

## **Getting outsourcing right**

Key considerations for  
businesses operating in the  
financial services industry



# Overview

Most businesses engage in some form of outsourcing: they rely on external vendors who are expert in a field to provide them with services or a solution which they couldn't efficiently or economically provide themselves. Doing so should give them access to state-of-the-art technology, optimised business processes, and trained personnel, which allow them to focus on what they do best: service their own clients.

While bringing in a vendor to deliver a core component of your platforms or systems or to deliver a key business function has its upsides, it is not without risk. If you engage in outsourcing, you should do so diligently and strategically, and in a manner that enables you to manage and control the outsourcing relationship, so that you can be confident about continuity of service and compliance with your own legal obligations.

A diligent and strategic approach to outsourcing is never more important than in the highly-regulated financial services industry. If an outsourcing goes wrong, you may find yourself unable to comply with the myriad legal obligations that are imposed on you; or worse, you may find your clients' trust and confidence is lost – resulting in a significant financial risk.

Read on for our high-level guide on getting outsourcing right in the financial services industry, and contact our experts below for legal advice on your own outsourcing requirements, including advice on:

- Your regulatory obligations, including obligations under the Financial Markets Conduct Act 2013.
- Approaching the market (including conducting RFPs).
- Contract drafting and negotiation.
- Privacy compliance.
- Cyber and privacy incident preparedness.

# Our experts

Have any questions, or need some advice on how to engage with your vendors?  
Talk to one of our experts.



**Campbell Featherstone**

Partner

D +64 4 498 0832

M +64 21 80 9779

[campbell.featherstone@dentons.com](mailto:campbell.featherstone@dentons.com)



**David Ireland**

Partner

D +64 4 498 0840

M +64 21 34 3615

[david.ireland@dentons.com](mailto:david.ireland@dentons.com)



**Catriona Grover**

Partner

D +64 4 498 0816

M +64 21 77 5330

[catriona.grove@dentons.com](mailto:catriona.grove@dentons.com)



**Hayley Miller**

Partner

D +64 9 915 3366

M +64 21 870 477

[hayley.miller@dentons.com](mailto:hayley.miller@dentons.com)



**Ashleigh Ooi**

Senior Associate

D +64 4 915 0825

M +64 21 046 1896

[ashleigh.ooi@dentons.com](mailto:ashleigh.ooi@dentons.com)



**Mark Schroder**

Senior Associate

D +64 9 375 1120

M +64 21 300 190

[mark.schroder@dentons.com](mailto:mark.schroder@dentons.com)



**Güneş Haksever**

Senior Associate

D +64 9 375 1161

M +64 21 080 61422

[gunes.haksever@dentons.com](mailto:gunes.haksever@dentons.com)



**Natalie Fraser-Jones**

Associate

D +64 4 915 1892

M +64 27 414 3042

[natalie.fraser-jones@dentons.com](mailto:natalie.fraser-jones@dentons.com)



**Connor Seddon**

Associate

D +64 4 915 0841

[connor.seddon@dentons.com](mailto:connor.seddon@dentons.com)



# Why is it important to get outsourcing right?

## Licence conditions require it

Many businesses operating in the financial services industry operate under a licence issued by the Financial Markets Authority. These include:

- Managers of a registered (investment) scheme.
- Providers of discretionary investment management services.
- Financial advice providers.
- Financial institutions (the definition of which captures most registered banks, licensed insurers and licensed non-bank deposit takers in New Zealand).

The conditions applicable to licences to operate the above businesses differ from licence-to-lifecycle (for the time being at least), but they all have a common condition relating to outsourcing.

In short, the condition requires a licensee to be satisfied regarding the capability of its outsource providers where the licensee outsources to a vendor “a process or system necessary to meeting the licensee’s obligations as they relate to the licensee’s regulated services”. In such cases, the licensee must be satisfied that the vendor is capable of performing the service to the standard required to enable the licensee to meet its licensee obligations.

In other words, the licensee must ensure that it outsources in a way that ensures that it will still be able to meet all of its obligations, and is able to provide evidence of its compliance, despite the use of a third party vendor.



## **Even if licence conditions don't require it, it's good practice**

Not all “outsourcings” are captured within the scope of licensee conditions. Any appointment of a vendor to provide you with services, process or systems – even where the processes or systems aren't necessary to meeting your obligations as they relate to your regulated services – should be managed using the same care and diligence as you would use if the outsourcing fell within the scope of your licence conditions.

This is especially important where:

- Your vendor will have access to, or hold on your behalf, personal information (including financial information) and other confidential or business-critical information that you rely on to operate.
- Your vendor is providing you a platform or system that underpins your service delivery, which if you were to lose access to it, would result in operational disruption.
- You will be relying on your vendor to hold any records or documents to which you need access to verify your compliance with other legal obligations (for example, if you are a reporting entity under the Anti-Money Laundering and Countering the Financing of Terrorism Act 2009).

In this paper, where we refer to an “outsourcing”, we mean any outsourcing: not just one that falls within the scope of your licence conditions.

## **Your reputation deserves it**

A hard-fought reputation can be easily lost through poor outsourcing practices. Your clients entrust you with their information and their funds or insurance needs on the basis of your reputation.

If information is compromised or funds put at risk through a failing in your vendors, you will need to offer your client a compelling narrative as to why they should continue to trust you.

If you aren't able to control the narrative because you don't have a handle on your outsourcing arrangements, and you don't have sufficient controls or levers to use on your vendors, then you will likely lose that trust and suffer damage to your reputation.

## **Getting it right saves time and money and reduces risk**

All too often, a business becomes overly dependent on a vendor by not approaching an outsourcing strategically. This results in the business finding itself in a position of weakness when it comes to negotiating the terms on which the vendor is engaged. The vendor can become so essential to the business that they end up being immovable, which pushes costs up as the vendor negotiates from a position of strength.

The dominance of an incumbent vendor can also increase continuity of service risk. The more that you are reliant on a vendor to deliver a process or system, the harder it is for you to replace that vendor. If that vendor decides or is forced to withdraw from the market (for example, through insolvency) or decides to play hardball on terms or fees, then this can have significant operational implications for your business.



# How do you go about getting outsourcing right?

## Making the decision to outsource

Before making the decision to outsource, you should consider the following factors:

- Whether the outsourcing falls within the scope of your licence conditions and if it does, whether there are any regulatory criteria the outsource provider will need to satisfy.
- What, if any, other legal obligations you need comply with in connection with the outsourcing, and whether your governing documents permit the proposed outsourcing.
- Who within your business will have the skills and experience necessary to maintain oversight of the outsourced relationship. You will need to ensure that you can monitor the performance of the vendor and properly assess that performance against what is considered to be best practice. If you don't have, or won't have, the necessary skills and experience in-house, you need to think about what independent verification you might need of the vendor's performance.
- What the key risks are which will arise from the outsourcing relationship: be they legal, operational, or commercial. Consider undertaking a comprehensive risk assessment to identify the risks and how they can be managed.
- What ability will you have to access records kept of the outsourced activity, and whether those rights of access will be sufficient to support your regulatory compliance obligations, especially if you are faced with a request for information from a regulator. Many businesses operating in the financial services industry are required to have continual access to key documents and records, and must be able to provide them to the regulator on request.



## Undertaking due diligence

While a robust contract is crucial for any business looking to manage the risk of outsourcing, it is no substitute for in-depth due diligence. You need to be confident that your vendor has the technical and operational measures necessary to be able to perform the obligations it is agreeing to on paper – otherwise, you may find that the contract is not worth the paper it is written on. A contract alone may not assist you in defending any investigation by the Financial Markets Authority (or any other regulator), who will be looking for evidence that you have conducted all aspects of the outsourcing to a high standard.

A good way to extract the information you need from your vendors is to approach the market with a request for proposals, or “RFP”. This enables you to test the market and seek the information you need to help you make your decision to appoint a vendor against the background of competitive tension. It incentivises vendors to put their “best foot forward” and allows you to pick between vendors based on the adequacy of the information they provide to you.

No matter the approach, you should get the technical experts at your organisation involved in the process. They will likely have a view on whether the proposed vendor has the capability to provide the solution, and may be involved with monitoring the selected vendor’s performance down the track.

Other things to consider when choosing a vendor include:

- The vendor’s previous experience – both generally and within your industry.
- Public reports, information, reviews and references.
- Any reported complaints or incidents (including cyber incidents).
- Any relevant certifications.



## Negotiating the contract

When managing the risk of outsourcing to any vendor, you need to ensure that the contract you agree to with the vendor aligns with the promises and undertakings made by the vendor about the quality of the service provided and the controls to be implemented.

If things go wrong you need to be able to turn to reliable, enforceable contractual rights and obligations that enable you to exert some contractual leverage over a vendor, and hold them to account.

Your contract should include provisions such as:

- Warranties regarding the standard of services.
- Service levels and remedies for failures to meet these.
- Audit rights, record-keeping obligations, and the right to frequent reporting – all of which need to anticipate your own regulatory obligations.
- Obligations to protect your confidential information (including the personal information of your customers).
- Regular performance reviews.
- The ability to terminate for poor performance.

However, contractual provisions should never be considered in a vacuum. You should also consider how your exercise of rights will hold a vendor to account in practice. For example, if you have a right to terminate for poor performance or insolvency, you will need to ensure that you can exercise that right with minimal disruption to your continuity of service. This may require you to have a “Plan B” in place to switch vendors on short notice: not something that your contract with the vendor will necessarily cover, and something that can often be overlooked when businesses focus too closely on the contract itself. Failing to adequately cover off this aspect may leave you in breach of your business continuity licence condition.

Some vendors may insist on using their own terms and conditions. This can work, but you need to select a vendor who knows your industry well and is happy to assume a shared level of risk. Pay close attention to the legal terms and conditions on which a vendor is offering their services as part of your due diligence, and make sure that those terms and conditions hit the mark when it comes to the vendor’s assumption of responsibility – especially in the context where the vendor should be familiar with the regulatory framework under which you, their customer, need to operate.



## Monitoring performance

The vendor's appointment doesn't end with signing the contract. You need to be able to monitor the quality of services being provided throughout the engagement. This is important for not only making sure you are getting the right value out of the engagement, but also so that you can have confidence that you are meeting your regulatory obligations.

Your contract with the vendor should establish a sensible framework for governance and reporting.

To make the most out of that framework, you'll need to retain expertise within your organisation to help you monitor your vendor's performance. You'll need to ensure that you have the capability to:

- Review reporting.
- Enforce service levels.
- Benchmark performance.
- Hold the vendor to account and best practice.
- Align the vendor's performance to your regulatory framework.

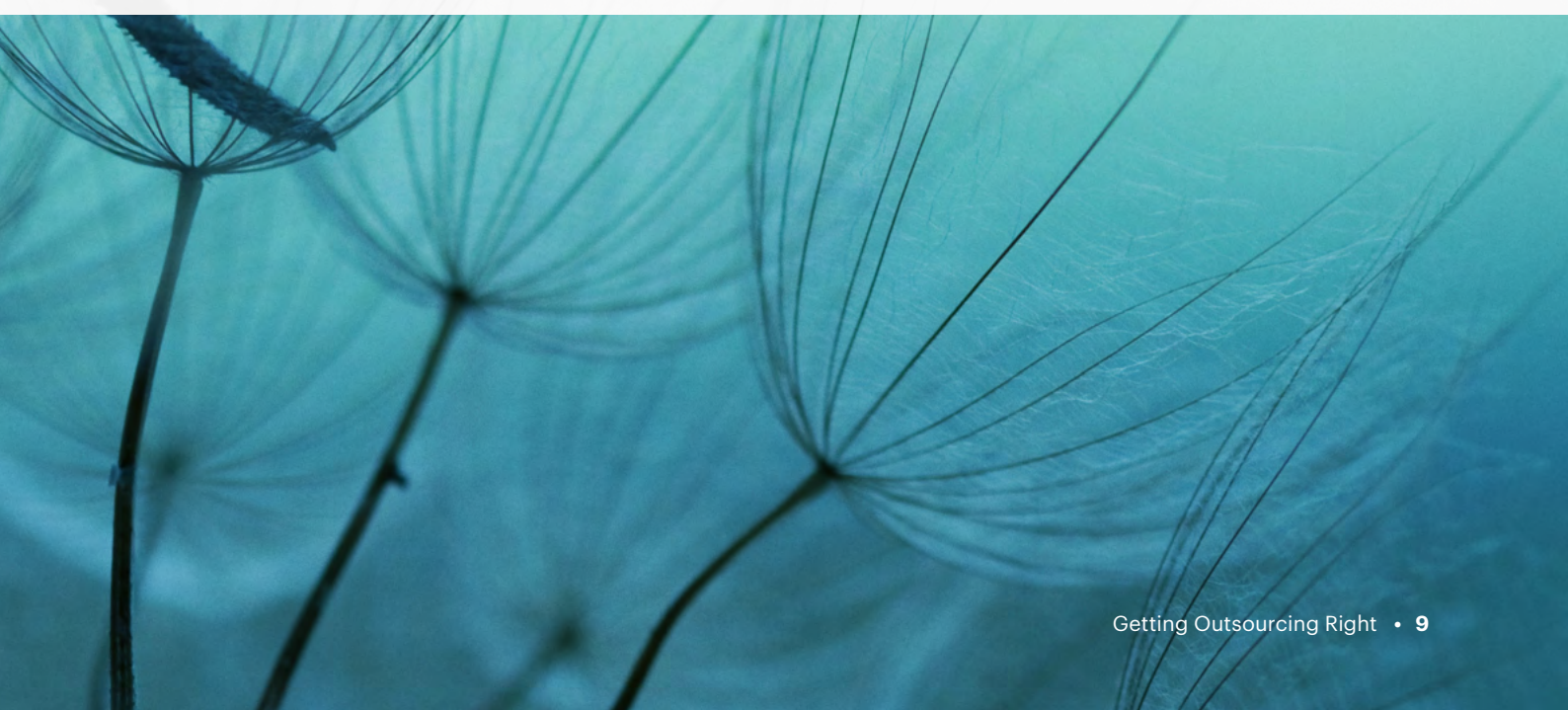
## Planning for transition

Managing vendor risk doesn't stop with appointment of a vendor: far from it. As soon as (or even before) you have onboarded a new vendor, you need to start thinking about when and how you might replace them, so that you can ensure continuity of service and enable a smooth transition to a new vendor.

Ideally, you will appoint a vendor based on how open they are to assisting you with a (hypothetical) future transition to a new vendor. Your vendor should understand how crucial continuity of service is to you and your customers, and should be happy to have the discussion with you up front about how transition might occur.

The earlier you have this discussion, the better: ideally, you'll have the discussion with a vendor before you appoint them (and your contract with the vendor will deal in some detail with how transition will occur). The vendor's willingness to engage in open discussions about transition should be one of the factors you take into account when deciding whether to appoint them.

There is no better time to agree on the exit transition arrangements than when relationships are in great shape and the vendor is looking to secure its appointment; rather than trying to agree a seamless transition at the time you are looking to exit the arrangement when the relationship has soured.





## ABOUT DENTONS

Redefining possibilities. Together, everywhere. For more information visit [dentons.co.nz](https://www.dentons.co.nz)

© 2025 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Please see [dentons.com](https://www.dentons.com) for Legal Notices.