



New CAA Circular Letter 22/16

Outsourcing of important or critical operational activities or functions

Mazars Financial Advisory Services

On 19 August 2022, the Commissariat aux Assurances ("CAA") - Luxembourg supervisory authority for the insurance sector - published the Circular Letter 22/16 on the outsourcing of critical or important operational functions or activities (hereinafter referred to as "CIFA"). The new Circular Letter clarifies the requirements for the outsourcing of CIFA and their notification to the CAA.

- The insurance sector has always shown interest in the outsourcing of business functions as to reduce costs while enhancing flexibility and efficiency. In a nutshell, outsourcing eases the access to new technologies and exploits of economies of scale.
- The CAA provides insurance companies with an electronic form that can be downloaded from the CAA website in order to strengthen the monitoring of growing use of outsourcing and sub-contracting.
- The CAA has incorporated the Circular Letter 22/16 within **Article 81** of the amended Law of 7 December 2015 on the insurance sector. The Circular Letter is applicable to all service outsourcing agreements that entered into force or were amended as of **1 November 2022**.

> What's new?¹

(Pre-)outsourcing
risk assessments

Notification
Template

Notification
Obligations

GDPR-related
impacts

Scope of Application:

- The Circular Letter 22/16 is applicable to all **CAA-supervised Luxembourg (re)insurance undertakings** (hereinafter referred to as "supervised entities"). However, the Circular Letters does not apply to:
 - IT outsourcing arrangements which are exclusively based on a cloud computing infrastructure²;
 - The outsourcing by a captive (re)insurance undertaking to a Luxembourg professional of the insurance sector of (i) daily management, or (ii) a key function as defined by the Directive 2009/138/CE ("Solvency II"); and
 - The use of intermediaries for the distribution of (re)insurance products. However, if an insurance intermediary who is not an employee of the insurance undertaking underwrites contracts or settles claims, this activity must be regarded as outsourcing if it is to be deemed a critical or important operational function or activity.

In short:

- The CAA expects all supervised entities to **conduct and document a risk assessment** prior to outsourcing critical operational activities, as to evaluate the risks potentially lead by the outsourcing arrangement and ensure full compliance with the relevant regulatory framework.
- Supervised entities shall assess and determine the criticality of a function or activity that shall be outsourced and whether such function or activity is already a critical / operationally important or could potentially to be so in the **future**.
- If the nature, scope, or complexity of the risks inherent to the arrangement change significantly, the supervised entity must also **re-assess the criticality** of the activity or function that was previously outsourced.
- Supervised entities shall implement their supervisions on outsourcing activities or functions and comply with the notification requirements proportionally to the outcomes of the risk-based assessment.
- Supervised entities must conduct a **self-evaluation** regarding the compliance of the outsourcing arrangements against the Circular Letter 22/16, including a correspondence table.

¹ Non-exhaustive list

² The CAA Circular Letter 21/15 applies in those instances

Highlights

> Notification process

- Supervised entities are required to perform a **prior notification** for (a) all new CIFA outsourcing; (b) outsourcing of key functions / activities³ as defined Solvency II, where the latter are by nature considered as CIFA; (c) material changes to existing critical or important outsourcing arrangements and (d) changes to outsourcing arrangements that lead to a major impact to the supervised entity's business plan.
- The prior notification process shall be carried out in the aforementioned scenarios **prior to the signing** of any outsourcing contract and **at least one month before** the activity is effectively outsourced.
- The CAA will write to confirm receipt of the notification within **ten business days** after receiving it. Supervised entities are required to notify the CAA as soon as feasible if the outsourcing agreement is not executed yet.
- The compliance officer of the supervised entity must evaluate and communicate in writing to the CAA any specific aspects of the outsourcing arrangement **within two months** from the execution of the agreement.



> Additional requirements

Insurance Secrecy and GDPR-related impact:

- The supervised entities must also make sure that insurance secrecy requirements outlined in the Circular Letter 22/16 are implemented when outsourcing personal data or data that can identify any party of an insurance policy.

Documentation requirements:

- An **up-to-date registry of outsourcing agreements** must be established and maintained by the supervised entities.
- The Circular Letter 22/16 specifies a list of the mandatory information to be retained in the event of CIFA outsourcing, whereas in other circumstances supervised entities shall determine the information to be retained based on the nature, scope, and complexity of risks inherent to the outsourced services.

Notification Template:

- Supervised entities must download the notification template (excel sheet) on the CAA website, fill it out, and send it to the dedicated email address (outsourcing@caa.lu).
- The Circular Letter 22/16 offers a comprehensive set of instructions on how to fill out the different sections of the template.
- If an outsourcing arrangement covers multiple CIFA, each CIFA must have its own notification document filled out.

How can Mazars help you in practice?

Based on the knowledge, expertise and competences developed in supporting the key actors in the Luxembourg market over the last years, Mazars can be your partner in the:

- Design and implementation of an outsourcing risk-based approach together with the performance of (pre-) outsourcing risk assessment:
 - Mazars proposed approach starts with the definition of a risk universe / repository according to your license and business operating model.
 - The identified risk factors are then assessed in order to be able to determine the inherent risk, the relevant mitigations as to calculate a residual risk associated to the outsourcing arrangement, including the type of outsourced functions / activities.
 - The result of the exercise reported in the two previous points will result in the definition and implementation of a dedicated monitoring plan, where controls are scaled according to the assessed risk exposure.

Results from the risk assessment will allow you to:



Receive the necessary comfort in the delegated activity tasks



Clearly **identify** if there are any potential issues on the delegate / delegate activity



Determine any actions to be taken (e.g. exit plan / strategy)

- Performance of criticality assessment;
- Performance of (pre-)outsourcing risk assessments;
- Design and implementation of the due diligence process (e.g. due diligence questionnaires, performance of on-site visits);
- Provision of guidance in the notification process to the CAA and related due diligence / risk assessment supporting documentation to be provided.

Mazars team is available for any question on the above and will assist clients in the swift and efficient way to ease the implementation of those requirements.



Mazars can assist you in implementing every aspect of the new Circular Letter 22/16

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