subject to banking supervision, while meeting Article 27 on prudential undertaking and Articles 89-93 on banking secrecy of Banking Act, is possible only within the scope which does not require a banking licence for the outsourced activities. The outsourced activities, however, should not include, in particular:
- a. internal audit and internal control
  - b. a compliance officer position
  - c. a head officer position

The outsourcing of the activities supporting the above-specified activities is, however, possible.

32. The outsourcing of other activities by the entity which is subject to supervision on a consolidated and solo basis in any non-EEA country, or which is not subject to banking supervision, is conducted in the

extent of the prudential conduct of a bank's activities and in the modality that considers and minimizes the risks, such as:

- a. information systems and information technologies;
- b. written documents' administration and their archiving;
- c. electronic processing of data.

In Bratislava, 8 June 2004

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