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Ins(urance) & outs(ourcing) in Saudi Arabia

By Peter Hodgins

The Saudi Arabian Monetary Authority (SAMA) issued new regulations governing the outsourcing of functions by insurers, reinsurers, brokers and other service providers operating in the Kingdom of Saudi Arabia (KSA) on November 17th, 2012. The regulations are progressive by regional standards, allowing outsourcing to entities outside of KSA, but will need to be carefully considered by insurance sector players. This is not least because the regulations apply equally to functions performed by group entities as well as third parties.

The regulations require that outsourcing arrangements should be recorded in a legally binding contract. The contract must comply with Saudi law and contain specific details provided by the regulations, including service levels and performance standards and data protection provisions. The contract should be governed by Saudi law and subject to the jurisdiction of the Saudi courts (unless otherwise approved by SAMA). In addition, it is necessary for an insurance sector player to have analysed the business case and suitability of the outsourced service provider (even where that entity is another group company). Such analysis must be reassessed at least on an annual basis.

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In the context of 'material outsourcing' additional requirements apply. For these purposes material outsourcing includes any arrangement which, if disrupted, has the potential to significantly impact on an entity's business operations, reputation or profitability. No material outsourcing is permitted without SAMA's prior written no objection. The outsourcing of 'material functions', such as underwriting, claims handling, investment, risk management, finance, internal audit, compliance and primary-decision making processes, must be approved by SAMA on a case-by-case basis for each individual function.

Consider the example of an insurer in KSA which utilises the services of a group entity elsewhere in the world to provide specialist underwriting support for specialist classes of business. Such an arrangement may provide the insurer with a competitive advantage where the local market does not have the necessary skills to underwrite such business. Because the outsourcing involves underwriting and may also involve the primary decision-making process being outside of the country it would amount to the outsourcing of a material function in addition to being outsourcing overseas. If such an arrangement is already in place it is necessary to seek a no objection from SAMA retrospectively within 120 days of the issuance of the regulations. Any new arrangement must be submitted to SAMA at least 60 working days prior to the commencement of the arrangement together with supporting information detailing the functions to be outsourced, highlighting such functions as material and the reason for the outsourcing.

In the context of material outsourcing, sub-contracting of services by the outsourced service provider is only permitted with the prior approval of SAMA. This requirement is particularly challenging for large international groups which may provide human resources, finance, information technology, internal audit etc. on a group-wide basis through different entities in the group. Careful consideration will be required in order to determine whether separate contracts with each group entity is more appropriate than a single contract with an appropriate group holding company under which functions are to be sub-contracted to other group entities.

A clear driver for SAMA in introducing the regulations is to ensure that it has visibility of all functions that are outsourced and access to information held by the outsourced service provider. For this reason the regulations include extensive provisions governing the handling of data and include a requirement that all data held by the outsourced service provider is segregated from its other data pools. In the context of outsourcing to an entity outside of KSA it is necessary to have confidentiality provisions in place regarding the services and to ensure that SAMA has a right of access to the entity providing the outsourced service. This right of access must be either in the format of a standard provision approved by SAMA or supported by a legal opinion to be issued by the insurance sector player's lawyers to SAMA.

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