



Financial Services Authority

# The FSA's role under the Payment Services Regulations 2009

Our approach

January 2012



# Preface



The PSD Approach Document is aimed at helping firms navigate through the Payment Services Regulations (PSRs) and our relevant rules and guidance, and to understand our general approach in this area. It is aimed at firms which are, or are seeking to become, authorised or registered as payment institutions, and also credit institutions and e-money issuers, who must also comply with parts of the PSRs. For ease of reference we use the word ‘firms’ throughout the document to refer to all categories of payment service providers.

Since the first version was issued in April 2009, we have kept the document under review and have updated it from time to time to clarify our interpretation of the PSRs provisions, and answer questions that have arisen in our interaction with firms.

We have updated this version of the document to reflect the end of the transitional provisions, including the provision which allowed payment service providers to agree with their customers that funds would take up to three business days longer to be credited than required under the PSRs (which ended on 31 December 2011). We have also included information on how to make a complaint about the FSA (paragraph 11.33).

We are pleased to receive comments and queries on our approach.

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# 1 Introduction

- 1.1 This document describes our approach to implementing the Payment Services Regulations 2009 (the PSRs) and a small number of payment services-related rules in our Handbook of Rules and Guidance (the Handbook). It gives readers links to all the information they need to have a comprehensive picture of the regime. It also provides guidance to give a practical understanding of the requirements, our regulatory approach and how businesses will experience regulatory supervision.

## **The payment services regulatory regime**

- 1.2 The regime originates from a European Community law; the Payment Services Directive (PSD). The aim of the PSD is to foster a single market in retail payment services across the European Economic Area (EEA) by:
- removing barriers to entry and ensuring fair market access to enhance competition in payment services; and
  - establishing the same set of rules across the EEA on information requirements and other rights and obligations that will be applicable to many payment services transactions in the EEA.
- 1.3 The full text of the PSD can be found on the European Commission's website.
- 1.4 The PSRs and parts of the Handbook implement the PSD in the UK. In general, these require payment service providers to be either authorised or registered by us and to comply with certain rules about providing payment services, including specific requirements concerning payment transactions.
- 1.5 The PSRs do the following:
- Introduce an authorisation and prudential regime for payment service providers that are not banks, building societies or e-money issuers (and so already authorised or certificated by us). Such businesses are known as authorised payment institutions (authorised PIs). Authorised PIs can passport their services to other EEA States – in other words, because of their UK authorisation, they have the right to establish or provide services across the EEA. Further

information can be found in *Chapters 3 – Authorisation and registration, 6 – Passporting and 9 – Capital resources and requirements*.

- Allow payment service providers operating beneath a certain average monthly turnover threshold to be registered instead of obtaining authorisation (regulation 13). Such small payment institutions (small PIs) are unable to passport. See *Chapter 3 – Authorisation and registration* for further information.
- Exempt certain payment service providers (for example, banks, electronic money institutions (authorised EMIs) and small EMIs) from authorisation/registration requirements.
- Set out conduct of business requirements. In this context, this means requirements for information to be provided to payment service users, and specific rules on the respective rights and obligations of payment service users and providers. These requirements are applicable to all payment service providers with effect from 1 November 2009, whether they are payment institutions, banks, building societies, e-money issuers or any other category. See *Chapter 8 – Conduct of business requirements* for further information. In addition, banks and building societies need to comply with the FSA's Banking: Conduct of Business Sourcebook.
- Stipulate that rules governing access to payment systems should be non-discriminatory, subject to certain exemptions. This is aimed at supporting competition among payment service providers. See *Chapter 16 – Access to payment systems* for further information.

#### 1.6 The Handbook:

- sets out complaints handling procedures that PIs must have in place;
- establishes the right of certain customers to complain to the Financial Ombudsman Service (FOS);
- sets out our policy and procedures for taking decisions relating to enforcement action and when setting penalties; and
- contains rules on application, our ongoing fees, and the FOS levies.

### **Implementation dates and transitional provisions**

- 1.7 The PSRs came into force for most purposes on 1 November 2009. On the same date, a complementary conduct of business regime for retail deposit takers (i.e. banks and building societies) also came into effect. This includes the full application of the FSA's Principles for Businesses and conduct of business rules set out in a Banking: Conduct of Business sourcebook (BCOBS).
- 1.8 The PSRs contain transitional provisions for authorising and registering requirements, which payment service providers who were already providing payment services immediately before 25 December 2007 could take advantage of. All transitional provisions have now ended. Any firm that requires authorisation or registration as a



PI and is still operating without having obtained authorisation or registration is committing a criminal offence under regulation 110 of the PSRs, for which the officers of the company may be personally liable.

## Status of this document

- 1.9 This guidance is given under regulation 93 of the PSRs. It is a ‘live’ document, that is, it will be updated as we progress in implementing and regulating payment services and as we receive feedback from firms, trade associations and other stakeholders on additional issues they would like to see covered, or guidance that needs to be clarified. Where we propose major changes to the document, we will normally consult with our Stakeholder Liaison Group (see Annex 4 for the list of members of this group). Anyone who wishes to receive updates should register on our website.
- 1.10 We are taking this approach because this is a relatively new area of regulation and we expect that, as the regime progresses, issues will emerge that we have not anticipated or that require additional guidance. We will update this guidance to ensure it continues to be useful and let readers know what has changed.
- 1.11 This document is supporting material to the legal requirements, which are contained in the documents described below. It is essential to refer to the PSRs or relevant parts of the Handbook for a full understanding of the obligations imposed by the regime.
- 1.12 Whatever guidance is used for, it is not binding on those to whom the PSRs and rules apply, nor does it have ‘evidential’ effect. It need not be followed in order to achieve compliance with the relevant regulation or other requirement. So, a payment service provider cannot incur disciplinary liability merely because it has not followed guidance. Nor is there any presumption that departing from guidance is indicative of a breach of the relevant regulation.
- 1.13 Guidance is generally designed to throw light on a particular aspect of regulatory requirements, not to be an exhaustive description of firms’ obligations.
- 1.14 If a person acts in accordance with general guidance in the circumstances contemplated by that guidance, we will proceed as if that person has complied with the aspects of the requirement to which the guidance relates. For the reliance that can be placed on other guidance, see section 9.4 of the Supervision manual in the Handbook (Reliance on individual guidance).
- 1.15 DEPP 6.2.1G(4) in the Handbook, sets out how we take into consideration guidance and other published materials when deciding to take enforcement action. Firms should also refer to Chapter 2 of the FSA’s Enforcement Guide for further information about the status of Handbook guidance and supporting materials.
- 1.16 Rights conferred on third parties (such as a payment service provider’s clients) cannot be affected by our guidance. Guidance on the PSRs or other requirements represents our view, and does not bind the courts, for example in relation to an

action for damages brought by a private person for breach of a regulation. A person may need to seek his own legal advice.

## Key documents

1.17 Links are given in the document to the PSRs and relevant sections of the Handbook. Payment service providers who are not authorised or certificated under the Financial Services and Markets Act 2000 (FSMA) will not need to refer to any other parts of the Handbook for the purpose of payment services regulation. Authorised and small EMIs will also need to be aware of their obligations under the Electronic Money Regulations 2011; guidance on these regulations is available in our [E-money Approach Document](#).

1.18 The requirements for payment services regulation can be found in the following documents, which are all accessible on our website.

- [The Payment Services Regulations 2009](#) as amended by the [Payment Services \(Amendment\) Regulations 2009](#)

These set out the vast majority of rules for the new regime.

- The relevant parts of the FSA Handbook

Our Handbook is an extensive document that sets out the rules and guidance for financial services regulation. A [Reader's Guide](#) to the Handbook is available on the Handbook website together with a [User Guide](#) for the online version. Most of the Handbook does not apply to payment institutions. However, there are a few areas that contain relevant provisions. These are:

- [Glossary](#)

This provides definitions of terms used elsewhere in the Handbook. Clicking on an italicised term in the Handbook will open up the glossary definition.

- General Provisions (GEN) – [GEN 2](#) and [GEN 5](#)

GEN 2 contains provisions on interpreting the Handbook. GEN 5 includes the licence that allows authorised PIs to use the FSA logo in certain circumstances.

- Banking: Conduct of Business sourcebook (BCOBS)

From 1 November 2009, banks and building societies are also required to comply with the conduct of business rules for retail banking in a new module of the Handbook. The BCOBS Policy Statement ([PS09/6](#)) also contains further information about the interaction between BCOBS and the PSRs.

- [Fees manual](#) (FEES)

This contains fees provisions for funding the FSA and the FOS relevant to payment service providers.

- Supervision manual (SUP)

SUP 9 describes how people can seek individual guidance on regulatory requirements and the reliance they can place on guidance received.

SUP 5.3 and SUP 5.4 describe our policy on the use of skilled persons to carry out reports (see *Chapter 12 – Supervision* for further information).

- Decision procedure and penalties manual (DEPP)

This contains the procedures we must follow for taking decisions in relation to enforcement action and setting penalties.

- Dispute resolution: complaints sourcebook (DISP)

This contains the obligations on PIs for their own complaint handling procedures. It also sets out the rules concerning customers' rights to complain to the FOS. Banks, building societies and authorised e-money issuers already have to comply with our complaints handling requirements.

1.19 The Handbook website also contains the following regulatory guides that are relevant to payment service providers:

- Enforcement guide (EG)

This describes our approach to exercising the main enforcement powers given to us under FSMA and the PSRs.

- Perimeter guidance manual (PERG) – PERG 15

This contains guidance aimed at helping businesses consider whether they need to be separately authorised or registered for the purposes of providing payment services in the UK.

- Unfair contract terms regulatory guide (UNFCOG)

This guide explains our powers under the Unfair Terms in Consumer Contracts Regulations 1999 and our approach to exercising them.

1.20 There is also guidance and information issued by us, the OFT, the FOS and HMRC likely to be relevant to readers of this document. These are referenced in the appropriate section of the document and gathered together in *Annex 1 – Useful links*.

## **Contacting us**

1.21 We hope this document will answer all your questions; however, if you have any questions or comments regarding this document or any aspect of the PSRs, please refer to the contacts page on our website.

1.22 Annex 2 contains a list of other useful contact details.

# 2 Scope

- 2.1 This section sets out in summary who and what is covered by the Payment Services Regulations 2009 and where to find further information on scope issues.

## **Who is covered?**

- 2.2 The PSRs apply, with certain exceptions, to everyone who provides payment services, as described in Part 1, Schedule 1 to the PSRs, by way of business in the UK.
- 2.3 Chapter 15 of our Perimeter Guidance (PERG 15) gives guidance for firms who are unsure whether their activities fall within the scope of the PSRs.
- 2.4 For a fuller understanding of the scope of the PSRs, the guidance should be read in conjunction with Schedule 1 of the PSRs and the definitions in regulation 2.

## **Payment institutions**

- 2.5 The PSRs create a new class of firms authorised or registered to provide payment services called payment institutions (PIs).
- 2.6 We expect the types of firms to require authorisation or registration for their payment services activities to include, amongst others:
- money remitters;
  - certain mobile network operators (offering payment services);
  - non-bank credit card issuers; and
  - merchant acquiring firms.
- 2.7 Not all providers of payment services will require authorisation or registration under the PSRs (see ‘Other payment service providers’ below).
- 2.8 A payment service provider who acquires authorisation under the PSRs is termed an ‘authorised payment institution’ and acquires the right to ‘passport’ that authorisation to other EEA member states (see *Chapter 6 – Passporting*) Payment service providers who meet the criteria for registration under regulation 13, and

choose to apply for registration rather than authorisation, are referred to as small PIs. *Chapter 3 – Authorisation and registration* gives details of the procedures for authorisation and registration.

- 2.9 All PIs must comply with the conduct of business requirements of the PSRs, described in *Chapter 8 – Conduct of business*.

### **Agents**

- 2.10 PIs may provide payment services through agents, subject to prior registration of the agent's details with us. *Chapter 5 – Appointment of agents* gives details of the process to be followed.
- 2.11 It is the PI's responsibility to ensure the agent complies with the conduct of business requirements of the PSRs and that it has the systems and controls in place to effectively oversee their activities.

### **Other payment service providers**

- 2.12 The following can continue to provide payment services without the need for further authorisation or registration under the PSRs:

banks;

building societies;

EEA authorised PIs;

authorised e-money institutions;

small e-money institutions;

Post Office Limited; and

certain public bodies.

- 2.13 These entities must, however, comply with the conduct of business requirements of the PSRs described in *Chapter 8 – Conduct of business*. In the case of credit institutions, the relevant application or certification procedures remain those in FSMA. For EMIs the relevant application procedures will be those in the EMRs, which also contain conduct of business provisions in relation to issuance and redemption of e-money.

### **Exemptions**

- 2.14 The following bodies are specifically exempt from the scope of the PSRs:

credit unions;

municipal banks; and

The National Savings Bank.

- 2.15 Municipal banks and the National Savings Bank will also be exempt from BCOBS. Municipal banks must nevertheless notify us if they are providing, or propose to provide, payment services. Credit unions will be subject to BCOBS.

### The register

- 2.16 All authorised and small PIs and their agents are included on the public register on our website with details of the payment services that they are entitled to provide.
- 2.17 Firms who already appear on our FSMA Register and our E-Money register and who do not require separate authorisation or registration under the PSRs to provide payment services have had their existing register information amended to show they can provide payment services.
- 2.18 The payment services covered by the PSRs (Part 1 of Schedule 1) are set out in the table below, along with some examples of the sort of payment services expected to fall within the scope of each. The table is high-level and indicative in nature. If firms are in any doubt as to whether their activities constitute payment services, they should refer to Chapter 15 of our Perimeter Guidance manual. In addition to questions and answers providing further information on payment services, the guidance also seeks to explain a number of exclusions in the PSRs.

Payment service	Examples
Services enabling cash to be placed on a payment account and all of the operations required for operating a payment account.	Payments of cash into a payment account over the counter and through an ATM.
Services enabling cash withdrawals from a payment account and all of the operations required for operating a payment account.	Withdrawals of cash from payment accounts, for example through an ATM or over the counter.
Execution of the following types of payment transaction: <ul style="list-style-type: none"> <li>• direct debits, including one-off direct debits;</li> <li>• payment transactions executed through a payment card or a similar device; and</li> <li>• credit transfers, including standing orders.</li> </ul>	Transfers of funds with the user's payment service provider or with another payment service provider. Direct debits (including one-off direct debits). N.B. Acting as a direct debit originator would not, of itself, constitute the provision of a payment service. Transferring e-money. Credit transfers, such as standing orders, BACS or CHAPS payments.
Execution of the following types of payment transaction where the funds are covered by a credit line for a payment service user: <ul style="list-style-type: none"> <li>• direct debits, including one-off direct debits;</li> <li>• payment transactions through a payment card or a similar device; and</li> <li>• credit transfers, including standing orders.</li> </ul>	Direct debits using overdraft facilities. Card payments. Credit transfers using overdraft facilities.

Issuing payment instruments or acquiring payment transactions.	Card issuing (other than mere technical service providers who do not come into possession of funds being transferred) and card merchant acquiring services (rather than merchants themselves).
Money remittance.	Money transfer/remittances that do not involve payment accounts.
Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.	Mobile or fixed phone payments, where the payment is made from the phone itself rather than the phone being used as an authentication tool to send a payment order to another payment service provider. Payments made from handheld devices (for example, BlackBerry).

## Scope of the PSRs: jurisdiction and currency

The table below shows the jurisdictional scope of different parts of the PSRs and their scope in terms of the currency of the payment transaction. Note that the ‘corporate opt-out’ may apply to certain of the conduct of business provisions – see Part 1 of *Chapter 8 – Conduct of business* for further details.

Payment services – jurisdictional and currency scope		
PSRs	Jurisdiction	Currency
Authorisation/Registration (including meeting capital and safeguarding requirements).	Firms providing payment services, by way of business in the UK including one leg transactions, unless the firm is in the list of ‘other payment service providers’ described above or is an agent. One leg transactions are those where either the payer’s or the payee’s payment service provider (rather than the payer or payee) is located outside the EEA.	All currencies.
Complaints that can be considered by the FOS (see Chapter 11 for full details of eligibility).	All payment services provided from a UK establishment, including the UK end of one leg transactions.	All currencies.
Conduct of business requirements (except regulations 70-73).	Payment services provided from a UK establishment where both the payer and payee’s payment services provider are in the EEA.	Payment services are carried out either in euro or the currency of a member state outside the euro area.

<p>Regulations 70-72 (execution time and value date) and refer to article 68 of the PSD.</p>	<p>Payment services provided from a UK establishment, where both the payer and payee's payment services provider are in the EEA.</p>	<p>Payment transactions in:</p> <ul style="list-style-type: none"> <li>• euro; or</li> <li>• in sterling within the UK (i.e. the payment service providers of both the payer and the payee are located within the UK); or</li> <li>• where there is only one currency conversion between the euro and sterling, provided that: <ul style="list-style-type: none"> <li>o the conversion is carried out in the UK; and</li> <li>o where there is a cross-border payment, the cross-border transfer takes place in euro.</li> </ul> </li> </ul> <p>In respect of other transactions, with the exception of regulation 70(4), the parties can agree that regulations 70 to 72 do not apply.</p>
<p>Regulation 73 (value date and availability of funds).</p>	<p>All payment services provided from a UK establishment within the EEA, including the UK end of one leg transactions.</p>	<p>Payment services are carried out either in euro or the currency of a member state outside the euro area.</p>



## Using this document

The table below indicates the chapters that are most relevant according to categories of payment service provider.

Category of payment service provider	Authorised payment institutions	Registered payment institutions	EEA authorised payment institutions	Other payment service providers (including banks, building societies, authorised e-money issuers and small e-money issuers)
Relevant chapters of Approach Document				
Chapter 1 – Introduction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chapter 2 – Scope	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chapter 3 – Authorisation and registration	<input type="checkbox"/>	<input type="checkbox"/>		
Chapter 4 – Changes in circumstances of authorisation and registration	<input type="checkbox"/>	<input type="checkbox"/>		
Chapter 5 – Appointment of agents	<input type="checkbox"/>	<input type="checkbox"/>		
Chapter 6 – Passporting	<input type="checkbox"/>		<input type="checkbox"/>	
Chapter 7 – Use of the FSA Logo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chapter 8 – Conduct of Business Requirements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chapter 9 – Capital resources and requirements	<input type="checkbox"/>			
Chapter 10 – Safeguarding	<input type="checkbox"/>	<input type="checkbox"/>		
Chapter 11 – Complaints handling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chapter 12 – Supervision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chapter 13 – Reporting requirements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Chapter 14 – Enforcement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chapter 15 – Fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chapter 16 – Access to payment systems	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

# 3 Authorisation and registration

3.1 This chapter sets out how we will apply the PSRs dealing with:

- authorisation of payment institutions (Part I); and
- registration of payment institutions (Part II).

Part III describes the decision making process we will use for both types of application.

## Introduction

- 3.2 As outlined in Chapter 2, a UK firm that provides payment services (as defined in the PSRs) by way of business in the UK needs to apply to us to become either an authorised payment institution (authorised PI) or a small payment institution (small PI); unless it is already another type of payment service provider or is exempt.
- 3.3 Being a small PI is an option available to businesses whose average turnover in payment transactions does not exceed €3 million per month. The registration process is cheaper and simpler than authorisation and has no ongoing capital requirements, but there are no passporting rights for small PIs. The conduct of business requirements still apply, as does access for small PIs' eligible customers to the FOS.
- 3.4 Agents can be appointed by a PI (the principal) to provide payment services on the principal's behalf. The principal accepts responsibility for the actions of the agent and must make an application on the agent's behalf for inclusion on the FSA register. More information on agents is contained in *Chapter 5 – Appointment of agents*.
- 3.5 Authorised and small PIs and their agents and EEA branches are included on the public FSA register on our website:  
[www.fsa.gov.uk/register/psdFirmSearchForm.do](http://www.fsa.gov.uk/register/psdFirmSearchForm.do)

## Requests for further information (regulations 5(4) and 12(4))

- 3.6 At any time after receiving an application for authorisation or registration (or a variation of either of these) and before determining it, we can require the applicant to provide such further information as we reasonably consider necessary to enable

us to determine the application. Where an application is incomplete, firms will need to provide information requested promptly to avoid delay to consideration of their application (see ‘Timing’ in Part III of this chapter).

### **Duty to advise of material changes in an application (regulation 16)**

- 3.7 We attach considerable importance to the completeness and accuracy of the information provided to us. If there is any material change, deficiency or inaccuracy in the information provided in connection with an application before we have issued our decision on it, the applicant must notify us. This applies equally if it becomes apparent to the applicant that a deficiency or inaccuracy in the application or a material change is likely to arise. The requirements also apply to material changes to supplementary information provided due to an earlier material change. If an applicant fails to provide accurate and complete information it will take longer to assess the application. In some cases, it could lead to the application being rejected.
- 3.8 The notification must include details of the change, the complete information or a correction of the inaccuracy (as the case may be) and must be made without undue delay. In the case of an anticipated material change that has not yet taken place, the applicant must provide details of the likely change as soon as they become aware of it.
- 3.9 Applicants for authorisation or variation of an authorisation should notify the case officer assigned to the application (the case officer will be in contact with an applicant soon after receipt of the application). Applicants for registration as a small PI or for variation of registration should notify the Non-FSMA Team using the following email address: [psd-spi@fsa.gov.uk](mailto:psd-spi@fsa.gov.uk).

## **Part I: Becoming an authorised PI**

- 3.10 Anyone wishing to become an authorised PI needs to complete an application form and submit it to us along with the required information and the appropriate application fee. We will assess the information provided in the application against the criteria contained in the PSRs and make a decision to approve or refuse the application. The information requirements can be found in regulation 5 of and Schedule 2 to the PSRs. The conditions for authorisation are in regulation 6.

### **Making an application for authorisation**

- 3.11 Application forms are available on the PSD section of our website: [www.fsa.gov.uk/Pages/Doing/Regulated/banking/psd/applying/index.shtml](http://www.fsa.gov.uk/Pages/Doing/Regulated/banking/psd/applying/index.shtml)
- 3.12 We will acknowledge that we have received your application within seven days and the case officer assigned to deal with it will be in contact soon after. If necessary, they will ask you for more information in support of your application.
- 3.13 The application fee to become an authorised PI is the greater of the following:
  - £1,500 for firms performing only the payment services (f) and/or (g) in Schedule 1, Part 1 of the PSRs;

- £5,000 for firms performing any of the payment services (a) to (e) in Schedule 1, Part 1 of the PSRs;
- £12,500 for a firm with more than 2,500 agents; or
- £25,000 for a firm with more than 5,000 agents.

No work will be done on processing the application until the full fee is received. The fee is non-refundable and must be paid by cheque.

- 3.14 The application must be signed by the person(s) responsible for making the application on behalf of the applicant firm. The appropriate person(s) depends on the applicant firm's type as follows:

Type of applicant	Appropriate signatory
Company with one director	The director
Company with more than one director	Two directors
Limited liability partnership	Two members
Limited partnership	The general partner or partners

### Assessment of the application

- 3.15 Authorisation will not be granted unless we are satisfied in relation to the conditions specified in regulation 6.
- 3.16 This section explains the information that you must supply with the application and the conditions that must be satisfied. Unless stated otherwise, the requirements come from Schedule 2 to the PSRs. While we do not prescribe the format of information you give us, we will need to have enough information to be satisfied that the relevant conditions are met. This does not mean that you need to enclose full copies of all the relevant procedures and manuals with the applications; a summary of what is covered by them may be sufficient, as long as the manuals and procedures themselves are available if we wish to investigate further. It should be noted that supplying the information requested on the application form will not necessarily be enough for the application to be 'complete'. It is often necessary for us to ask additional questions to clarify or expand on the answers already given, and for additional documentation based on the answers given in the application. Only when these have been received will the application be deemed complete.

#### *Programme of operations (Paragraph 1 of Schedule 2)*

- 3.17 We will ask applicants to identify the main activity or activities of the business (which may or may not be payment services) and select the payment services that they are intending to carry on. Some examples of the sorts of activities expected to fall within the scope of each are described in *Chapter 2 – Scope*, with further guidance in Chapter 15 of our Perimeter Guidance Manual (PERG).
- 3.18 Our assessment of the application will consider if the systems and controls described in the other information supplied are adequate and appropriate to the payment services activities that the applicant intends to carry on.

### *Business plan (paragraph 2 of Schedule 2)*

- 3.19 The business plan needs to explain how the applicant intends to carry out its business. It should provide enough detail to show that the proposal has been carefully thought out and that the adequacy of financial and non-financial resources has been considered.
- 3.20 The plan must include a forecast budget for the first three financial years. The budget needs to demonstrate that the applicant is able to employ appropriate and proportionate systems, resources and procedures to operate soundly, and that it will be able to continue to meet the ‘own funds’ requirements (see under ‘Initial capital’ below).
- 3.21 The business plan should also include, but not be limited to, the following:
- background to the application;
  - location of the business, including any intention to ‘passport’ (see *Chapter 6 – Passporting*);
  - sources of funding;
  - target markets; and
  - a marketing plan.

### *Initial capital (regulation 6(3) and paragraph 3 of Schedule 2)*

- 3.22 By the time of authorisation, the applicant must provide evidence that they hold initial capital at the level required by Part 1 of Schedule 3 to the PSRs. The level of initial capital required depends on the payment services provided, and is the greater of the following:

<b>Payment services (see Schedule 1 to the PSRs)</b>	<b>Initial capital required</b>
Money remittance.	€20,000
Execution of payment transactions where payer’s consent for execution is given via a telecommunication, digital or IT device and payment is made to the telecommunication, IT system or network operator acting only as an intermediary between the payment service user and the supplier of the goods or services.	€50,000
Payment institutions providing other services, that is those covered in Schedule 1 Part 1(1)(a) to (1)(e) of the PSRs.	€125,000

- 3.23 The evidence that should be provided will depend on the type of firm and its source of funding. For example, if an applicant was a limited company and using paid-up share capital, we would expect to see a copy of the SH01 form submitted to Companies House and a bank statement, in the business name, showing the monies being paid in. If an applicant has already been trading and has sufficient reserves to meet the initial capital requirement, then a copy of the last year-end accounts may be sufficient (or interim accounts if appropriate). Businesses may wish to capitalise nearer to the time of authorisation, so this evidence can be provided at a later date but will be required before authorisation is granted. We will not consider an

application to be incomplete merely because the applicant indicates that initial capital will be provided before authorisation.

- 3.24 As well as the requirements for initial capital, the PSRs require that authorised PIs maintain adequate own funds on an ongoing basis. At the time of authorisation we will also assess the financial information supplied in the business plan to see if it shows that own funds are likely to be maintained on an ongoing basis. Before authorising a PI, we expect a firm to provide evidence it has the systems, resources and procedures to be able to maintain its own funds to meet the maximum ongoing capital requirement projected for its first year of operation. More detailed information is provided in *Chapter 9 – Capital resources and requirements*.

#### *Safeguarding measures (Paragraph 4 of Schedule 2)*

- 3.25 To help protect customers' funds while they are held by the payment institution, authorised PIs must implement one of two specified safeguarding measures. The two measures are:
- Segregate the funds received for payment services from others and, when held at the end of the business day on which they were received, place them in an account with an authorised credit institution or in assets held by an authorised custodian.
  - Arrange for the funds received for payment services to be covered by an insurance policy or by a comparable guarantee from a UK or EEA authorised insurer, bank or building society.
- 3.26 Applicants must describe the safeguarding measures they intend to use to satisfy regulation 19.
- 3.27 There is more information in *Chapter 10 – Safeguarding* on safeguarding measures, including guidance on what we would expect to see by way of organisational arrangements.

#### *Governance arrangements, internal controls, risk management and money laundering controls (regulation 6(5) and (7), paragraphs 5 and 6 of Schedule 2)*

- 3.28 Applicants are required to provide descriptions of the governance arrangements, internal control mechanisms, risk management procedures and money laundering controls they will use when providing payment services. We will assess if the arrangements, controls and procedures are appropriate, sound and adequate taking account of a number of factors, such as the:
- payment services being provided;
  - nature, scale and complexity of its business;
  - diversity of its operations, including geographical diversity;
  - volume and size of its transactions; and
  - degree of risk associated with each area of its operation.

### *Governance arrangements*

- 3.29 Governance arrangements are the procedures used in the decision-making and control of the business that provide its structure, direction and accountability.
- 3.30 The description of the governance arrangements must include a clear organisational structure with well-defined, transparent and consistent lines of responsibility (regulation 6(5) (a)). We would also expect to receive information on:
- decision-making procedures;
  - reporting lines;
  - internal reporting and communication processes;
  - the arrangements for regular monitoring of internal controls and procedures; and
  - measures that would be taken to address any deficiencies.

### *Risk management*

- 3.31 The description of the risk management procedures provided in the application should show how the business will effectively identify, manage, monitor and report any risks to which the applicant might be exposed (regulation 6(5)(b)). Such risks may include settlement risk (a settlement of a payment transaction does not take place as expected), operational risk (loss from inadequate or failed internal processes, people or systems), counterparty risk (that the other party to a transaction does not fulfil its obligations), financial risk (inadequate cash flow to meet financial obligations) and market risk (risk resulting from the behaviour of the entire market).
- 3.32 Depending on the nature and scale of the business and the payment services being undertaken, it may be appropriate for the payment institution to operate an independent risk management function. Where this is not appropriate, the PI should nevertheless be able to demonstrate that the risk management policies and procedures it has adopted are effective.

### *Internal controls*

- 3.33 Internal controls are the systems, procedures and policies used to safeguard the business from fraud and error, and to ensure accurate financial information (regulation 6(5)(c)). They should include sound administrative and accounting procedures that will enable the applicant to deliver to us, in a timely manner, financial reports that reflect a true and fair view of its financial position and that will enable the applicant to comply with the requirements of the PSRs in relation to its customers.
- 3.34 Where the applicant intends to employ agents, we would expect the internal controls to ensure the applicant meets its responsibilities for its agents.

### *Money laundering controls*

- 3.35 Applicants for authorisation are required to provide a description of the internal control mechanisms that they will establish in order to comply with the Money Laundering Regulations 2007 (MLR) and the EC wire transfer regulation<sup>1</sup> (paragraph 6 of Schedule 2 to the PSRs).
- 3.36 We understand that most authorised PIs are already required to comply with the MLR and so their existing controls to detect and prevent money laundering and terrorist financing should meet these requirements. However, under the PSRs we will still require a description of these controls to accompany the application for authorisation. The MLR require firms to establish appropriate and risk-sensitive policies and procedures related to:
- customer due diligence checks;
  - the ongoing monitoring of business relationships;
  - the reporting of suspicions, both within the firm and to the Serious Organised Crime Agency;
  - assessment of money laundering risks and the application of enhanced measures in higher risk situations;
  - record keeping;
  - monitoring compliance with procedures;
  - internal communication of policies and procedures; and
  - staff awareness and training on money laundering matters.
- 3.37 We would expect the description of the firm's internal controls to refer to these matters.

### *Structural organisation (Paragraph 7 of Schedule 2)*

- 3.38 We will require a description of the applicant's structural organisation, which is the plan for how the work of the business will be organised. We expect this to be in the form of an organisational chart. The information must also include, where applicable, a description of the intended use of agents and branches, its outsourcing arrangements (if any) and its participation in a national or international payment system.

### *Outsourcing (regulation 21)*

- 3.39 The PSRs make specific provisions in relation to the outsourcing to third parties of 'important' operational functions. These provisions are:
- the outsourcing is not undertaken in such a way as to impair:
    - the quality of internal control; or
    - our ability to monitor the authorised PI's compliance with the PSRs.

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<sup>1</sup> Regulation (EC) No 1781/2006/EC of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds.



- the outsourcing does not result in any delegation by the senior management of responsibility for complying with the PSRs;
- the relationship and obligations of the authorised PI towards its payment service users under the PSRs is not substantially altered;
- compliance with the conditions which the authorised PI must observe in order to be authorised and remain so is not adversely affected; and
- none of the other conditions of the authorised PI's authorisation requires removal or variation.

3.40 We will take these factors into consideration when assessing an authorisation application where the business intends to outsource important operational functions. See 'Outsourcing arrangements' in Part 2 of Chapter 4 for guidance on what constitutes an 'operational function'.

3.41 Regulation 21(2) and (3) indicates what is considered an 'important operational function'. In summary, it is a function which, if it failed or was defective, would materially impair an authorised PI's ability to comply with the PSRs, its financial performance, or soundness or continuity of its payment services. In practice, which of an authorised PI's operational functions are important will vary from firm to firm, according to the nature and scale of its business.

### *Qualifying holdings (regulation 6(6)(a), paragraph 8 of Schedule 2)*

3.42 A condition for authorisation under regulation 6(6)(a) is that the applicant must satisfy us that any persons having a qualifying holding in it are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of the PI. This comprises two elements: firstly, the applicant will need to assess whether any persons (or entities) have a qualifying holding in the applicant and notify the FSA of the identity of such persons; and secondly, we will undertake an assessment of the fitness and propriety of any such persons (or entities).

3.43 A 'qualifying holding' is defined in the PSRs by reference to Article 4(11) of the Banking Consolidation Directive (BCD).<sup>2</sup> The definition in the BCD is a '*direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking*'. We refer to people with a qualifying holding as 'controllers'.

3.44 In relation to an authorised PI, a controller is, broadly, an individual or firm that does one of the following:

- holds 10% or more of the shares in the applicant firm (including through a parent);
- is able to exercise significant influence over the management of the applicant firm through a controlling interest in the applicant firm or a parent;

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<sup>2</sup> Directive 2006/48/EC of the European Parliament and of the Council of 14th June 2006 relating to the taking up and pursuit of the business of credit institutions.

- is entitled to control or exercise control of 10% or more of the voting power in the applicant firm (including through a parent); or
  - is able to exercise significant influence over the management of the applicant firm through their voting power in it or a parent.
- 3.45 Limited Liability Partnership (LLP) applicants should note that some (or sometimes all) individual members may be controllers of the LLP. Usually this will depend on the number of members and the terms of the membership agreement, especially regarding voting power or significant influence. For example, in an eleven-person LLP where all have equal voting power, it might appear that none of the members will be a controller (as no individual member will have 10% or more of the voting power). However, one of the members may still exercise significant influence. If the membership agreement required significant decisions to be taken unanimously by the members, a dissenting member could exercise significant influence over the firm's management despite having less than 10% of the voting power. Applicant firms should have this in mind when considering whether a member with less than 10% voting power could exercise significant influence over the firm's management.
- 3.46 Paragraph 8 of Schedule 2 requires that, for each qualifying holding in the applicant, an authorisation application must contain the following information:
- the size and nature of the qualifying holding; and
  - evidence of the suitability of each controller taking into account the need to ensure the sound and prudent management of a PI.
- 3.47 The term 'fit and proper' is one that the FSA uses frequently in the context of individuals approved under the Financial Services and Markets Act 2000 (FSMA). We have interpreted this term, which is used in regulation 6 in relation to controllers, to mean substantially the same for PIs as it does for individuals approved in FSMA firms. We have set out extensive guidance on what might fall within our consideration of fitness and propriety in the section of FSA's handbook entitled 'The Fit and Proper test for Approved Persons'. Applicants who require more information may therefore find this guidance helpful.
- 3.48 In Schedule 2 to the PSRs, the word 'suitability' is used to describe what is required of controllers, rather than 'fitness and propriety', which is used in regulation 6. Although these terms are different, they incorporate the same essential factors, namely the:
- honesty, integrity and reputation;
  - competence and capability; and
  - financial soundness
- of the person with a qualifying holding having regard to the need to ensure the sound and prudent management of a PI.

3.49 Whilst it is impossible to list every fact or matter that would be relevant to the fitness and propriety of a controller, the following are examples of factors that we will consider:

- whether the person has been convicted of any criminal offence particularly of dishonesty, fraud, or financial crime;
- whether the person has been investigated for any criminal offence. This would include where an individual has been arrested or charged *whether or not* the investigation/arrest/charge led to a conviction; and
- whether the person has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a firm, particularly a PI.

This would include any findings by the FSA, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies (such as HMRC, the Serious Organised Crime Agency, the Serious Fraud Office etc.) that the individual has breached or contravened any financial services legislation. The regulatory history of the firm or individual is therefore likely to be relevant;

- whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by the FSA, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies (such as HMRC, the Serious Organised Crime Agency, the Serious Fraud Office etc.);
- whether the person has been refused membership, registration or authorisation of a professional organisation or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory or government body;
- whether the person has been a director, partner, or concerned in the management, of a business that has gone into insolvency, liquidation or administration while the *person* has been connected with that organisation or within one year of that connection; and
- whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards.

3.50 Importantly, we will also consider the fitness and propriety of any person linked to the controller (i.e. any person who has, or who appears to have, a relevant family or business relationship with the controller), and whether this adversely affects the suitability of the controller.

3.51 The details of any qualifying holdings should be submitted on the appropriate 'Qualifying Holding' form, available on the PSD section of our website. **We attach**

considerable importance to the completeness and accuracy of the ‘Qualifying Holding’ form. If the applicant is in any doubt as to whether or not any information is relevant, it should be included.

*Directors and persons responsible for payment services (regulation 6(6)(b), Paragraph 9 of Schedule 2)*

- 3.52 Under regulation 6(6)(b) and Paragraph 9 of Schedule 2, the applicant must satisfy the FSA that its directors and any other persons who are or will be responsible for the management of the PI or its payment services activities, are of good repute and possess appropriate knowledge and experience to perform payment services.
- 3.53 This incorporates two elements: firstly, identification by the applicant of those with responsibility for the payment service activities of the payment institution. All such individuals need to be included in the application (such an individual is referred to as a ‘PSD Individual’). Secondly, the applicant, together with the PSD Individual, must provide full and complete information to the FSA about all PSD Individuals in order to satisfy the FSA as to the reputation, knowledge and experience of these individuals.
- 3.54 We expect to be provided with the following information in relation to directors and persons responsible for payment services:
- a) the identity of all the directors where the payment institution is a corporate body;
  - b) the identity of all those persons responsible for the management of the payment service activities where the payment institution is not a corporate body or where other individuals perform these activities in addition to the directors of a corporate body; and
  - c) evidence that these individuals are of good repute (in order to satisfy the fitness and propriety test).
- 3.55 In the case of a payment institution that only provides payment services, this will mean the applicant is likely to be required to complete the relevant PSD Individual forms for each and every senior manager of the PI. In the case of PIs that carry on activities other than just payment services, the applicant is likely to be required to complete the relevant PSD Individual forms for those persons with responsibility for running the firm’s payment services activities.

*Assessing reputation – fitness and propriety*

- 3.56 The first stage in the assessment process is the completion of the PSD Individual form. We will assess the fitness and propriety of an individual on the information provided in the application form and other information available to us from our own and external sources. We may ask for more information if required. **We attach considerable importance to the completeness and accuracy of the PSD Individual form. If the applicant is in any doubt as to whether or not any information is relevant, it should be included.**
- 3.57 The term ‘of good repute’ is considered by the FSA to include the essential factors relating to fitness and propriety set out above in relation to controllers. This means

that the FSA will consider the same essential factors, set out in paragraph 3.62 below in respect of all directors and all persons who are or who will be responsible for the management of the PI or its payment services activities.

- 3.58 We will assess the fitness and propriety of an individual on the information provided in the application form and other information available to us from our own and external sources. We may ask for more information if required.
- 3.59 In accordance with our overall approach to implementing the PSRs, we will take a risk-based and proportionate approach when making our assessment. We will take into consideration the nature and size of the business and the payment services the firm is seeking to perform.
- 3.60 If a matter comes to our attention which suggests that the person might not be fit and proper, we will take into account the above factors when determining how relevant that information is.
- 3.61 During the application process, we may discuss the assessment of the candidate's fitness and propriety informally with the firm and may retain any notes of those discussions.
- 3.62 The factors that we will have regard to when making the fit and proper assessment are:
- honesty, integrity and reputation;
  - competence and capability; and
  - financial soundness.
- 3.63 Examples of the matters we will consider for each factor are set out below. However, it is not possible to list all the matters that would be relevant to a particular application or individual.

#### *Honesty, integrity and reputation*

- 3.64 In determining the honesty, integrity and reputation of an individual, the matters that we will have regard to include, but are not limited to:
- relevant convictions or involvement in relevant criminal proceedings or investigations;
  - relevant civil or administrative cases;
  - relevant disciplinary action (including disqualification as company director or bankruptcy);
  - whether the individual has been a director or senior manager in an entity that has been put into liquidation, wound up or is or has been the subject of an investigation by an inspector under company or any other legislation; and
  - information (including relevant shareholdings) relevant for assessing potential conflicts of interest with another entity.
- 3.65 We will consider matters that may have arisen in the UK or elsewhere.

- 3.66 The 'relevant' matters we refer to above will include offences under legislation relating to companies, banking or other financial services, serious tax offences or other dishonesty, insolvency, insurance, money laundering, market abuse, misconduct or fraud.
- 3.67 The applicant firm should tell us of all relevant matters, but we will consider the circumstances in relation to the requirements and standards of the PSRs. For example, a conviction for a criminal offence will not automatically mean an application is rejected. We treat each individual's application on a case-by-case basis, taking into account the seriousness of, and the circumstances surrounding, the offence, the explanation offered by the convicted individual, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation.
- 3.68 If a firm is not sure whether something may have an impact on an individual's fitness and propriety, the information should be disclosed. The non-disclosure of material facts is taken very seriously by us as it is seen as evidence of current dishonesty. If in doubt, disclose.

#### *Competence, capability and experience*

- 3.69 In determining an individual's competence, capability and experience, we will have regard to whether the individual has the:
- knowledge;
  - experience; and
  - training
- to be able to perform the activity of providing payment services.
- 3.70 The level of experience, knowledge and training should be proportionate to the nature, complexity and scale of risk inherent in the business activity of the firm.

#### *Financial soundness*

- 3.71 In determining good repute, we will take into account an individual's financial soundness and we will consider any factors including, but not limited to:
- whether the individual has been the subject of any judgement debt or award in the UK or elsewhere, that remains outstanding or was not satisfied within a reasonable period; or
  - whether the individual has made any arrangements with their creditors, filed for bankruptcy, had a bankruptcy petition served on them, been an adjudged bankrupt, been the subject of a bankruptcy restrictions order (including an interim bankruptcy restriction order), offered a bankruptcy restrictions undertaking, had assets sequestrated, or been involved in proceedings relating to any of these.

- 3.72 We will not normally require the individual to supply a statement of assets and liabilities. The fact that an individual may be of limited financial means will not, in itself, affect their suitability to perform payment services activities.

*Auditors and audit arrangements (Paragraph 13 of Schedule 2)*

- 3.73 Where an authorised PI is required under any UK legislation (in particular company legislation) to appoint an auditor, the name and contact details must be included in the application form.
- 3.74 The applicant must provide a description of the audit and organisational arrangements that have been set up in relation to the safeguarding measures, governance arrangements, risk management procedures, internal control mechanisms and organisational structure described in the application. These should show that the applicant is taking all reasonable steps to protect the interests of its customers and to ensure the continuity and reliability of performance of payment services.
- 3.75 Depending on the nature, scale and complexity of its business, to comply with the requirement of the PSRs for sound accounting procedures and adequate internal control mechanisms, it may be appropriate for a firm to maintain an internal audit function which is separate and independent from the other functions and activities of the firm. We would expect the internal audit function to have the following responsibilities:
- Establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the firm's systems, internal control mechanisms and arrangements.
  - Issue recommendations based on the result of work carried out.
  - Verify compliance with those recommendations.
  - Report in relation to internal audit matters to senior personnel and/or separate supervisory function (for example, a supervisory board in a two-tier board structure or non-executive committee in a one-tier structure).

*Location of offices (regulation 6(4), paragraph 12 of Schedule 2)*

- 3.76 The applicant must be a body corporate (for example, a limited company or limited liability partnership) constituted under the law of the UK and must have its head office and, where appropriate, its registered office in the UK. The PSD does not define what is meant by a firm's 'head office'. This is not necessarily the firm's place of incorporation or the place where its business is wholly or mainly carried on. Although the FSA will judge each application on a case-by-case basis, the key issue in identifying the head office of a firm is the location of its central management and control, that is, the location of:
1. the directors and other senior management, who make decisions relating to the firm's central direction, and the material management decisions of the firm on a day-to-day basis; and

2. the central administrative functions of the firm (for example, central compliance, internal audit).

*Close links (regulation 6(8) and (9))*

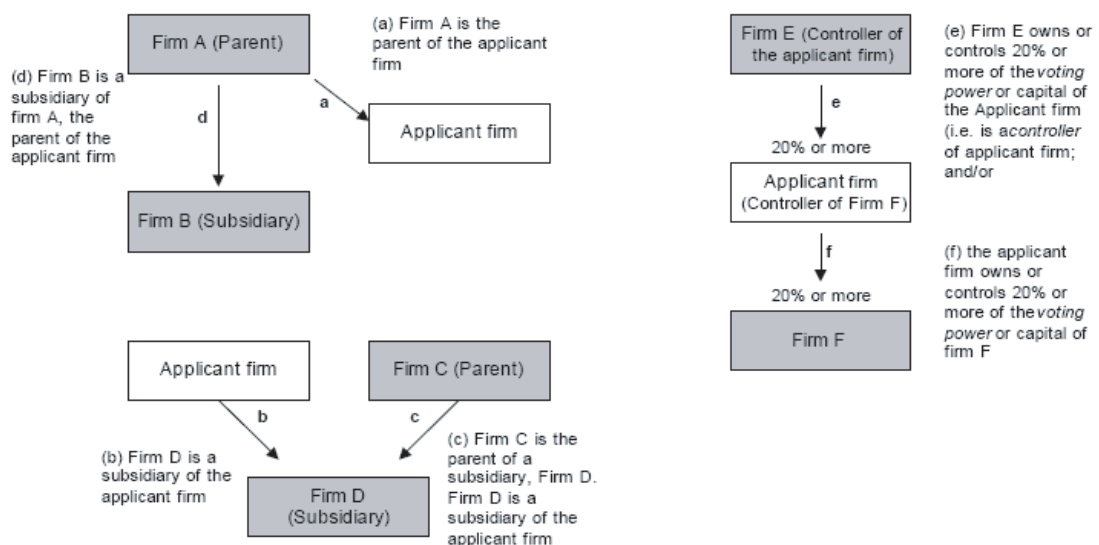
3.77 Applicants must satisfy us that any ‘close links’ it has are not likely to prevent the effective supervision of the firm or, where a close link is located outside of the EEA, the laws of the foreign territory would not prevent effective supervision.

3.78 A close link is defined as:

- a parent undertaking of the applicant;
- a subsidiary undertaking of the applicant;
- a parent undertaking of a subsidiary undertaking of the applicant;
- a subsidiary undertaking of a parent undertaking of the applicant;
- an owner or controller of 20% or more of the capital or voting rights in the applicant; or
- an entity of which the applicant owns or controls 20% or more of the capital or voting rights.

3.79 The application should include details of any persons meeting the above criteria, as set out in the form. We will then assess the nature of the relationship against the conditions for authorisation. If an Individual form is to be submitted for a person that has a qualifying holding, a Controller form will not be required in relation to that person.

3.80 The following diagram sets out the types of relationships between firms and individuals that we consider to be close links. Shaded boxes are all close links of the relevant applicant firm.





### *Money laundering registration (regulation 6(7))*

- 3.81 Some PIs, such as money remitters, are already required to register with HM Revenue and Customs (HMRC) under the Money Laundering Regulations 2007 (MLR). The PSRs require some additional payment service providers within their scope to register with HMRC under the MLR.
- 3.82 Payment service providers falling within the following categories will need to be registered with HMRC under the MLR before we can authorise them:
- money service businesses (MSBs);
  - bill payment service providers; and
  - telecommunications, digital and IT payment service providers.
- 3.83 Firms that are already MLR registered with HMRC should supply their registration number when applying to us. If an application to HMRC is being made at the same time as an application for authorisation, then we will still process the application, but cannot grant authorisation until the MLR registration number has been received.
- 3.84 We will verify with HMRC that the registration number provided to us matches a valid MLR registration for that firm.
- 3.85 We are responsible for money laundering supervision of PIs that are credit card issuers or merchant acquirers (other than firms licenced to carry on a consumer credit business for which the OFT will remain the supervisory authority for this purpose). These firms only need complete the 'Authorised Payment Institution' form, as it combines both MLR registration and PSD authorisation, although a firm may still wish to refer to the MLR registration form when providing the information on money laundering controls.

### **Decision making**

- 3.86 Having assessed all the information provided, we will make a decision to either approve or reject the application. This decision will be notified to the applicant, along with instructions for the appeal process, if relevant.

### **Part II: Becoming a small payment institution**

- 3.87 Firms that do not intend to provide payment services on a cross-border basis and which have an average monthly payment value of not more than €3 million can apply for registration as a small PI and be exempt from the authorisation and prudential requirements.

### **Making an application**

- 3.88 Application forms are available on the PSD section of our website:  
[www.fsa.gov.uk/Pages/Doing/Regulated/banking/psd/applying/index.shtml](http://www.fsa.gov.uk/Pages/Doing/Regulated/banking/psd/applying/index.shtml)

- 3.89 An application for registration as a small PI has less information and assessment requirements than an authorisation application.
- 3.90 The application fee for registration of a small PI is £500. No work will be done on processing the application, until the full fee is received. The fee is non-refundable and must be paid by cheque.
- 3.91 Once an application has been submitted, but before the application has been determined, the applicant must notify us without undue delay of any material change in the information provided or if the applicant establishes the information provided is incomplete or inaccurate. It must notify us of likely material changes as soon as it is aware of them.
- 3.92 The application must be signed by the person(s) responsible for making the application on behalf of the applicant firm. The appropriate persons(s) depends on the applicant firm's type, as follows:

Type of applicant	Appropriate signatory
Sole trader	The sole trader
Partnership	Two partners
Unincorporated association (not a limited partnership)	All members of the unincorporated association or one person authorised to sign on behalf of them all (supported by a resolution of the committee of management or equivalent)
Company with one director	The director
Company with more than one director	Two directors
Limited liability partnership	Two members
Limited partnership	The general partner or partners

### Conditions for registration as a small PI

- 3.93 We may refuse to register an applicant as a small payment institution where any of the following conditions are not met.
- The monthly average of the total amount of payment transactions carried out by the applicant (including by agents on their behalf) over the preceding 12 months must not exceed €3 million. Where business has yet to start, the monthly average can be based on the projected payment transactions for the next 12 months.
  - None of the individuals responsible for the management or operation of the business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes.
  - The applicant's head office, registered office or place of residence, as the case may be, must be in the UK.
  - The applicant must comply with the registration requirements of the MLR, where those requirements apply to it.

### *Monthly value of payment transactions (regulation 13(3))*

- 3.94 Applicants will be required to self-certify that the business meets the monthly value of payment transactions condition. However, if we suspect that this might not be the case, we may ask for previous or projected financial statements.
- 3.95 Firms will need to take account of changes in exchange rates where they carry out transactions in different currencies. In our view it would be reasonable for firms to use the Commission's monthly accounting rate of the euro when calculating turnover in euro for a particular calendar month. Current and historical rates can be found on the InforEuro website at: <http://ec.europa.eu/budget/inforeuro/index.cfm?Language=en>

### *Convictions by management (regulation 13(4))*

- 3.96 We will ask the applicant to confirm on the application form that none of the persons responsible for the management of the small PI has been convicted of offences relating to money laundering, terrorist financing or other financial crimes. This includes fraud or dishonesty, offences under FSMA or under the PSRs, and includes acts or omissions that would be an offence if they took place in the UK. Deliberately or recklessly giving misleading information in the application is a criminal offence under regulation 114.
- 3.97 We will ask the firm to supply the name(s) of persons responsible for the management of the PI. This is so we can confirm their identity later for regulatory purposes. However, we will also need a contact name and the application will need to be signed by the relevant persons described in the 'Making an application' section above.

### *Head office (regulation 13(5))*

- 3.98 The location of the head office, registered office or principal place of business is to be supplied as part of the contact details. The PSD does not define what is meant by a firm's 'head office'. This is not necessarily the firm's place of incorporation or the place where its business is wholly or mainly carried on. Although the FSA will judge each application on a case-by-case basis, the key issue in identifying the head office of a firm is the location of its central management and control, that is, the location of:
1. the directors and other senior management, who make decisions relating to the firm's central direction, and the material management decisions of the firm on a day-to-day basis; and
  2. the central administrative functions of the firm (for example, central compliance, internal audit).

### *Money laundering registration (regulation 13(6))*

- 3.99 The MLR registration requirements for application as a small PI are the same as those for an authorised PI (see Part I).

## **Other information requirements**

### *Safeguarding arrangements*

- 3.100 Small PIs can choose to comply with safeguarding requirements in order to offer the same protections over customer funds as authorised PIs must provide. Where they choose to comply, the requirements are the same as those for an authorised PI (please refer to the information on safeguarding for authorised PIs in Part I above and *Chapter 10 – Safeguarding*).
- 3.101 The application pack for registration as a small PI will ask the applicant if they will be complying with the safeguarding arrangements. If so, applicants will be required to explain their procedures and methodology. This information will also be required in their annual reporting return (*see Chapter 13 – Reporting*).
- 3.102 If the applicant is already registered with us (or there is an outstanding application to register the applicant) as an agent of another Payment Institution, we will expect an explanation why direct registration in the applicant's own right is also being sought. In particular we will wish to understand how business being carried out in the applicant's own name will be segregated from that being carried out under its agency registration. This explanation should be supplied along with the application form.

## **Decision making**

- 3.103 We will make a decision to either accept or reject the application once we have received all the required information (see paragraph 3.16). The decision-making process is described in Part III of this chapter.

## **Part III: Decision-making process**

- 3.104 Having assessed all the information provided, we will make a decision to either approve or reject the application. This decision will be notified to the applicant, along with instructions for the appeal process, if relevant.

### *Timing (regulation 9(1) and (2))*

- 3.105 We have to make a decision on a complete application within three months of receiving it. An application is complete only when we have received all the information and evidence needed for us to make a decision. We will let the applicant know if we need more information.
- 3.106 In the case of an incomplete application, we must make a decision within 12 months of receipt. However, if that date is reached and discussions with the firm have not resulted in us receiving all the information we need to make our decision, it is likely that an incomplete application will result in a refusal. This is because it is unlikely we will have been able to satisfy ourselves that the applicant has met the authorisation/registration requirements.

- 3.107 We maintain service standards for processing times for other activities that we regulate, which are generally shorter than those required under the PSRs. However, as our processes have not been fully developed or tested under normal operating conditions, we are unable to make such commitments at this stage. We will publish our PSR service standards and update this document when these become available.

*Withdrawal by the applicant (regulation 9(3))*

- 3.108 An application may be withdrawn by giving us written notice at any time before we make a decision.

*Approval (regulation 9(5) and (6))*

- 3.109 If we decide to grant an application we will give the applicant notice of that decision. This notice will specify the payment services for which approval has been granted, requirements (if applicable) and the date from which it takes effect.
- 3.110 The PSRs allow us to vary the types of payment services that a PI is ultimately approved to carry out from those requested in the application and to apply requirements to the PI as a condition of their authorisation or registration that we consider appropriate (regulation 7). This may include requiring the firm to take a specified action, refrain from taking specified action (for example, not to deal with a particular category of customer) or relate to their relationship with their group or other members of their group. We may also specify the time that a requirement expires.
- 3.111 In accordance with regulation 7(4), where an applicant carries out non-payment services business and we feel that the carrying on of this business will, or is likely to, impair our ability to supervise the firm or their financial soundness, we can require the applicant firm to form a separate legal entity to perform payment services.
- 3.112 We will update the online register as soon as practicable after granting the authorisation or registration. The register will show the contact details of the firm, the payment services it is permitted to undertake, and the names of any agents. If the firm is authorised and has taken up passporting rights to perform payment services in another EEA State, then these will also be shown.

*Refusal (regulation 9(7) to (9))*

- 3.113 We can refuse an application when the information and evidence provided does not satisfy the requirements of the PSRs. When this happens we are required to give the applicant a warning notice setting out the reason for refusing the application and allowing 28 days to make a representation on the decision.
- 3.114 Applicants can make oral or written representations. If oral representations are required, we should be notified within 2 weeks of the warning notice, so that arrangements can be made for a meeting within the 28 day deadline.
- 3.115 If no representations are made, or following them we still decide to refuse the application, we will give the applicant a decision notice. If a firm wishes to contest the decision, they may refer the matter to the Financial Services and Markets

Tribunal, an independent judicial body. If no referral has been made within 28 days we will issue a final notice. If the matter is referred to the tribunal, we will take action in accordance with any directions given by it (including to authorise/register the firm) and then issue the final notice.

- 3.116 On issuing the final notice, we are required to publish such information about the matter to which a final notice relates as we consider appropriate. However, we may not publish information if we believe it would be unfair to the firm or prejudicial to the interests of consumers.

# 4 Changes in circumstances of authorisation or registration

- 4.1 This chapter describes the notifications that authorised and small PIs need to make to us as part of their ongoing authorisation or registration. It is divided into three parts.
- Part I – Notifications applicable to authorised and small PIs.
  - Part II – Notifications applicable only to authorised PIs.
  - Part III – Notifications applicable only to small PIs.

## Introduction

- 4.2 PIs need to provide us with two types of information while they are being regulated – we categorise these as ‘reporting’ and ‘notifications’.
- 4.3 Reporting information is the information we need on a regular and periodic basis to comply with our supervisory and EU reporting obligations. Reporting requirements are discussed in *Chapter 13 – Reporting*.
- 4.4 The subject of this chapter is ‘notifications’. Notifications are what PIs need to send us when there is a change in the information they have already provided.
- 4.5 There are specific notification requirements in relation to agents (for both authorised and small PIs) and passporting (authorised PIs only). These are covered in *Chapter 5 – Appointment of agents* and *Chapter 6 – Passporting*.

## Types of notifications and timing

- 4.6 The PSRs contain requirements in relation to notifications of changes in specific circumstances, as well as a general requirement in regulation 32.
- 4.7 The general requirement is that where it becomes apparent to a PI that there is, or is likely to be, a significant change in circumstances, which is relevant to its fulfilment of the conditions for authorisation or registration, it must provide us with details of the change without undue delay. We would generally consider ‘without undue delay’ to mean within 28 days of the change occurring at the latest.

- 4.8 Regulation 32 also requires that in the case of a substantial change which has not yet taken place, the PI must provide details of the change in good time before the change takes place. A ‘substantial change’ is, in our view, one that could impact on either the firm’s ability to meet the conditions for remaining authorised or registered, or the way we would supervise the firm. We will need to assess substantial changes against the initial conditions for authorisation or registration. To give us time to do this, we consider that a period of 28 days before the change takes place would generally be ‘in good time’. However, the notification period will depend on the circumstances of the change and firms should make efforts to notify us as soon as possible.

### **How to notify us**

- 4.9 Notifications must be made using the form available on the [PSD](#) section of our website, or, where a form is not provided, by written confirmation to our [Customer Contact Centre](#).

### **Different notifications for authorised and small PI**

- 4.10 Not all notification requirements apply to both authorised and small PI. This is mostly due to authorised PIs having to meet more initial conditions that could change over the life of the business. Although most of the notification requirements that apply to a small PI also apply to an authorised PI, some do not. To help PIs identify the notification requirements that apply to them, the remainder of this chapter is divided into three parts:
- Part I describes the notification requirements that apply to both authorised and small PIs.
  - Part II describes the notification requirements that only apply to authorised PIs.
  - Part III describes the notification requirements that only apply to small PIs.

### **Part I: Notifications applicable to authorised and small PIs**

- 4.11 Changes in the information set out below will require a notification to us.

#### **Name, contact details and standing data (including firm name and contact details)**

- 4.12 PIs should give us reasonable advance notice of changes to their name and contact details, which includes:
- legal name (registered name, in the case of an authorised PI);
  - trading name (if applicable);
  - principal place of business;
  - overseas registered offices (if applicable);
  - primary compliance contact;



- accounting reference date; and
  - website and email address.
- 4.13 The notification should be made using the form available at: [www.fsa.gov.uk/pages/Doing/Regulated/banking/psd/being/data/index.shtml](http://www.fsa.gov.uk/pages/Doing/Regulated/banking/psd/being/data/index.shtml) and should include the details of the proposed change and the date on which the firm intends to implement the change.

### **Variation of payment services**

- 4.14 When a PI intends to change the payment services it is providing (either by increasing or decreasing the range) or, in the case of an authorised PI, wants to have a new requirement imposed or an existing requirement varied or removed, it needs to apply to us for approval.
- 4.15 Regulations 5 and 12 require that an application for variation in authorisation or registration (respectively) must:
- contain a statement of the desired variation;
  - contain a statement of the payment services that the applicant proposes to carry on if the authorisation/registration is varied; and
  - contain or be accompanied, by such other information as we may reasonably require.
- 4.16 Applicants should complete and submit the ‘Variation of PSD Authorisation/Registration’ form, which is available on the PSD section of our website. This will set out the information that must be provided. However we may ask for more information if we feel it is necessary to enable us to determine the application.
- 4.17 The application fee to vary an authorisation/registration is between £250 and £2,500, depending on the PI’s existing payment services and the payment services it is applying to add. There is no fee for a PI that is only reducing its payment services.
- No work will be done on processing the application until the full fee is received. The fee is non-refundable and must be paid by cheque.
- 4.18 We will approve the variation of payment services (or requirements, if applicable) only if the initial conditions for authorisation/registration continue to be met (regulations 6 and 13).
- 4.19 The process for determining a variation of payment services is the same as for initial authorisation/registration (see Parts I and II, *Chapter 3 – Authorisation and registration*) and the time allowed for us to do this is three months. However, we expect to be able to process complete applications for variation quicker than an initial authorisation/registration, and our expected turnaround times will in most cases be quicker than this. Where firms want to increase the range of services they provide they will need to factor in the time needed for approval.

## **MLR registration**

- 4.20 PIs should notify the Customer Contact Centre immediately by email to [fcc@fsa.gov.uk](mailto:fcc@fsa.gov.uk) if there is a change in the status of their MLR registration with HMRC. A PI must be MLR registered, where applicable, to remain an authorised/small PI.

## **Cancellation of authorisation/registration**

- 4.21 PIs can request to cancel their authorisation or registration (regulations 10 and 14, respectively) by using the ‘Cancellation of Authorisation or Registration’ form, which is available on the PSD section of our website. We will remove the PI from the PSD register once we have established that there are no outstanding fees to either ourselves or the FOS, that any liabilities to customers have either been paid or are covered by arrangements explained to us, and there is no other reason why the PI should remain on the FSA register.
- 4.22 Our fee year runs from 1 April until 31 March, so if a PI applies to cancel after 31 March, full annual fees will become payable as there are no pro-rata arrangements or refunds of fees.

## **Change in legal status**

- 4.23 A change in legal status (for example, limited liability partnership (LLP) to limited company) is a significant change to the authorisation/registration of the PI. Such a change is effected by cancelling the existing legal entity authorisation/registration and arranging for the authorisation/registration of the new legal entity. PIs should apply using the appropriate ‘Change of Legal Status’ form, which is available on the PSD section of our website.

## **Part II: Notifications applicable only to authorised PIs**

- 4.24 This part gives examples of changes that are likely to impact the conditions for authorisation of an authorised PI. As noted in the introduction, the duty to notify changes in circumstances is general. We will expect firms to notify us of any significant change in circumstances, including any not set out here, which is relevant to the continued fulfilment of the conditions for authorisation.

### **Significant changes to the programme of operations or business plan**

- 4.25 For authorised PIs, we would expect to be notified of any significant changes to the business. This may include proposed restructuring, reorganisation or business expansion that could have a significant impact on the firm’s risk profile or resources.
- 4.26 We would also expect to be advised of any proposed action that would result in an authorised PI being unable to meet its capital requirements, including but not limited to:
- any action that would result in a material change in the firm’s financial resources or financial resources requirement;

- a material change resulting from the payment of a special or unusual dividend or the repayment of share capital or a subordinated loan;
  - significant trading or non-trading losses (whether recognised or unrecognised); or
  - failures in governance arrangements and internal control mechanisms.
- 4.27 Authorised PIs should notify the Customer Contact Centre of any significant failure in the firm's systems or controls, including those reported to the firm by the firm's auditor.

### **Outsourcing arrangements**

- 4.28 An authorised PI must inform us when it intends to enter into an outsourcing contract where it will be relying on a third party to provide an 'operational function relating to its provision of payment services' (regulation 21(1)).
- 4.29 In our view, 'operational functions relating to the provision of payment services' does not include the provision of any services that do not form part of the payment services (for example, legal advice, training or security) or the purchase of standardised services, including market information services.
- 4.30 A proposed outsourcing arrangement that is classified as 'important' under regulation 21(2) and (3) is more likely to be relevant to a PI's compliance with the authorisation conditions than one that is not 'important'. Where an authorised PI changes its important outsourcing arrangements without entering into a new outsourcing contract, it will need to consider whether the change is relevant to the conditions for authorisation and so needs to be notified under regulation 32.
- 4.31 Notification on changes to outsourcing requirements should be made to the Customer Contact Centre. Depending on the nature of the arrangement, we may request further information.

### **Qualifying holdings**

- 4.32 We consider changes in qualifying holdings 'significant' in relation to changes in the circumstances of authorisation. Therefore we expect to be notified of any changes to qualifying holdings in good time before the change takes place, which we would expect in most cases to be 28 days.
- 4.33 If we consider that the proposed change has an adverse impact on the authorised PI's fulfilment of the conditions for authorisation, or that the persons or entities who propose to acquire a qualifying holding (also referred to as 'controllers') are not suitable, we will advise the firm of our concerns. If the change then goes ahead and we believe any of the relevant conditions of regulation 11 apply, we may take action to cancel the authorisation of the PI and remove it from the register using our powers to cancel authorisation under regulation 10, or to impose requirements on a PI's authorisation under regulation 11.
- 4.34 Notification should be on the appropriate 'Application for a Change in Qualifying Holding' form which is available on the PSD section of our website. For more information on qualifying holdings see Part I, *Chapter 3 – Authorisation and*

*registration* (paragraphs 3.42 to 3.51 contain specific important information about our approach to the assessment of controllers/qualifying holdings).

## **Directors/persons responsible for management**

### *Appointment/removal*

- 4.35 Changes to the directors or persons responsible for management of either an authorised PI or the payment service activities of an authorised PI are regarded as a significant change. Appointments should be notified to us before the change takes place, and removals no later than 7 working days after the event.
- 4.36 Notification of a new appointment should be on the ‘PSD individual form’, available on the PSD section of our website, and should include all the information required for us to assess the individual against the requirement in regulation 6(6)(b) to be of good repute and possess appropriate knowledge (see Part I, *Chapter 3 – Authorisation and registration*). An individual who is a member of the management staff that moves from being a non-board member to a board member will need to resubmit the PSD individual form and answer the fitness and propriety questions in Section 5.
- 4.37 A PI must also notify us of any changes in the details of existing PSD individuals, such as name changes and matters relating to fitness and propriety (see below). It should do this using the ‘Notification of changes to PSD individual’ form, which is available on the PSD section of our website.
- 4.38 If we consider that the proposed change has an adverse impact on the authorised PI we will advise the firm of our concerns. If the change then goes ahead and we believe that any of the relevant conditions of regulation 10 relating to cancellation of authorisation are met, we may take action to cancel the authorisation of the PI and remove it from the register, or seek to impose requirements on a PI’s authorisation under regulation 11.
- 4.39 Information about the removal of ‘directors/persons responsible’ should include the reason for the departure and provide further information if the individual was dismissed for reasons relating to criminal or fraudulent activities.
- 4.40 Notification should be on the ‘Notice to remove PSD individual(s)’ form which is available on the PSD section of our website. For more information on the fit and proper requirement for directors and persons responsible for management of the PI (see Part I, *Chapter 3 – Authorisation and registration*).

### *Changes affecting the fitness and propriety of individuals*

- 4.41 Where an authorised PI becomes aware of information that may impact on the fit and proper condition applying to directors and persons responsible for management of the payment institution, it should notify us using the ‘Notification of changes to PSD individual’ form, as detailed above. We will examine the information, assess it against the fitness and propriety requirements explained in Part I, *Chapter 3 – Authorisation and registration*, and notify the PI of the action that we intend to take.

## **Auditors**

- 4.42 Where an authorised PI has an auditor and is aware that a vacancy in the office of auditor will arise or has arisen, it should:
- notify us of the date, without delay, giving the reason for the vacancy;
  - appoint an auditor to fill any vacancy in the office of auditor that has arisen;
  - ensure that the replacement auditor can take up office at the time the vacancy arises or as soon as reasonably practicable after that; and
  - notify us of the appointment of an auditor, giving us the name and business address of the auditor appointed and the date from which the appointment has effect.
- 4.43 Notifications on changes to auditors should be made to the Customer Contact Centre [www.fsa.gov.uk/smallfirms/resources/contact/index.shtml](http://www.fsa.gov.uk/smallfirms/resources/contact/index.shtml).

## **Part III: Notifications applicable only to small PIs**

### **Change in status of a small PI**

- 4.44 Where the turnover of a business registered as a small PI exceeds the maximum average monthly turnover condition of €3 million, the PI must apply for authorisation within 30 days of becoming aware of the change in circumstances (regulation 15). This should be done by completing an Authorised Payment Institution application form (see 3.11 onwards), and a ‘Cancellation of Authorisation or Registration’ form in respect of its small PI registration.
- 4.45 If a small PI no longer fulfils any of the other conditions for registration (See Part II – *Chapter 3 – Authorisation and registration and regulation 13*), it should inform us immediately.
- 4.46 If there are changes to the individuals responsible for the management or operation of the business including changes of directors, full details should be notified to the FSA within a reasonable period before the change takes place.

# 5 Appointment of agents

- 5.1 This chapter describes the application procedure that payment institutions will need to go through to register their agents with us.

## **Introduction**

- 5.2 Payment institutions may provide payment services through agents, subject to prior registration with us. An agent is any person who acts on behalf of a PI in the provision of payment services (see the definition of agent in regulation 2(1)).
- 5.3 An authorised PI wanting to use a passport to provide payment services into another member state may use an agent, established in either the UK or the host state, to provide those services (an EEA agent), subject to additional notification requirements.
- 5.4 The requirements relating to the use of agents are contained mostly in regulation 29 and these are described below. In addition, regulation 31(2) makes PIs responsible for anything done or omitted by an agent. PIs are responsible to the same extent as if they had expressly permitted the act or omission. We will therefore expect PIs to have appropriate systems and controls in place to effectively oversee their agents' activities.

## **Making an application**

- 5.5 Application forms for registration of agents, 'Add PSD agent' can be found on the PSD section of our website. The same form is used for agents of authorised and small PI. However, there are differences in the information requirements.
- 5.6 In general, the information required for the registration of an agent is:
- the name and address of the agent;
  - a description of the anti-money laundering (AML) internal control mechanisms; and

- in the case of an agent of an authorised PI, the identity of the directors and persons responsible for the management of the agent and evidence that they are fit and proper persons.

### *Name and address details*

- 5.7 For agents of both authorised and small PI we will require details of the PI and its agent to enable us to identify both parties and to meet our supervisory and register requirements.

### *AML internal control mechanisms*

- 5.8 For agents of both authorised and small PI we will require a description of the internal control mechanisms that will be used to comply with the MLR, or in the case of an EEA agent the Third Money Laundering Directive. The factors that we expect firms to include in their internal controls with agents are the same as those we describe in relation to the money laundering controls for the firm, which are set out in Part I, *Chapter 3 – Authorisation and registration*.
- 5.9 The description of internal control mechanisms only needs to be supplied once if a PI applies the same controls to all their agents and it has not changed from previous appointments. If the PI has previously supplied this information they should indicate this in the appropriate question on the agent application form.

### *Directors and persons responsible for the management of the agent*

- 5.10 In the case of an agent of an authorised PI, regulation 29(3) requires that the application must also provide:
- the identity of the directors and persons responsible for the management of the agent; and
  - evidence that they are fit and proper persons.
- 5.11 We must be provided with details of the director(s) and persons responsible for the management of the agent. For incorporated agents this would be the board members, or for unincorporated agents the partners or sole trader.
- 5.12 To verify identity, the form asks for the name, national insurance number or passport details for non-UK residents, and date of birth for these persons.
- 5.13 The authorised PI should carry out its own fitness and propriety checks on its agents, on the basis of a ‘due and diligent’ enquiry. We ask that this is certified on the form for each person and any adverse information is disclosed. The assessment should be proportionate to the nature, complexity and scale of risk inherent in the payment services activities being carried out by the agent.
- 5.14 We expect the authorised PI to have regard to the following factors when making a fit and proper assessment of the directors and persons responsible for the management of an agent of an authorised PI:

- honesty, integrity and reputation;
  - competence and capability; and
  - financial soundness.
- 5.15 For more information on the types of checks we expect PIs to make when assessing against these factors, please see the information on the fit and proper assessment in ‘Directors and persons responsible for payment services’ in *Chapter 3 – Authorisation and registration*.

### *Additional information and changes to information supplied*

- 5.16 At any time after receiving an application and before determining it, we may require the applicant to provide us with such further information as is considered reasonably necessary to determine the application (regulation 29(5)).
- 5.17 Once an application has been submitted, both before the application has been determined and on an ongoing basis, the duty to notify significant changes in circumstances relating to fitness and propriety of an agent’s management or of matters relating to money laundering or terrorist financing applies. Applicants must notify us of such changes without undue delay.

## **Decision making**

- 5.18 We are required to make a decision on registering an agent within a reasonable period, beginning with the date on which we receive the information required. We will aim to process the majority of applications within ten days provided the application is complete. However, where an agent application forms part of the PI’s application for authorisation or registration, it will be determined in accordance with the timetable for that application. In the case of an EEA agent, host states are required to tell us of any suspicions of money laundering or terrorist financing and so our decision will take into account any such suspicions reported by the host state, as required when passporting, which may add to the time taken in coming to a decision (See *Chapter 6 – Passporting*).

## **Approval**

- 5.19 Where we decide to approve the agent application we will update the register, usually the next business day. We will not acknowledge successful agent applications as we believe to do so would add unnecessary costs to the process given the large volume of agents and high turnover. PIs should check the register to ensure that the agent has been registered. If, after ten days (see above) or for an agent in another EEA Member State, 30 days (see Chapter 6), the agent does not appear on the register, the PI should contact the Customer Contact Centre. PIs cannot provide payment services through an agent until the agent is included on the register.



## Refusal

- 5.20 The PSRs allow us to refuse to include the agent in the register only where:
- we have not received all the information required in the application (see ‘Making an application’ above) or we are not satisfied that such information is correct;
  - we are not satisfied that the directors and persons responsible for the management of the agent are fit and proper persons;
  - we have reasonable grounds to suspect that, in connection with the provision of services through the agent;
  - money laundering or terrorist financing within the meaning of the Money Laundering Directive is taking place, has taken place or been attempted; or
  - the provision of services through the agent could increase the risk of money laundering or terrorist financing.
- 5.21 The refusal process for agents is the same as for authorisation and registration (see Part III, *Chapter 3 – Authorisation and registration*).

## Cancellation of agents

- 5.22 To cancel the registration of an agent the principal should complete the ‘Remove PSD agent’ form, which is available on the PSD section of our website. We will update the register to show that the agent is no longer registered to act for the principal once we have finished processing the notification. Our aim is to update the register within ten days of notification. If after this time the agent still shows as registered, the firm should contact the Customer Contact Centre.
- 5.23 If an agent is being used to perform payment services in another EEA State, the principal may also need to amend the details of the passport, and must then submit a ‘change in passport details’ form (see *Chapter 6 – Passporting*).

## Changes to agent details

- 5.24 The principal must use the ‘Amend PSD agent’ form, which is available on the PSD section of our website, to amend the details of an agent. The form will set out the information that needs to be provided.
- 5.25 We will assess the impact of the change against the agent registration requirements. If the change is approved we will update the register (if required) as soon as possible. If we need further information we will contact the firm, and if the change is not approved we will follow the refusal process set out above.
- 5.26 Where an existing agent commences activities from a separate address we do not require a new notification.

# 6 Passporting

- 6.1 This chapter describes the process that authorised PIs will need to go through if they wish to provide payment services in another EEA State. It also tells PIs authorised in another EEA State how we will deal with notifications to provide payment services in the UK that we receive from their home state regulator.

## Introduction

- 6.2 Passporting is the right for a firm to conduct activities and services regulated under EU legislation in another EEA State on the basis of authorisation in its home member state. The activities can be conducted through an establishment in the host state (known as a ‘branch’ passport) or on a cross-border services basis without using an establishment in the host state (a ‘services’ passport). A branch established in another member state by a UK authorised PI is referred to as an ‘EEA branch’. Regulation 23 sets out the procedure for the exercise of passporting rights.
- 6.3 Passporting rights are only available to authorised PIs, not small PIs.
- 6.4 A UK authorised PI can also provide services in another EEA State through an agent established in the UK (using a ‘services’ passport) or in another EEA State (using its right of establishment). In this chapter we refer to such an agent as an ‘EEA agent’.
- 6.5 The passporting right extends to all the payment services for which the PI is authorised but does not, in our view, extend to other activities that authorised PIs may perform that are ancillary to the provision of payment services (see article 16 PSD). Whether an authorised PI can carry on those other activities in another EEA State will depend on the local law in that state and firms may therefore wish to take professional advice if they think their business is likely to be affected by this.
- 6.6 PERG 15.6 provides further guidance on when we consider a passport notification needs to be made.

## **Making an application**

- 6.7 The procedures for making an application for a ‘services’ and ‘branch’ passport are very similar, but there are additional procedures that need to be followed when passporting through an agent. The procedures for both types of passport are set out below.

### *Notice of intention*

- 6.8 Where an authorised PI intends to provide payment services, either on a cross-border services basis or on an establishment basis into another EEA State, regulation 23 requires the firm to give notice to the FSA of its intention to do so (a notice of intention.) Notification forms are available on the PSD section of our website.
- 6.9 The notification form will ask for the payment services the firm intends to carry on, the names of the people responsible for managing any proposed EEA branch, and details of that branch’s organisational structure, as well as the EEA State(s) where the payment services are to be performed.
- 6.10 We must tell the host state competent authority as soon as is practicable, but no later than one month from the date on which we receive the notice of intention.
- If the firm intends to use an EEA agent to provide the services into another EEA State under the ‘right of establishment’, then regulation 29(7) requires us to inform the relevant host state competent authority and take into account its opinion. Therefore, if an EEA agent is being used by the authorised PI, to allow the host state to form its opinion, we will also provide the same information as set out in 6.10, as if the agent were a branch i.e. the firm should submit a completed ‘Notification of intention to establish a branch in another EEA State’ form.
  - If the firm’s proposed passported activities include the use of an EEA agent that is not already registered, then the applicant will also need to submit an agent registration application form. The registration of the agent will be subject to the requirements explained in *Chapter 5 – Appointment of agents*, but will also be subject to review by the host state competent authority. To expedite the approval of the passport, we will process the agent application simultaneously, but the agent must be registered before the passport notification can be made.

## **Notification process**

- 6.11 Once we have received the notification form with the required information, we will forward that information to the host state as soon as possible. We will check that the payment services the applicant intends to provide in the other EEA State are within the scope of its UK authorised payment service activities.

## **Service passports – not involving an EEA agent**

- 6.12 Where a firm has applied for a services passport that it will be using directly (that is, not through an EEA agent), we will let it know once the host state has been notified and update the register to show the details of the passport.

## Branch passports and/or use of EEA agents

- 6.13 Where a firm seeks to establish a branch, or provide services through an EEA agent (either exercising its right of establishment or using a services passport) we intend to assess the fitness and propriety of the management of the branch or EEA agent before making the notification to the host state competent authority.
- 6.14 The appointment of an agent by an authorised PI is subject to the directors and persons responsible for the management of the agent being fit and proper. We will undertake the checks described in *Chapter 5 – Appointment of agents*, on these persons. We will also extend these checks to the persons identified as being responsible for the management of the branch.
- 6.15 When we have carried out our checks, we will make the notification to the relevant host state competent authority. If the application is for a new passport, or changes to the payment services of an existing passport, then we will let the applicant firm know that this has been done. We are expecting a high turnover of EEA agents, therefore to keep the costs to firms down we will not acknowledge notifications of changes in EEA agents.
- 6.16 Article 17(6) of the PSD requires that if the competent authorities of the host Member State *‘have reasonable grounds to suspect that, in connection with the intended engagement of the agent or establishment of the branch, money laundering or terrorist financing...is taking place, has taken place or been attempted, or that the engagement of such agent or establishment of such branch could increase the risk of money laundering or terrorist financing, they shall so inform the competent authorities of the home Member State, which may refuse to register the agent or branch, or may withdraw the registration if already made, of the agent or branch.’*
- 6.17 If the host state’s competent authority responds with no concerns or we receive no response within a month of the FSA receiving the firm’s notice of intention, and our own assessment shows no reasonable grounds to suspect money laundering or terrorist financing, or an increased risk of such activities, then we will approve the agent and update the register with the passport details. In the case of a new passport application we will inform the applicant firm and the host state’s competent authority when we do this. The firm may then start providing services in the host EEA State through its branch or agent. If an agent is being added to an existing passport, then in accordance with our policy on the appointment of agents firms should, where necessary, check the register to confirm that the agent has been approved. Check our website for expected turnaround times, and contact the Customer Contact Centre if the agent does not appear within the expected period.
- 6.18 If the host state’s competent authority responds within that month with suspicions concerning money laundering or terrorist financing, we will consider the information supplied to us and make a decision on what action we will take. Under regulation 24(1) we may refuse to register the branch or, under regulation 29(6), the EEA agent. In addition to the power to refuse registration, we can cancel existing registrations of branches under regulation 24(1) and of EEA agents under regulation 30(1). We also have powers under regulation 7 to impose requirements on the authorised PI’s authorisation. If we decide not to approve the passport

application as requested by the firm, we will follow a decision making process equivalent to that described in Part III, *Chapter 3 – Authorisation and registration*.

- 6.19 It may also be the case that the host state’s competent authority responds with concerns, or new information raises FSA concerns, after we have approved any agent and recorded the passport on our FSA register. In this case we will consider the information supplied to us and may decide to de-register the passport and/or agent. This may add to the time taken to come to a final decision on the application.

### **Making changes**

- 6.20 Changes that affect the payment services that a firm seeks to carry on under passporting rights should be notified to us at least one month before firms wish them to take effect. Such changes may include:

- changes to the name or address of the firm, or agent engaged in another member state;
- adding/removing an agent;
- adding/removing passporting rights to particular EEA States;
- changes to the payment services being conducted;
- changes to the persons responsible for the management of the proposed EEA branch or agent; or
- changes to the organisational structure of the branch or agent.

- 6.21 Approval of changes is subject to a similar review process as for new passport applications, so in the case of changes in agents being used or the management of a branch, registration will be subject to the fitness and propriety checks described above in relation to branch passports and/or use of EEA agents.

### **Incoming EEA authorised payment institutions**

- 6.22 PIs that are authorised in another EEA State and who wish to provide payment services in the UK (‘EEA PIs’) should refer to the competent authority in their home state for instructions on making a passport notification. These PIs will appear in the register of their home state, but not our register.
- 6.23 When we receive a passport notification from the home state’s competent authority in respect of a PI intending to establish a branch in the UK or use a UK agent, we are entitled to review the notification for suspicions of money laundering and terrorist financing involvement as outlined above. Where we have concerns, we will notify the home state competent authority and they will decide what action to take.
- 6.24 Changes to an EEA PI’s passport should be notified to its home state’s competent authority who will notify us, as appropriate.
- 6.25 In our view, an EEA PI’s passport entitles it to carry on only payment services in the UK. If an EEA PI wishes to carry on other activities in the UK, it may need to seek other appropriate authorisation, registration or make use of another passport (for

example, to provide investment services under the Markets in Financial Instruments Directive (MiFID)).

### **Supervision of incoming EEA payment institutions**

- 6.26 Under the PSRs, we are responsible for supervising compliance by an FSA-authorized PI with its capital requirements obligations, regardless of where it carries on its payment services within the EEA, but we are not responsible for supervising compliance with capital requirements by an EEA PI authorised in another member state.
- 6.27 We are responsible for supervising compliance with the conduct of business requirements of the PSRs in relation to payment services being provided from an establishment in the UK (for example, by an EEA PI exercising its right of establishment), but not in relation to those provided on a cross-border basis from an establishment outside the UK (for example, under a services passport).
- 6.28 We will exchange information about authorised PIs and EEA authorised PIs with other competent authorities in accordance with the PSRs. In particular, the FSA is obliged to provide relevant competent authorities with all relevant or essential information relating to the exercise of passport rights by a PI, including information on breaches or suspected breaches of the PSRs and of money laundering and terrorist financing legislation.

### **Credit institutions**

- 6.29 Article 92 of the PSD modifies the wording and scope of activities 4 and 5 in Annex I of the recast Banking Directive (BCD) 2006/48/EC. In particular, the activity of issuing electronic payment instruments (e.g. credit cards) moves from activity 5 to activity 4 in the recast BCD.
- 6.30 Credit institutions with a passport comprising activity 4 in the Annex to the BCD should be able to continue the same activities without having to make a re-notification.
- 6.31 As regards activity 5 in the Annex to the BCD, credit institutions and financial institutions which have already made passport notifications in relation to this activity do not need to re-notify activity 5. However, the activity 5 has narrowed in the Annex to the BCD so that the issuing of electronic payment instruments now falls within activity 4. This means that a credit institution currently without a passport in relation to activity 4 of the Annex to the BCD, but whose passport covers activity 5, needs to make a fresh passport notification in relation to activity 4.

# 7 Use of the FSA logo

- 7.1 This chapter explains the circumstances under which PIs are allowed to use our logo.
- 7.2 We allow authorised firms for whom we are the home state regulator, to use our logo in certain circumstances. An authorised PI may use our logo as part of a statement in a letter (or electronic equivalent such as an email) that it is authorised and regulated by us, in common with other firms authorised by us under other legislation, such as FSMA. It should be noted that a website is not classed as a letter or electronic equivalent, and the use of our logo on firms' websites is not therefore allowed.
- 7.3 Agents of authorised PIs are also permitted to use our logo as part of a statement in a letter (or electronic equivalent) that its principal is authorised and regulated by us.
- 7.4 The following types of firms are not permitted to use our logo, either directly or through their agents or branches:
- small PIs; and
  - EEA authorised PIs.
- 7.5 This does not prevent any PI, either authorised or registered as a small PI, from making a factual statement about its regulatory status (as is required in the information requirements in Part 5 of the PSRs). Annex 3 sets out some sample statements for PIs in describing their regulatory relationship with us.
- 7.6 Guidance on the use of our logo is set out in the General Provisions sourcebook (GEN) at GEN 5 and the licence for its use is found in GEN 5 Annex 1 of our Handbook.
- 7.7 Firms may not use our logo (and must take all reasonable steps to ensure that their representatives do not use it) in any communication with a payment service user other than in accordance with the general licence in GEN 5 Annex 1 or any individual licence granted by us to the firm or its representatives. In particular firms must not use either the logo, or any statement to the effect that the firm is authorised or regulated by the FSA to give the impression that the authorisation and/or regulation goes beyond the particular activities for which the authorisation or registration has been granted. To do so would infringe the FSA's trademark and may constitute a criminal offence under the Consumer Protection from Unfair Trading Regulations 2008.

# 8 Conduct of business requirements

- 8.1 This chapter describes the conduct of business (COB) requirements. These apply to all payment service providers except credit unions, municipal banks and the National Savings Bank.
- 8.2 The chapter is set out as follows:
- Introduction, application and interaction with other legislation.
  - Part I: Information requirements:
    - A – framework contracts;
    - B – single payment transactions; and
    - C – other information provisions.
  - Part II: Rights and obligations.

## **Introduction**

- 8.3 Parts 5 and 6 of the PSRs set out obligations on payment service providers relating to the conduct of business in providing payment services. These are typically referred to as ‘conduct of business requirements’.
- 8.4 They fall into two main categories:
- information to be provided to the customer before and after execution of a payment transaction; and
  - the rights and obligations of both payment service provider and customer in relation to payment transactions.
- 8.5 The information requirements differ depending on whether the transaction concerned is carried out as part of an ongoing relationship under a ‘framework contract’ (described below) or as a single payment transaction. There are also different requirements for payment instruments that are limited to low value transactions.



- 8.6 In some cases, the PSRs allow different requirements to be agreed between the customer and payment service provider, what is known as a ‘corporate opt out’, so that payment service providers can reach agreement with certain classes of business customers to apply different requirements.
- 8.7 The PSRs contain an overarching provision allowing payment service providers to offer more advantageous terms to their customers than those set down in the PSRs.
- 8.8 Definitions for the terms used in this chapter can be found in regulation 2 of the PSRs.

## **Application of the conduct of business requirements**

- 8.9 The requirements apply to all payment service providers except credit unions, municipal banks and the National Savings Bank.
- 8.10 Broadly, the requirements apply to all payment transactions where the payment service providers of both the payer and the payee are located in the EEA, and where the payment transactions are in euro, or in the currency of a member state that has not adopted the euro. The exception is regulation 73 which applies to all transactions, including one leg transactions, i.e. those where the payment service provider of either the payer or the payee is located outside the EEA.

## **Interaction with other legislation**

- 8.11 In addition to complying with the PSRs, payment service providers will need to comply with other relevant legislation. Firms which are also carrying on an activity regulated under FSMA (for example, accepting deposits or issuing e-money) must comply with the Principles for Businesses to the extent that these do not conflict with the PSRs. We describe below some other key legislative requirements that firms may need to take into account.

### **Consumer Credit Act 1974 (CCA)**

- 8.12 Broadly speaking, businesses that lend money to retail consumers are licensed by the Office of Fair Trading (OFT) under its consumer credit regime. The Government has taken the approach that where there is a conflict between the PSD and consumer credit provisions, consumer credit legislation, either provided by the CCA or the Consumer Credit Directive (CCD), will take precedence.
- 8.13 There are some specific information requirements in the PSRs that are not applied where the contract under which a payment service is provided is also a regulated agreement under the CCA (regulation 34). There are also specific provisions of the rights and obligations requirements that are not applied where the contract under which a payment transaction is provided is a regulated agreement to which particular sections of the CCA applies (regulation 52). These are identified in the description of the relevant regulations in Parts I and II below.

## **The Banking: Conduct of Business sourcebook (BCOBS)**

- 8.14 Retail deposit takers, i.e. banks and building societies, are required to comply with the FSA's Banking: Conduct of Business sourcebook (BCOBS). BCOBS sets out conduct of business rules that are complementary to the PSRs, and applies to retail deposit taking, except where this is contrary to the provisions of the Payment Services Directive.
- 8.15 BCOBS includes rules relating to:
- communications with banking customers and financial promotions;
  - distance communications, including the requirements of the Distance Marketing Directive and E-commerce Directive;
  - information to be communicated to banking customers, including appropriate information and statements of account;
  - post-sale requirements on prompt, efficient and fair service, moving accounts, and lost or dormant accounts; and
  - cancellation, including the right to cancel and the effects of cancellation.
- 8.16 The BCOBS sourcebook is at [www.fsahandbook.info/FSA/html/handbook/BCOBS](http://www.fsahandbook.info/FSA/html/handbook/BCOBS) and further information is available at [www.fsa.gov.uk/Pages/Doing/Regulated/banking/bcoobs/index.shtml](http://www.fsa.gov.uk/Pages/Doing/Regulated/banking/bcoobs/index.shtml)

## **Distance Marketing Directive**

- 8.17 The Distance Marketing Directive (DMD) provides protection for consumers whenever they enter into a financial services contract by distance means, including for payment services. Both the PSRs and the DMD apply to contracts for payment services.
- 8.18 For other payment service providers, the rules implementing the DMD are found in the Distance Marketing Regulations 2004. The rules implementing the DMD in relation to retail banking services can be found in [BCOBS 3.1](#).

## **The E-money Directive 2009/110/EC**

- 8.19 The E-money Directive (2009/110/EC), replacing the previous directive (2000/46/EC), was implemented in the UK by means of the Electronic Money Regulations 2011. The bulk of these regulations came into effect on 30 April 2011.
- 8.20 E-money issuers do not require authorisation under the PSRs but are subject to the conduct of business requirements set out in this chapter.
- 8.21 We are aware that a number of pre-paid cards have been issued in the UK by "programme managers" which utilise e-money issued by a credit institution or e-money issuer. Under these arrangements, the programme manager manages the card and takes transaction and other fees from the card user, but the underlying funds are held by the e-money issuing institution. In our view the e-money issuer will usually be the payment service provider for the purposes of the PSRs, given that the programme manager does not hold the funds on behalf of the customer. In the

situation described, the e-money issuer is therefore responsible for ensuring that the programme manager complies with the conduct of business requirements set out in this chapter.

### **Regulation 924/2009 on cross-border payments**

- 8.22 Regulation 924/2009 on cross-border payments replaced Regulation 2560/2001 on cross-border payments in euro. The regulation prohibits payment service providers from charging more for a cross-border payment in euro than for a corresponding domestic payment in euro. The FSA is the competent authority and the FOS is the out of court redress provider for this regulation.

### **Regulation 1781/2006 on information on the payer accompanying transfers of funds**

- 8.23 Regulation 1781/2006 on information on the payer accompanying transfers of funds specifies the information on the payer to be included in a payment message (or made available on request).
- 8.24 The provisions of Regulation 1781/2006 are not affected by the implementation of the PSRs, but care should be taken that information provided to the payment service provider as a result of the requirements of Regulation 1781/2006 is passed on to the payee only where appropriate. Further explanation is provided later in this chapter.

### **The E-Commerce Directive (2000/31/EC)**

- 8.25 The E-Commerce Directive will continue to apply in addition to the provisions of the PSRs.
- 8.26 The rules implementing the E-Commerce Directive in relation to deposit-taking can be found in the FSA Handbook at [BCOBS 3.2](#).
- 8.27 For other payment service providers, the rules implementing the E-Commerce Directive are found in the [Electronic Commerce \(EC Directive\) Regulations 2002](#).

### **The Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs)**

- 8.28 The UTCCRs apply to payment services contracts with consumers and payment service providers should continue to ensure that their standard-form consumer contracts are fair and written in plain and intelligible language. Further information about the UTCCRs can be found in The Unfair Terms Regulatory Guidance (UNFCOG), on our website and on the OFT's website.
- 8.29 Payment service providers must ensure that their terms and conditions comply with the conduct of business provisions of the PSRs and the UTCCRs.

## **The Consumer Protection from Unfair Trading Regulations 2008 (CPRs)**

- 8.30 Payment service providers should note that the CPRs still apply to their payment service business with consumers. The CPRs are intended to protect consumers from unfair commercial practices by businesses. Further information about the CPRs can be found on our website and on the OFT's website.
- 8.31 Where a money transfer operator payment institution operates as a 'wholesaler' (providing a payment service to smaller money transfer operators, but without a contractual relationship with the payment service user) and provides its client payment institutions with advertising materials and stationery, the use of such material must be compatible with the CPR's provisions. Advertising material or business stationery that is likely to mislead customers into believing that the payment service provider with whom they have contracted is the 'wholesaler' firm rather than the client firm may potentially constitute a misleading commercial practice under the CPR. In these circumstances it is unlikely that simply referring to the client firm's name on the customer's receipt will, in itself be sufficient to achieve compliance, as this occurs after the transaction has been entered into. Where it appears to us that a firm's business model has changed from an 'agency' to a 'wholesaler' model purely as a matter of form rather than substance, in order to avoid the firm's regulatory obligations for its agents, this would be seen as a matter of concern.

## **Part I: Information Requirements**

- 8.32 The information that payment service providers are required by the PSRs to provide to customers is separated into two scenarios as follows.
- Transactions under framework contracts – that is, a contract governing the future execution of individual and successive payment transactions (see regulation 2 for the full definition). This is where there is an ongoing relationship, and there is an agreement between the payment service provider and the customer covering the making of payments. An example of this would be parts of a bank's current account terms and conditions. It is important to understand that payment transactions falling under the scope of the PSRs are also made to and from accounts other than payment accounts, and that where this is the case, the framework contract provisions will also apply to the payment service provider's agreement with its customers. No account to or from which payment transactions falling within the scope of the PSRs are made can therefore correctly be said to be 'out of scope of the PSRs', and payment service providers must ensure that they take this into consideration in their arrangements for such accounts. However, there are some provisions that we believe will only apply to payment accounts and these are explained later in this chapter.
  - Single payment transactions – this is typically where there is no ongoing relationship between the customer and the payment service provider – the transaction is a 'one-off' and the contract between the payments service provider and the customer relates solely to the particular transaction in question. A single

payment transaction may also occur if there is a framework contract that does not include the particular payment service involved.

- 8.33 For both scenarios, the PSRs set out the information to be provided before the contract is entered into, at the time the payment order is made, and after execution of the transaction.

### **Corporate opt-out**

- 8.34 For some customers, as detailed below, different arrangements may be made by agreement. It is important to note that the PSRs provide that the agreement may be that ‘any or all of the provisions do not apply’. In our view, for the customer to ‘agree’ it must be made clear to them which provisions are being disapplied.
- 8.35 Payment service providers are allowed to agree different terms with certain classes of their business customers. This is known as the ‘corporate opt-out’. However, this is only where the customer is not:
- a consumer;
  - a micro-enterprise (see Glossary for definition); or
  - a charity with an annual income of less than £1 million.

### **Form in which the information must be provided**

- 8.36 All of the specified information must be provided (for example on paper, by email or text) or, where the relevant provision allows, made available (for example by a link to a secure website) in an easily accessible manner. The information must be in a clear and comprehensible form, in English (or other agreed language) and, if requested by the customer, on paper or another durable medium (for example by email), unless otherwise specified in the particular regulation. A firm which is also carrying on an activity regulated under FSMA will need to take into account the Communications with Clients Principle, which requires it to communicate information to clients in a way that is clear, fair and not misleading. No charges may be levied by the payment service provider for providing any of this information, in the form and frequency set out below.

## **A: Framework contract**

### *Before the framework contract is entered into (regulation 40 and Schedule 4)*

- 8.37 In good time before the contract is concluded (or immediately after the execution of the transaction if the contract has been concluded by a means of distance communication, such as by telephone, where it is not practicable to do so), the payment service provider must make available to the customer the information in the table below. This may be done by providing the customer with a copy of the draft contract.

8.38 Where the contract is also a regulated agreement under the CCA, certain exemptions apply to regulation 40. These are set out in regulation 34.

**Information to be provided before the contract is entered into (regulation 40 and Schedule 4)**

Details about the payment service provider	The payment service provider's name, head office address and contact details. If different, the address and contact details of the branch or agent from which the service is being provided and details of the payment service provider's regulator(s), including any reference or registration number (for example the provider's FSA register number).
Details of the payment service(s) to be provided	Description of their main characteristics.
	Specification of the information or unique identifier to be provided by the customer for a payment order to be properly executed. For example, for a UK bank transfer, the payee bank's sorting code and account number might be specified as the unique identifier. The need to provide the correct unique identifier (and the potential for loss/delay if an incorrect unique identifier is provided) should be explained to the customer.
	What the payment service provider will take as consent for the execution of a payment order, and the procedure by which such consent may be given. For example, consent could be given in writing, verified by a signature, by means of a payment card and PIN number, over a secure password-protected website, by telephone or by use of a password. Whatever means are to be used, including any allowable alternative methods (e.g. signature in place of chip and PIN), they must be detailed in the framework contract. The contract must also say how the customer may withdraw consent.
	Details of when a payment order will be deemed to have been received. If the payment service provider has a cut-off time after which payment orders are deemed to have been received on the next business day, this must be specified. This is very important because of the requirements in the PSRs on execution time of payments. It is recognised that there may be different cut-off times for different payment channels.
	The maximum time after receipt of a payment order, by which the funds will have been received by the payee's payment service provider.
	Where applicable, the fact that a payment instrument attached to the account has a spending limit (for example, a maximum daily withdrawal limit on an ATM card).
Charges and interest	Details of all charges payable by the customer to the payment service provider and, where applicable, a breakdown of them. The customer should be able to understand what the payment services to be provided under the contract will cost them. If the firm will make a charge for notifying the customer that a payment order has been refused under regulation 66(3), this must be specified here.

	<p>Details of the interest or exchange rates to be used (where relevant). In line with Commission guidance during transposition and in the Commission's FAQs, this will include changes to interest rates on the underlying payment account unless the use of reference interest rates has been agreed (as set out below) or the framework contract forms part of a regulated agreement under the CCA. If a reference exchange or interest rate is to be used, details of where the reference rate can be found and how the actual rate will be calculated must be given (including the relevant date and index or base for determining the reference rate). The aim is to enable the customer to verify that the interest charged or paid is correct. Reference exchange rates may be set by the payment service provider itself, but the customer must be told where they can find out what they are.</p>
	<p>Agreement, if relevant, that changes in reference interest or exchange rates will take effect immediately (otherwise they will take effect in line with regulation 42(5)).</p>
	<p>Where reference interest or exchange rates are being used, agreement, of how, and with what frequency changes in actual interest or exchange rates will be notified, in line with regulation 42(5). If no alternative method or frequency is agreed, notification will be required as soon as possible.</p>
Transmission of information	<p>How information relating to the account will be transmitted (for example, in writing, by email or using a secure website), how often it will be provided or made available and what language will be used. Any technical requirements for the customer's equipment to receive information or notices must be stated. The contract must also include the customer's right to obtain a copy of the contract at any time during its term.</p>
Information about safeguards and corrective measures	<p>What steps the customer must take to keep a payment instrument safe. (Note that 'payment instrument' has a wide definition and will include payment cards, e-banking and telephone banking arrangements.)</p>
	<p>Details of how to notify the payment service provider of the loss, theft or misappropriation of the payment instrument.</p>
	<p>In what circumstances the payment service provider would be able to stop or block the payment instrument. These are limited to reasons related to:</p> <ul style="list-style-type: none"> <li>• the security of the payment instrument;</li> <li>• the suspected unauthorised or fraudulent use of the payment instrument; and</li> <li>• where the payment instrument has a credit line (for example, a credit limit on a credit card), a significantly increased risk that the payer may be unable to fulfil their ability to pay.</li> </ul> <p>Payment service providers may wish to include wording advising that the payment instrument might be blocked or stopped due to national or Community legal obligations of the payment service provider.</p>
	<p>In what circumstances and to what extent the customer might be liable for unauthorised payment transactions.</p>
	<p>That the customer must notify the payment service provider of any unauthorised or incorrectly executed payment transactions as soon as they become aware of them, how such notification should be made and that the notification should be no later than 13 months after the debit date in order to be entitled to have the error corrected (no such limit will apply unless the customer has received this information). It is open to the payment service provider to offer better terms in this area.</p>

	The payment service provider's liability for unauthorised or incorrectly executed payment transactions (for example that the payment service provider will be liable for unauthorised or incorrectly executed payment transactions, as long as the claim is made within the time limits specified above). If UK Direct Debits are offered as a payment service on the account, reference should be made to the rights under the Direct Debit Guarantee scheme.
	The conditions under which a refund is payable in relation to a transaction initiated by or through a payee (for example, a direct debit or card transaction).
Information about the length of the contract, variation of terms and termination	The duration of the contract, customer and payment service provider termination rights, and the terms under which the firm can unilaterally vary the contract.
Information on applicable law and disputes	Details of the law applicable to the contract, the competent courts, (where relevant) the availability of the FOS as a dispute resolution service and how to access the service (see <i>Chapter 11 – Complaint handling</i> ), and the possibility to submit complaints to us.

## Changes to the framework contract (regulation 42)

- 8.39 Any changes to the framework contract, or to the information that has to be disclosed before the framework contract is entered into, must be communicated at least two months before they are due to take effect.
- 8.40 Some account terms and conditions will contain provisions relating to other, non-payment services, for example overdraft facilities. In such accounts the obligation to notify changes under regulation 42 does not extend to non-payment services that are outside the scope of the pre-contract disclosure requirement. However, for banks and building societies the BCOBS requirements on appropriate information may apply to such services.
- 8.41 The framework contract may contain a provision that changes are to be made unilaterally unless the customer notifies the payment service provider to the contrary (although payment service providers will also need to take account of unfair contract terms legislation). It may also state that rejection of proposed changes will amount to rejection of the contract and notice of termination. If the contract contains such a provision, the advice of change must state:
- that the customer will be deemed to have accepted the changes unless they notify the payment service provider before the proposed date of the change; and
  - that the customer has the right to terminate the contract immediately and without charge before that date.
- 8.42 The addition of new payment services to an existing framework contract, which do not change the terms and conditions relating to the existing payment services, will not be treated as a change and so will not require two months notice.
- 8.43 In general, we believe a change in account type at the payment service provider's instance – e.g. from a 'free account' to a fee paying packaged account – constitutes



either a change in the framework contract or terminating the existing contract and its replacement by a new framework contract. Both the proposed change and the termination by the payment service provider require the customer to be given two months notice, and the option of immediate termination without charge.

- 8.44 Changes to the actual interest or exchange rates arising from changes to the reference interest and/or exchange rates must be notified to the customer as soon as possible unless another frequency has been agreed with the customer. The manner in which this information is to be provided or made available may be agreed with the customer.
- 8.45 The application of interest rate or exchange rate changes must be implemented and calculated in a neutral manner that does not discriminate against customers. In our view, this means that customers should not be unfairly disadvantaged; for example, by using a calculation method that delays passing on changes in rates that favour customers but more quickly passes on changes in the payment service provider's favour.
- 8.46 Recital 21 of the PSD makes clear that the intent of the information provisions in the directive, and therefore in the regulations, is to enable payment service users to make well-informed choices, and to enable consumers to shop around within the EU. In light of this, we would expect that where, for example, an introductory interest rate on a payment account comes to an end, firms should provide the two months notice of the change in the interest rate specified in paragraph 8.39 above, and not rely on a framework contract term stating that the interest rate will change at the end of the introductory period.
- 8.47 Where the contract is also a regulated agreement under the CCA, regulation 42 does not apply. The details are set out in regulation 34.
- 8.48 We would expect that, in normal circumstances, where a change in UK or EU legislation or regulation requires a change to be made in the framework contract, firms will be sufficiently aware of forthcoming changes in legislation or regulation and therefore able to provide the required two months' notice set out above. However, it is recognised that there may be exceptional occasions where this may not be possible. Firms should ensure that where this is the case, customers are given as much notice of the changes as possible.

### **Termination of the framework contract (regulation 43)**

- 8.49 The framework contract may be terminated by the customer at any time, unless a period of notice (not exceeding one month) has been agreed. If the contract has been running for 12 months or more and is for a fixed period of more than 12 months or for an indefinite period, then no charge may be made for termination. Regular service charges for the running of the payment services may be charged, but any advance payments in respect of such service charges must be returned on a pro-rata basis. Any charge that is made for termination must reasonably correspond to the payment service provider's actual costs.
- 8.50 Sometimes the framework contract relates to a savings account with a notice period of longer than one month. In our view the right to terminate this at one month (or shorter) notice does not itself entitle the payment service user to withdraw the funds

in the account at the end of the termination notice period or affect any interest penalty that might apply to early withdrawal if the payment service provider chooses to permit this.

- 8.51 The payment service provider must give at least two months' notice of termination on a framework contract that is not for a defined term.
- 8.52 The parties retain their usual legal rights to treat the framework as unenforceable or void, including any rights arising out of breach of the contract.
- 8.53 Where the contract is also a regulated agreement under the CCA, regulation 43 does not apply. The details are set out in regulation 34.

### **Transaction information under a framework contract**

#### *Before execution (regulation 44)*

- 8.54 Where the payment order is given direct by the payer customer to his payment service provider, the payment service provider must, at the customer's request, inform the customer of:
- the maximum execution time for the transaction concerned; and
  - any charges payable (including a breakdown of those charges where applicable).

#### *After execution (regulations 45 and 46)*

- 8.55 As soon as reasonably practicable after each individual transaction, the payment service provider must provide his customer with certain information. If agreed in the framework contract, this may be provided (that is, sent or given directly to the customer) or made available (that is, available to obtain at his option) at least once a month. For example, for most banks and building societies this may be by means of issuing (or making available) a statement. The information may be made available, for example through a secure website that meets the requirements for being a durable medium, or on request (although it must be made clear to the customer that the information is being made available and how to obtain it). For accounts operated by use of a passbook, our view is that the transaction information is available to the customer when they present their passbook to be made up and that this is sufficient to fulfil the obligation to 'make available'. If it is not so agreed, the information must be separately provided in relation to each transaction. However, it is important to note that this provision does not require monthly statements to be posted out for all payment accounts. Where there are no transactions (or the only transactions relate to the payment of interest) there is no obligation under the PSRs to provide the information.
- 8.56 For the payer the information required is as follows:
- A reference enabling the customer to identify the payment transaction and, where appropriate, information on the payee. In assessing what information it is 'appropriate' to provide, in our view the payment service provider should take

into account other obligations, such as those of customer confidentiality, or the security of the payment system through which the payment was made.

- The amount of the transaction in the currency of the payment order, along with details of any exchange rate used by the payment service provider and the amount of the payment transaction after it was applied.
- The amount and breakdown of any transaction charges and/or interest payable in respect of the transaction, so that the customer knows the total charge he is required to pay (it is our understanding that LINK rules require ATM operators to disclose any charges before the customer agrees to the transaction).
- The debit value date or date of receipt of the payment order.

8.57 However, if the payer's contract is also a regulated contract under the CCA, the information requirements of that Act will continue to apply, and only the exchange rate information specified in regulation 45(2)(d) must be provided in addition to that information.

8.58 For the payee, the information required is as follows:

- A reference enabling the customer to identify the payment transaction and, where appropriate, information on the payer and any information transferred with the payment transaction. Regulation 1781/2006 requires, for anti-terrorist-financing purposes, a set of details of the payer to be transferred with such payments (or in some cases to be available to the payee's payment service provider on request). In our view, the PSRs do not require that all such information transferred with the payment be passed on to the payee. In assessing what information it is 'appropriate' to provide, in our view the payment service provider should take into account other obligations, such as those of customer confidentiality or the security of the payment system through which the payment was made.
- The amount of the transaction in the currency of the payment account credited.
- Any exchange rate used by the payment service provider and the amount of the payment transaction before it was applied.
- The amount and breakdown of any transaction charges and/or interest payable in respect of the transaction.
- The credit value date.

#### *Low value payment instruments (regulation 35)*

8.59 Low value payment instruments are those that under the framework contract:

- can only be used for individual transactions of €30 (or equivalent) or less, or for transactions executed wholly within the UK €60 (or equivalent) or less;
- have a spending limit of €150 (or equivalent), or for payment instruments where payment transactions can only be executed within the UK, €300; or
- store funds that do not exceed €500 (or equivalent) at any time.

- 8.60 The following, less detailed, information requirements apply to such low value payment instruments, relating to information required before entering into a framework contract (or immediately after the execution of the transaction if the contract has been concluded by some means of distance communication (for example, by telephone) where it is not practicable to do so) and information required before individual payment transactions.
- 8.61 The payment service provider must provide information on the main characteristics of the payment service. This must include:
- the way in which the instrument can be used;
  - the payer's liability for unauthorised payment transactions;
  - details of any charges applicable;
  - any other material information that the customer might need to make an informed decision; and
  - details of where the customer can easily access the full information in Schedule 4 that must normally be disclosed prior to being bound by a framework contract (as specified in Schedule 4 (for example, the website URL)).
  - The payment service provider may agree with the customer that there is no need to communicate contractual changes on paper or another durable medium.
- 8.62 It may also be agreed that rather than full post-execution information on payment transactions the payment service provider may provide or make available a reference that will enable the customer to identify the individual transaction, the amount and any charges payable in respect of the transaction. If there are several payment transactions of the same kind to the same payee, the payment service provider must provide or make available information on the total amount of the transactions concerned and any charges for those payment transactions.
- 8.63 If the payment instrument concerned is used anonymously or, for technical reasons the payment service provider is not able to provide or make available even this limited post-execution information, it does not need to be provided. However, the payment service provider must enable the customer to check the amount of funds stored.
- 8.64 The payment service provider and the customer may also agree that changes to the framework contract relating to the low value payment instrument do not have to be communicated in the form and manner required for other framework contract changes.
- 8.65 We recognise that fluctuations in exchange rates between euro and sterling may cause difficulties over time in determining whether a particular payment instrument is a low value payment instrument. We expect payment service providers to take a reasonable and consistent approach to dealing with such fluctuations to ensure they are compliant with the requirements.

## **B: Single payment transactions**

### *Before the transaction (regulation 36 and Schedule 4)*

- 8.66 Before the contract is concluded (or immediately after the execution of the transaction if the contract has been concluded by some means of distance communication (for example, by telephone) where it is not practicable to do so), the payment service provider must make available to the customer the information set out below. This may be done, for example, by providing the customer with a copy of the draft contract or payment order.
- The information (or unique identifier) the customer needs to provide for the payment order to be properly executed (the payment routing information).
  - The maximum time the payment service will take to be executed (that is, how long until the funds are received).
  - Details of any charges, including a breakdown where applicable.
  - If applicable the exchange rate to be used (or the reference exchange rate on which the actual exchange rate will be based).
- 8.67 In addition, there is a list of information in Schedule 4 of the PSRs that must be disclosed prior to entering into a framework contract. Items on the list must also be provided or made available if they are relevant to the single payment contract in question. What is ‘relevant’ will depend on the nature of the payment service and the circumstances. However, we consider that the following, in particular, will always be relevant information:
- Details of the payment service provider and its regulators (Schedule 4 paragraph (1)(d)); and
  - For customers who are eligible to take complaints to the FOS: notification of the availability of the FOS as an out-of-court redress mechanism and how to access it (Schedule 4 paragraph (7)(b)).
- 8.68 Where a payment institution operates as a ‘wholesaler’ (providing a payment service to smaller money transfer operators but without having a contractual relationship with the payment service user) and provides its client payment institutions with advertising materials and stationery, they must make it clear to customers of client firms before any transaction is entered into, that the client firm is the payment service provider. Failure to do so is likely to constitute a breach of the PSRs. Advertising and marketing material or business stationery that is likely to mislead the customer into believing the payment service provider with whom they are contracting is the ‘wholesaler’ firm rather than the client firm may also potentially constitute an unfair commercial practice under CPRs. Where it appears to us that a firm’s business model has been changed from an ‘agency’ to a ‘wholesaler’ model purely as a matter of form rather than substance to avoid the firm’s regulatory obligations for its agents, this would be seen as a matter of concern.

- 8.69 Suggested wording for describing the payment service provider's relationship with the FSA is provided in *Annex 3 – Status disclosure*. Guidance on the permitted use of our logo in connection with statements about regulatory status can be found in *Chapter 7 – Use of the FSA logo*.

*After the receipt of the payment order (regulation 37)*

- 8.70 The payer's payment service provider must immediately after receipt of the payment order, provide or make available to its customer:
- a reference to enable the payer to identify the transaction (and if appropriate the information relating to the payee, for example, in a money remittance what the payee will need to do to collect the funds);
  - the amount of the payment transaction in the currency used in the payment order;
  - details of any charges (including, where applicable, a breakdown of those charges);
  - where the transaction involves a currency exchange and the rate used differs from the rate provided before the transaction, the actual exchange rate used (or a reference to it) and the amount of the payment in the other currency; and
  - the date the payment order was received.

*Information for the payee after execution (regulation 38)*

- 8.71 The payee's payment service provider must immediately after execution of the payment transaction provide or make available the following to its customer.
- A reference to enable the payee to identify the transaction and where appropriate, relevant information transferred with it (for example, name of the payer and invoice number). Regulation 1781/2006 requires, for anti-terrorist-financing purposes, a set of details of the payer to be transferred with such payments (or in some cases to be available to the payee's payment service provider on request). In our view the PSRs do not require that all such information transferred with the payment be passed on to the payee. In deciding what is appropriate and relevant, the payment service provider should take into account other obligations, such as those of customer confidentiality, or the security of the payment system through which the payment was made (for example, technical information relating to the payment system that is received with a payment, may not be relevant or appropriate to be provided to the customer).
  - The amount of the transaction in the currency in which the funds are being put at the payee's disposal.
  - Details of any charges (including a breakdown of those charges).
  - The exchange rate used (if relevant) and the amount of the payment before it was applied.
  - The credit value date.

### *Payment instruments issued under a framework contract (regulation 39)*

- 8.72 If the single payment transaction arises from the use of a payment instrument issued under a framework contract (for example an ATM withdrawal by a customer of Bank X at an ATM operated by Bank Y) the payment service provider with whom the single payment transaction is undertaken (Bank Y) need not provide information that will be provided or made available by Bank X under the framework contract. (It is our understanding that LINK rules require ATM operators to disclose any charges before the customer agrees to the transaction).

## **C: Other information provisions**

### *Charges for information (regulation 48)*

- 8.73 The information specified above must be provided free of charge. Payment service providers may charge for additional or more frequent provision of information, or where another means of transmission from that agreed in the framework contract is requested, but such charges must reasonably correspond to the actual cost to the payment service provider of providing the information. Payment service providers must therefore be able to justify the level of any such charges.

### *Currency conversions (regulation 49)*

- 8.74 Where a currency conversion service is offered before a payment transaction, at the point of sale or by the payee (that is, 'dynamic currency conversion' where, for example, a UK shop could offer a German customer the facility to pay his bill in euro) the exchange rate to be used and all charges must be disclosed to the customer before the transaction is agreed. The payment transaction must be executed in the agreed currency. The wording of this provision does not apply to ATMs, but it is our understanding that the LINK rules require the provision of similar information. It is the person offering the service who must comply with the disclosure obligation – if that person is not a payment service provider then failure to make the disclosure risks committing a criminal offence under regulation 113.

### *Information on additional charges or reductions (regulation 50)*

- 8.75 If a payee (typically a shop, website operator or other merchant) levies an additional charge or offers a reduction in cost for using a particular means of payment (for example an additional charge for using a credit card) this information must be advised to the customer before the start of the payment transaction. This provision does not affect the operation of the Credit Cards (Price Discrimination) Order 1990, which prohibits agreements requiring, restricting or prohibiting the setting of different prices for goods or services purchased with a credit card from those charged when other payment types are used.
- 8.76 Similarly, if a payment service provider or other third party levies a charge for the use of a particular payment instrument, it must advise the customer before the payment transaction is initiated. A third party that fails to do this, risks committing a criminal offence under regulation 113.

## **Part II: Rights and obligations in relation to the provision of payment services**

8.77 The COB provisions on rights and obligations contain rules on:

- charging;
- authorisation of payment transactions;
- execution of payment transactions;
- execution time and value date; and
- liability.

### **General (regulations 51 to 53)**

8.78 These provisions apply to payment transactions under framework contracts and single payment transactions. They apply to low value payment instruments unless otherwise stated. See Part I, Section A of this chapter for a definition of low value payment instruments. They also apply to payment services contracts that are regulated agreements for the purpose of the CCA, but certain provisions are not applied in favour of equivalent CCA provisions (these are noted below where relevant).

8.79 Payment service providers are allowed to agree different terms with their customers for certain of these provisions, identified below. This is known as the ‘corporate opt-out’. However, this is only where the customer is not:

- a consumer;
- a micro-enterprise (see Glossary for definition); or
- a charity with an annual income of less than £1 million.

It is important to note that the PSRs provide that the agreement may be that ‘any or all of the provisions do not apply’. In our view it must be made clear to the customer which provisions are being disapplied.

### **Charges (regulation 54)**

8.80 Payment service providers may only charge their customers for carrying out their obligations as set out in Part 6 of the PSRs (those concerning rights and obligations) where the PSRs specifically allow it. Those charges must be agreed with the customer and must reasonably correspond to a provider’s actual costs. The corporate opt-out applies to this provision (see under ‘General’ at the start of Part II).

8.81 Unless there is a currency conversion as part of the payment transaction, the rule on charging is that:

- the payee must pay any charges levied by their payment service provider; and
- the payer must pay any charges levied by their payment service provider. This is also known as a SHARE arrangement.



- 8.82 The effect of this is that for payment transactions in scope of the regulations, arrangements where the payer pays both their own and the payee's payment service providers' charges (known in SWIFT terms as 'OUR'), or conversely the payee pays both his, and the payer's payment service providers' charges (known in SWIFT terms as 'BEN') will not be effective, unless the payment transaction involves a currency conversion. Any such charge levied will be subject to the agreement on charges between the customer and the PSP, in the framework contract or single payment service contract for the payment type concerned.

### *Charges or reductions for the use of a particular payment instrument (regulation 54)*

- 8.83 The payee's payment service provider cannot prevent the payee from requesting a charge from the payer, or offering a reduction to the payer, for the use of a particular payment instrument, e.g. credit card, debit card or pre-paid card. Similarly, a merchant can not be prevented from offering a discount for using a particular payment instrument. The Credit Cards (Price Discrimination) Order 1990 prohibits agreements requiring (or prohibiting or restricting) the charging of different prices for goods or services purchased with a credit card. Such agreements will continue to be prohibited, but this will not prevent merchants from choosing to impose a charge or offer a reduction.

### **Authorisation of payment transactions**

#### *Consent (regulation 55)*

- 8.84 The form and procedure for consent for execution of a transaction to be given by the payer must be set out in the information provided before entering into a framework contract. This should cover both individual transactions and a series of payment transactions (for example, a standing order or direct debit mandate). The PSRs allow that, where agreed with the customer, consent may be given after the payment transfer has been executed. Otherwise it must be given in advance. The corporate opt-out applies to this provision (see under 'General' at the start of Part II).
- 8.85 Regulation 67 sets out the rules on the point from which consent for a particular transaction may not be revoked by the customer. This will depend on the particular circumstances of the payment transaction in question. Up to the agreed point, the customer has a right to withdraw consent to a transaction.
- 8.86 If consent has been given to a series of payment transactions (for example, a standing order or direct debit mandate) the customer has the right, at any time, to withdraw consent in respect of future transactions in the series, subject to the time limits for revocation of the next payment transaction in the series, set out in regulation 67.
- 8.87 Unless the payment service provider can show that such consent has been received, or where the customer can show that his consent has been withdrawn under the rules set out in regulation 67, the payment service provider has no authority to make the payment or to debit the customer's account.

### *Limits on the use of payment instruments (regulation 56)*

- 8.88 Before blocking or stopping a payment instrument (for example a credit or debit card, or an e-banking service), the payment service provider must have agreed in the framework contract that it can do so, and must contact the customer to advise them of its intentions and its reason for doing so. Stopping or blocking a payment instrument must only be done on reasonable grounds relating to its security, suspected unauthorised or fraudulent use of the payment instrument, or (where the instrument has a credit line) a significantly increased risk the payer may be unable to pay. If the payment service provider is unable to contact the customer beforehand, it must do so immediately after, using the means of communication agreed in the framework contract. However, if providing this information would compromise reasonable security measures, or would be unlawful (for example if it would constitute ‘tipping off’ under anti-money laundering legislation) this requirement does not apply.
- 8.89 The payment service provider is required to unblock the payment instrument as soon as practicable after the reasons for blocking cease to apply.
- 8.90 The parties can also agree to a spending limit on a specific payment instrument.

### *Obligations of the customer in relation to payment instruments (regulation 57)*

- 8.91 The customer is obliged by the PSRs to abide by the terms and conditions for the use of the payment instrument, and in particular, to notify the payment service provider, in the agreed manner and without undue delay, should they discover that the payment instrument has been lost or stolen, or that someone else has used (or attempted to use) the payment instrument without the customer’s authority.
- 8.92 The requirement to notify will not apply for low value payment instruments if the nature of the instrument means that it is not possible for the payment service provider to stop it from being used. (See Part I, section A of this chapter for a definition of low value payment instruments).
- 8.93 The PSRs oblige the customer to take all reasonable steps to keep the personalised security features of the payment instrument safe. This would include the personalised identification number (PIN) or password for the instrument or other piece of information known only to the issuing payment service provider and the customer. It does not include for example, a credit card number itself, as this would be known to any business where the card was used. We believe that a contractual term which prohibits the customer from writing down or recording a password or PIN in any form goes beyond “reasonable steps” (and may potentially be unfair under the Unfair Terms in Consumer Contracts Regulations 1999). A term that purports to say that a customer who does so will always be liable for any unauthorised transactions is therefore inconsistent with the provisions of the PSRs and is likely to be unenforceable against the consumer. What constitutes reasonable steps will depend on the circumstances, but payment service providers must say what steps they expect customers to take in their pre-contract disclosure information.

### *Obligations of the payment service provider in relation to payment instruments (regulation 58)*

- 8.94 The payment service provider issuing a payment instrument must do the following.
- Make sure that any personalised security features cannot be accessed by anyone other than the customer involved (subject to the duty of the customer in regulation 57 to keep it safe). In addition, if the payment service provider sends a payment instrument, PIN, password, etc. to the customer, any risk involved in the sending of the item will remain with the payment service provider. So, if a card and password were intercepted before they were received by the customer, any losses arising from their misuse would lie with the payment service provider rather than the customer.
  - Not send any unsolicited payment instruments to the customer, except as a replacement for the existing payment instrument.
  - Have appropriate means available at all times (subject to the force majeure provisions of regulation 79) to allow the customer to notify them if the payment instrument is lost, stolen or misappropriated, or to request that an instrument be unblocked. The payment service provider must also be able to provide the customer with some way of proving that they have made the notification for 18 months after it has been made; for example this could be by means of providing a reference and/or by confirming receipt in writing.
  - Prevent all use of the payment instrument after having been notified that it has been lost, stolen or misappropriated. Where it is not practically possible in the circumstances to prevent all use of the instrument, transactions generated through the use of the payment instrument should not be debited to the underlying account.
- 8.95 The above two requirements will not apply for low value payment instruments if the nature of the instrument means that it is not possible for the payment service provider to stop it from being used (see Part I, section A of this chapter for a definition of a low value payment instrument).

### *Notification of unauthorised or incorrectly executed payment transaction (regulation 59)*

- 8.96 If a customer becomes aware of an unauthorised or incorrectly executed payment transaction, he must notify the payment service provider concerned without undue delay and no later than 13 months after the date of the transaction, or else he will not be entitled to redress under the PSRs. However, it should be noted that payment service providers have the ability to grant more favourable terms to their customers, and therefore to offer a longer period (for example, the UK Direct Debit Guarantee Scheme would not be prevented from continuing to offer a longer period for refunds). The time limit above will not apply where the payment service provider has failed to comply with any of the information requirements imposed by the PSRs in respect of the transaction concerned.

8.97 This provision will not apply if the contract under which the payment service is provided is a regulated agreement under the CCA and instead the following sections of the CCA will apply:

- Section 66 (acceptance of credit tokens);
- Section 83 (liability for misuse of credit facilities); or
- Section 84 (misuse of credit tokens).

These provisions generally replicate or are more advantageous to the customer than, the PSR provisions.

*Evidence on authentication and execution of payment transactions (regulation 60)*

8.98 Where the customer denies that they have authorised a payment transaction (for example claims that a credit card transaction was not made by him), or claims that a payment transaction has not been correctly executed (for example, if the amount is wrong or has been sent to the wrong place), the obligation lies with the payment service provider to prove that the payment transaction was:

- authenticated;
- accurately recorded;
- entered in its accounts; and
- not affected by a technical breakdown or some other deficiency.

8.99 The PSRs specifically provide that just because the customer's payment instrument has been recorded as having been used, that in itself is not *necessarily* sufficient to prove that the customer either authorised the payment, has acted fraudulently, or failed, with intent or gross negligence, to fulfil their obligation in respect of the security of the payment instrument concerned. In our view, since use is only likely to be recorded if any personalised security features have been used, this means that firms cannot point to the security features (such as Chip and PIN) alone as incontestable proof of authorisation, fraud, etc. The corporate opt-out applies to this provision (see under 'General' at the start of Part II of this chapter).

8.100 The effect of this is that, for all customers, other than businesses above micro-enterprise level and charities above small charity level, who are able and willing to agree otherwise, each case must be treated on its own merits and blanket rules in terms and conditions to the effect that the use of the payment instrument will be taken as proper authorisation in all circumstances will not be effective.

8.101 However, for low value payment instruments, if the nature of the instrument is such that it is not possible for the payment service provider to prove that it was authorised (for example, if it was used anonymously) this provision will not apply. (See Part I, Section A of this chapter for a definition of low value payment instrument).

*Payment service provider's liability for unauthorised transactions  
(regulation 61)*

- 8.102 If a payment transaction was not properly authorised by the customer, the payment service provider concerned must immediately refund the amount of the transaction to the payer and, if applicable, restore the relevant payment account to the state it would have been in had the transaction not been made.
- 8.103 A transaction should be treated as unauthorised unless the payment service provider has the consent of the customer as set out in regulation 55. Where consent has been withdrawn by the customer as set out in regulation 67 for either the specific payment transaction or a series of payment transactions, including the payment transaction in question, it should be treated as unauthorised.
- 8.104 There is a balance to be struck between a customer's right to an immediate refund for an unauthorised payment transaction, and the need to determine whether the payment transaction was properly authorised, or whether the customer has failed in their own obligations with regard to the payment instrument used, so that the claim is invalid. We expect payment service providers to take a reasonable approach to this. In our view it would usually be reasonable to investigate a claim before making a refund if there is prima facie evidence to suggest that either the customer has acted fraudulently or that he has deliberately or grossly negligently failed to comply with his obligations in relation to the payment instrument. Otherwise, we would generally expect the payment service provider to make the refund and other correcting actions immediately.
- 8.105 We consider that the reference in regulation 61 of the PSRs 'immediately' refunding the amount of an unauthorised payment transaction cannot mean later than the same business day on which the claim is made, or if the claim is made at the very end of the business day or out of business hours, the beginning of the next business day.
- 8.106 If a claim is to be investigated before making the refund, the decision to do so must generally be made on the business day the claim is made (subject to the same provisos set out in 8.104 above), and must be on the basis of prima facie evidence to support possible customer liability. The reasons for such a decision should be recorded in case of any challenge. Where an investigation is justified, it needs to be carried out as quickly as possible in light of the circumstances. We generally expect this to mean days rather than weeks; in no circumstances should the investigation be used to discourage the customer from pursuing the claim. Clearly, if such an investigation is carried out and the customer is not found to be at fault, an immediate refund must be made, and back valued so that the customer does not suffer any loss.
- 8.107 There is nothing to prevent the payment service provider from investigating a claim after having made the refund and, if the results of such investigation enable it to prove either that the customer did authorise the transaction or was otherwise liable, reversing the refund. Where this occurs, we would expect the firm to give reasonable notice of the reversal to the customer. What is 'reasonable' will depend on the particular circumstances of the case.

- 8.108 If the contract under which the payment service is provided is a regulated agreement under the CCA then this provision will not apply and sections 66 (acceptance of credit tokens), 83 (liability for misuse of credit facilities), and 84 (misuse of credit tokens) of the CCA will apply instead. Regulation 60 requirements (evidence on authentication and execution of payment transactions) do, however, apply and the payment service provider should also note the provisions of section 171 of the CCA (onus of proof in various proceedings). Our understanding is that this means that unless or until the payment service provider can provide the evidence to show liability on the part of the customer, the customer is not liable, meaning that no interest should be charged on the disputed amount, and the payment service provider is not entitled to demand repayment of that sum.
- 8.109 For low value payment instruments, if the nature of the instrument is such that it is not possible for the payment service provider to prove that it was authorised (for example, if it was used anonymously) this provision will not apply. (See Part I, section A of this chapter for a definition of low value payment instrument).

*Payer's liability for unauthorised payment transactions (regulation 62)*

- 8.110 The payer will be liable for losses up to a maximum of £50 resulting from unauthorised transactions arising from the use of a lost or stolen payment instrument, or from the misappropriation of the payment instrument where they have failed to keep its personalised security features safe. It should be noted that the £50 liability limit is applicable to each instance of loss, theft or misappropriation, and not to each transaction.
- 8.111 In our view, in this context, personalised security features means features such as the password or PIN relating to the payment instrument. It does not include information that is readily readable from the payment instrument itself (for example, a card number or security code printed anywhere on a card), as this information will be readily available to any merchant or business where the card has been used.
- 8.112 If the payment service provider can show that the payer has acted fraudulently, or has intentionally, or with gross negligence, not complied with their obligations regarding the security of the payment instrument, the payer will be liable for all losses. To avoid doubt, it is not sufficient for the payment service provider to assert that the customer 'must have' divulged the personalised security features of the payment instrument, and to effectively require the customer to prove that he did not. The burden of proof lies with the payment service provider and if a claim that a transaction is unauthorised is rejected, the rejection must be supported by sufficient evidence to prove that the customer is guilty of fraud, gross negligence or intentional breach and the reason for the rejection must be explained to the customer.
- 8.113 Except where the payer has acted fraudulently, the payer is not liable for any losses:
- Arising after they notified the payment service provider of the loss, theft or misappropriation (this will not apply for low value payment instruments if the nature of the instrument means that it is not possible for the payment service provider to prove that the transaction was authorised – because, for example it is

used anonymously – or to stop the payment instrument from being used. See Part I, Section A of this chapter for a definition of low value payment instrument).

- If the payment service provider has failed to provide the means for the payer to make the notification (subject to the force majeure provisions of regulation 79).
- Where the payment instrument has been used in connection with a distance contract other than an excepted contract (as defined in the Consumer Protection (Distance Selling) Regulations 2000).

8.114 The corporate opt-out applies to this provision (see under ‘General’ at the start of this section).

8.115 This provision will not apply if the contract under which the payment service is provided is a regulated agreement under the CCA, in which case this provision will not apply and sections 66 (acceptance of credit tokens), 83 (liability for misuse of credit facilities), and 84 (misuse of credit tokens) of the CCA will apply instead.

#### *Refunds for payment transactions initiated by or through the payee (regulation 63)*

8.116 This provision relates to payment transactions that have been initiated by or through the payee (for example, debit or credit card transactions or direct debits), where the exact amount of the transaction was not specified at the point of authorisation (for example, a variable amount direct debit, or a credit or debit card authorisation for a hire car or hotel room). If the amount of the payment transaction exceeds the amount the payer could reasonably have expected in all the circumstances, the payer is entitled to a refund of the full amount of the transaction from their payment service provider. Those circumstances include the customer’s previous spending pattern and the terms of the framework contract, but do not include fluctuations in the reference exchange rate.

8.117 It may be agreed in the framework contract that, if the payer has given their consent direct to their payment service provider and, if applicable, details of the amount of the transaction have been provided or made available to them at least four weeks prior to the debit date, they will not have the right to a refund.

8.118 However the corporate opt-out applies to this provision (see under ‘General’ at the start of Part II).

8.119 For direct debits, it can be agreed that the unspecified amount and realistic expectations conditions do not apply. For example, this means that the UK Direct Debit Scheme is at liberty continue to offer an automatic right to a refund.

#### *Requests for refunds for payment transactions initiated by or through a payee (regulation 64)*

8.120 The PSRs provide that to obtain the refund set out in ‘Refunds for payment transactions initiated by or through the payee’ above, the payer must make their request to the payment service provider within eight weeks of the debit date. However,

there is also a provision allowing payment service providers to offer better terms to their customers than those specified in the PSRs. For example, this means that the UK Direct Debit Scheme is at liberty to continue to offer a longer period for refunds.

- 8.121 On receipt of a claim for a refund, the payment service provider may request additional information from the payer, if it is reasonably required to check whether the conditions have been met. The payment service provider must either make the refund, or justify refusal within the later of ten days of the claim, or of the additional information being provided. Refusal must be accompanied by information on how to take the matter further if the customer is not satisfied with the justification provided.

## **Execution of payment transactions**

### *Receipt of payment orders (regulation 65)*

- 8.122 The point in time of receipt of a payment order, from which the execution time requirements of the PSRs must be calculated, will generally be the time at which the payment order is received (whether directly or indirectly) by the payer's payment service provider. The exceptions are as follows:
- That time is not on a business day for that payment service provider in respect of the particular payment service concerned, in which case the payment order is deemed to have been received on the following business day.
  - The payment service provider has set a time towards the end of the business day after which any payment order received will be deemed to have been received on the following business day (notice of this must be given to the customer). It is recognised that this cut-off time may be different, depending upon the requirements of different payment products, but that payment service providers should take a reasonable approach in setting such cut-off times.
  - The customer has agreed with the payment service provider that the payment order will be executed:
    - on a specific day in the future;
    - at the end of a certain period; or
    - on the day when the payer provides the required funds to the payment service provider.

Where one of the above applies, the agreed date (or, if it is not a business day for the payment service provider, the next business day) will be deemed to be the time of receipt.

- 8.123 The aim of the PSD provisions in respect of execution times is to mandate and harmonise the speeding up of payments, so the maximum time taken when neither the payer nor the payee has access to the funds should be one business day. This means, in our view, that where 'earmarking' of funds takes place, so that the funds remain in the customer's account for value-dating purposes but are unavailable to



the customer to spend, the point in time of receipt for the purposes of calculating the execution time must be the point at which the funds become unavailable to the customer. For example, if when sending a Bacs credit the bank ‘earmarked’ the funds in the payer’s account on the day the file was submitted, but delayed the debit until the business day before the funds are credited to the payee’s account, the execution time would be longer than ‘next day’ and therefore in breach of the requirements of regulation 70(1).

- 8.124 Where the payee’s payment service provider is not reachable by a payment system which enables payments to be made within the prescribed maximum execution times (such as Faster Payments), the firm will need to make alternative arrangements, and clearly explain the position to their customers. Possible options include:
- a) making the payment through an alternative payment system (e.g. CHAPS) if available. This must be with the agreement of the customer, who must be advised of (and agree to) any additional charges involved; or
  - b) continuing to use Bacs, but delaying the debit to the customer’s account until, at the earliest, the business day before the Bacs settlement day. This would be classed as a ‘future dated payment’ and the provisions of regulation 65(4) regarding customer agreement will apply. Firms should also take note of 8.122 above in respect of ‘earmarking’.
- 8.125 In exceptional circumstances where, in spite of all efforts, it is not possible for the firm to make the payment within the specified time limit, firms may feel it necessary to refuse the payment order concerned. The requirements of regulation 66 (as set out below) would need to be met in this regard, and where a firm believes that such refusals may be necessary it will need to consider whether its framework contracts will need to be amended to allow refusal on these grounds. Such amendments will, of course, require two months notice to be provided. We would not expect that any such refusal, or notification of a refusal on these grounds, would attract a charge.
- 8.126 It is expected that payment service providers will have made the necessary arrangements to enable their customers to receive payments within the one business day timescale, however any bank or building society whose customer accounts are not reachable by Faster Payments should consider how they will explain to their customers the difficulties that they are likely to experience in receiving payments for their accounts as a result.

### *Refusal of payment orders (regulation 66)*

- 8.127 A payment service provider may only refuse to execute a payment order if the conditions in the framework contract have not been met or execution would be unlawful (for example, in line with anti-money laundering legislation).
- 8.128 Where a payment service provider refuses to execute a payment order, it must notify the customer of the refusal, unless it is unlawful to do so (for example, due to restrictions on tipping-off). The notification must, if possible, include the reasons for the refusal and, where appropriate, what the customer needs to do to correct any

errors that led to the refusal. The notification must be provided or made available in the way agreed in the framework contract (for example online) at the earliest opportunity and no later than the end of the next business day following receipt of the payment order.

- 8.129 Notification need not be provided for low value payment instruments if the non execution is apparent from the context (for example, the purchase is refused at point of sale), (see Part I, Section A of this chapter for a definition of low value payment instrument).
- 8.130 If the refusal is reasonably justified and the framework contract so allows, the payment service provider may levy a charge for the notification. This charge must reasonably correspond to the payment service provider's actual costs. We believe this means that the provider must separately identify any such charge for notification in the framework contract and separately charge this to the underlying account.

### *Revocation of a payment order (regulation 67)*

- 8.131 The basic rule is that the customer cannot revoke a payment order after it has been received by the payer's payment service provider. There are, however, some exceptions to the rule:
- If the payment order is initiated by or through the payee (for example a credit or debit card payment) the payer may not revoke the payment order after transmitting it or giving their consent to its execution to the payee. So, after entering the PIN on a card transaction, the customer cannot revoke the payment order.
  - For direct debits, the latest the payer may revoke the payment order is at the end of the business day before the agreed date for the debit. This does not affect refund rights after this point through, for example, the Direct Debit Guarantee Scheme.
  - For future dated payments, the latest point at which the payer can revoke the payment instruction is the close of business on the day before the payment is due to be made, or if the payment transaction is to be made when funds are available, close of business on the day before those funds become available.
  - Recurring transactions on a payment card should be considered as future dated payments, so the latest point at which the payer can revoke the payment instruction (such revocation would be given to the payee) is the close of business on the day before the payment is due to be debited to the customer's account. If the payee ignores the revocation and still processes the payment order, the payer customer would have the right under regulation 61 to an immediate refund from their payment service provider.
  - In line with regulation 55(4) the payer may withdraw his consent to the execution of a series of payment transactions (for example recurring transactions) at any time with the effect that any future payment transactions are not regarded as authorised. This is an absolute right to withdraw consent, and once given the payment service provider has no authority to debit the account in question. However, given the fact that such payments are originated

by the merchant, it is best practice for the customer to be advised that notice of the withdrawal of consent should be given to the payee.

- It is important to note that the definition of ‘payment transaction’ in the regulations includes the words “irrespective of any underlying obligations between the payer and the payee.” The existence, or otherwise, of any obligation of the payer to make payment to the payee does not therefore affect the validity of the withdrawal of consent.
- In our view, where the underlying payment account (e.g. credit card account) has been closed, this is a clear withdrawal of consent for any future transactions that have not already been specifically advised and authorised. We can therefore see no justification for the practice of re-opening closed accounts to process recurring transactions received after the account has been closed.
- This will not affect any contractual refund rights the customer may have under the card scheme’s own rules, or statutory rights under, for example, section 75 of the Consumer Credit Act.
- For payment orders made direct by the payer to their payment service provider, later revocation may be agreed with the payer’s payment service provider. For payment orders initiated by or through the payee (for example, recurring card transactions), the agreement of the payee will also be needed for later revocation.

8.132 A charge may be made for revocation.

8.133 The corporate opt-out applies to this provision (see under ‘General’ at the start of Part II of this chapter).

### **Amounts transferred and amounts received – deduction of charges (regulation 68)**

8.134 In general, the rule is that the payer and the payee must each pay the charges levied by their own payment service provider and that no charges can be deducted from the amount transferred.

8.135 The payee can agree with their payment service provider that it can deduct its charges before crediting the payee, as long as the full amount of the payment transaction and details of the charges deducted are clearly set out in the information provided to the payee. If other charges are deducted, responsibility for rectifying the position and ensuring that the payee receives the correct sum, lies with:

- the payer’s payment service provider, for payments initiated by the payer; and
- the payee’s payment service provider, for payments initiated by or through the payee.

## Execution time and value date

### *Applicability (regulation 69)*

- 8.136 The execution time and value dating requirements apply to all:
- payment transactions in euro;
  - national payment transactions in sterling; and
  - payment transactions involving only one currency conversion between sterling and euro where the currency conversion is carried out in the UK and, for a cross-border transfer (that is, a payment transaction where the payer's and the payee's payment service providers are located in different member states), the transfer is denominated in euro.
- 8.137 Both the payer and payee's payment service providers, or the sole payment service provider, must be located within the EEA. The exceptions to this are:
- Regulation 73 in respect of value dating of transactions, which applies to all transactions in any EEA currency whether or not the payment service providers of both the payer and payee are located within the EEA; and
  - Regulation 70(4), which applies to all transactions in any EEA currency, but requires both the payer and the payee's payment service provider to be located within the EEA.
- 8.138 For transactions in other member state currencies, the requirements will apply unless the payment service provider and its customer agree otherwise. (See also the table of jurisdiction and currency in *Chapter 2 – Scope*).

### *Payment transactions to a payment account – time limits for payment transactions (regulation 70)*

- 8.139 The default rule is that payments have to be credited to the payee's payment service provider's account (that is the payee's PSP's account with its own bank or settlement service provider) by close of business on the business day following the day when the payment order was received (or was deemed to have been received – see above under 'Receipt of payment orders').
- 8.140 An extra day may be added to the above period when the payment order is initiated in paper, rather than electronic form.
- 8.141 For payment transactions in the currency of an EEA State where:
- both the payer and the payee are within the EEA;
  - the payment transaction is not a UK national sterling transaction; and
  - the payment transaction is not in euro,

the maximum period that may be agreed between the payer's payment service provider and its customer is the end of the fourth business day following the day on which the payment order was received.

- 8.142 For merchant acquiring transactions we have included diagrams and an explanatory note setting out how the time limit provisions might work for a four-party card scheme in Annex 5. We understand that the process within three-party card schemes may differ from the models set out in Annex 5, and we would be happy to discuss the application of the PSRs to such schemes on an individual basis.
- 8.143 The payee's payment service provider must value date and make available the credit to the payee's account following receipt of the funds in its own account in accordance with regulation 73. Therefore, as soon as the funds are received in the payee's payment service provider's account, it must make sure that the payee can get access to the funds, and credit value date them no later than the business day on which the payment service provider's account was credited. In practice this means that payment service providers' systems must identify the funds immediately they are received in their own account with their settlement provider and credit them to the payee's account immediately. If the funds are received on a non-business day, the above requirements will apply at the start of the next business day. A diagram showing these time limits is included in Annex 6.
- 8.144 It is recognised that in practice some processing of the payment by the payee's payment service provider may be needed before the customer can access the funds. However, the requirement for 'immediate' availability means that the time taken for this processing must be kept to a minimum and we see no reason why, in normal circumstances, this should be longer than two hours. For the avoidance of doubt, unless the payment concerned is received out of business hours, 'immediate' can never mean the next business day. What constitute business hours will depend upon the circumstances; for example a customer with an internet based account where the customer can make payments at any time using 'Faster Payments', or can withdraw funds at any time using an ATM can reasonably expect his payment service provider to make the funds available to him whenever they are received, whereas a customer with an account which can only be accessed during branch opening hours would expect the funds to be available when the branch next opened.
- 8.145 Payment transactions where both the payer's and the payee's accounts are with the same payment service provider are within the scope of the PSRs, and as such the execution time provisions will apply. This includes transactions where the payer and the payee are the same person. Where an external clearing system is used to execute the transaction, our view is that the funds will be 'credited to that payment service provider's account' (regulation 73(2)) when that clearing system settles, in the same way as payments received from another payment service provider through that clearing system.
- 8.146 Where a payment service provider is using its own internal processes to execute the transfer, we believe that the principles and aims underlying the execution time provisions in the PSD and PSRs must apply, that is, the avoidance of 'float' and the efficient processing of payment transactions. We would therefore expect that in

such transactions value will be given to the payee on the same day as the payer's account is debited, and that the funds will be put at the disposal of the payee as quickly as possible.

*Absence of payee's payment account with the payment service provider (regulation 71)*

- 8.147 Where the payee does not hold a payment account with the payment service provider (for example, in money remittance services) the payment service provider to which the payment has been sent must make the funds available immediately after they have been credited to its account. This provision should not be seen as requiring banks which receive funds addressed to a payee for whom they do not hold an account to hold such funds pending collection by the payee. In our view it is perfectly acceptable for such funds to be returned to the payer's PSP with the explanation, 'No account held'.

*Cash placed on a payment account (regulation 72)*

- 8.148 Cash placed by a consumer, micro-enterprise or small charity with a payment service provider for credit to its payment account with that payment service provider must be credited to the account, value dated and made available immediately after receipt by the payment service provider. This only applies if the account is denominated in the same currency as the cash. For other customers an extra business day is allowed. These time limits apply whether or not the branch or agent where the cash is paid in is the account holding branch, and will therefore apply, for example to cash paid in to settle a credit card bill, where the card was issued by the bank where the pay in was made. Note that where cash is paid in to another payment service provider under a clearing arrangement, where the payment service provider is providing a service to the customer rather than as agent for the payee payment service provider, the transaction would be subject to the normal execution time provisions under regulation 70. The use of the paper based credit clearing for such payments would therefore allow an additional day for the credit of the cash to the payee's account.
- 8.149 In our view, when identifying the point in time at which the cash is deemed to have been received, similar principles to those used in identifying the 'point in time of receipt' for a payment order may be used. This means that, as long as the payment service provider makes it clear to the customer, the point at which cash is deemed to be received when not taken over the counter by a cashier (for example, left in a nightsafe, or in a deposit box in the branch ('a daysafe')) can be specified in line with reasonable customer expectations as being the point at which the box is opened (for example, the end of the business day for a daysafe and next business day for a nightsafe).
- 8.150 Where a discrepancy in a cash deposit is discovered after the funds have been credited (for example, forged notes, or the cash has been miscounted) corrections can be made, but corrected post-transaction information will also need to be provided.

### *Value date and availability of funds (regulation 73)*

- 8.151 The PSRs in effect prohibit value dating that is detrimental to the customer. This means that the value date of a credit to a payment account can be no later than the business day on which the payment transaction was credited to the payee's payment service provider's account. This is the business day on which the payee's payment service provider is deemed to have received the funds. The funds must also be at the payee's disposal immediately after they have been credited to the payee's payment service provider's account.
- 8.152 Where the payee's account is not a 'payment account' and the payee's payment service provider is a credit institution, the rule in BCOBS 5.1.13 will apply, so that the transaction must be value dated on the business day received, but availability must be within a reasonable period.
- 8.153 Similarly, debit transactions must not be value dated before the date on which the amount of the debit was debited to the payer's account. For example, in a card transaction, the card issuer cannot value date the debit to the account before the date on which it receives the payment order through the merchant acquiring process (see Annex 5).

### **Liability**

#### *Incorrect unique identifiers (regulation 74)*

- 8.154 As part of the information the payment service provider is required to provide ahead of provision of the payment service, it will specify the 'unique identifier', which is the key information that will be used to route the payment to the correct destination and payee. For UK bank payments in sterling, this is likely to be the sorting code number and account number of the payee's account. For SEPA payments it will be the BIC and IBAN of the payee. Other information, such as the payee's name or invoice number, may be provided by the payer, but will not be part of the unique identifier, unless it has been specified as such by the payment service provider.
- 8.155 The PSRs provide that, as long as the payment service providers process the payment transaction in accordance with the unique identifier, they will not be liable under the non-execution or defective execution provisions of the PSRs (see below) for incorrect execution if the unique identifier provided is incorrect.
- 8.156 The effect of this is if the sorting code and account number are quoted as the unique identifier and the account number is incorrect but the account name quoted is correct (so that the funds go to the wrong account), the bank concerned will not be liable under those provisions.
- 8.157 Payment service providers are required to make reasonable efforts to recover the funds involved even where they are not liable, but they may, if agreed in the framework contract, make a charge for such recovery.

*Non-execution or defective execution of payment transactions initiated by the payer (regulation 75)*

- 8.158 This provision covers situations where the payer customer has instructed their payment service provider to make a payment and the instruction has either not been carried out, or has been carried out incorrectly.
- 8.159 In these circumstances the payer's payment service provider will be liable to its customer unless it can prove to the payer (and, where relevant, to the payee's payment service provider), that the correct amount, and the beneficiary's details as specified by the payer, were received by the payee's payment service provider on time. If it could prove this, the failure to credit the intended payee would then lie with the payee's payment service provider rather than with itself.
- 8.160 If the payer makes a request for information regarding the execution of a payment transaction, their payment service provider must make immediate efforts to trace the transaction and notify the customer of the outcome.
- 8.161 If the payer's payment service provider is liable, it must refund the amount of the defective or non-executed transaction to the payer without undue delay, and, where applicable, restore the debited payment account to the state it would have been in had the transaction not occurred at all. This may, for example, involve the refunding of charges and adjustment of interest. The effect of this provision is that if, due to the error of the payer's payment service provider, the funds have been sent to the wrong place or the wrong amount has been sent, as far as the payer is concerned the whole transaction is cancelled. The payment service provider will either have to stand the loss or seek reimbursement from/through the other payment service provider. However, in line with recital 47 of the Directive, which refers to the payment service provider's obligation to 'correct the payment transaction' our view is that to avoid undue enrichment, where an over payment has been made and the excess cannot be recovered from the payee's payment service provider, it would be appropriate to refund the excess incorrectly deducted from the payer's account where this is sufficient to avoid the payer suffering a loss.
- 8.162 If the payer's payment service provider can prove that the payee's payment service provider received the correct amount and beneficiary details on time, the payee's payment service provider is liable to its own customer. It must immediately make the funds available to its customer and, where applicable, credit the amount to the customer's payment account.
- 8.163 Liability under this provision will not apply if the failure giving rise to it was due to abnormal and unforeseeable circumstances beyond the control of the relevant payment service provider, or if it arose because of the payment service provider having to comply with other EU or UK law.
- 8.164 The corporate opt-out applies to this provision (see under 'General' at the start of Part II of this chapter).



*Non-execution or defective execution of payment transactions initiated by the payee (regulation 76)*

- 8.165 This provision covers situations where the payment order has been initiated by the payee (for example, credit or debit card payments, or direct debits), and the instruction has either not been carried out or carried out incorrectly.
- 8.166 In these circumstances the payee's payment service provider is liable to its customer unless it can prove to the payee (and, where relevant, to the payer's payment service provider), that it has carried out its end of the payment transaction properly. That is, it has sent the payment instruction (in the correct amount and within the agreed timescale), and the correct beneficiary details to the payer's payment service provider, so that the failure to receive the correct amount of funds within the timescale lies with the payer's payment service provider rather than with itself. If it has failed to do this it must immediately re-transmit the payment order.
- 8.167 If the payee makes a request for information regarding the execution of a payment transaction, their payment service provider must make immediate efforts to trace the transaction and notify the customer of the outcome.
- 8.168 If the payer's payment service provider is liable, its liability is to its own customer rather than the payee, and it must, without undue delay, and as appropriate:
- refund the payer the amount of the payment transaction (for example, if it has been debited and the funds sent to the wrong place); and
  - restore the debited payment account to the state it would have been in had the transaction not occurred at all.
- 8.169 The 'as appropriate' provision in regulation 76(5) here means that action short of a full refund may be acceptable, if making a full refund would result in 'undue enrichment' to the customer concerned, as long as the customer does not suffer a loss due to the error.
- 8.170 This may involve the refunding of charges and adjustment of interest. The effect of this provision is that if, due to the error of the payment service provider, the funds have been sent to the wrong place or the wrong amount has been sent, as far as the payer customer is concerned the whole transaction is cancelled. The payment service provider will either have to stand the loss or seek reimbursement from/through the other payment service provider.
- 8.171 Liability under this provision will not apply if the failure giving rise to it was due to unavoidable abnormal and unforeseeable circumstances beyond the control of the payment service provider, or if it arose because of the payment service provider having to comply with other EU or UK law.

*Liability of payment service provider for charges and interest  
(regulation 77)*

- 8.172 A payment service provider that is liable for non-execution or defective execution of a payment transaction under the two provisions detailed above will also be liable to its customer for any resulting charges and/or interest incurred by the customer. This liability will not be incurred if the circumstances giving rise to it were due to abnormal and unforeseeable circumstances beyond the control of the payment service provider.

*Right of recourse (regulation 78)*

- 8.173 If a payment service provider has incurred a loss or been required to make a payment under the provisions set out under 'Incorrect unique identifiers' and 'Non-execution or defective execution' above, but that liability is due to the actions of another payment service provider or an intermediary, the first payment service provider is entitled to be compensated by the other payment service provider or intermediary.

*Force majeure (regulation 79)*

- 8.174 Liability under the conduct of business requirements in Part 6 of the PSRs relating to rights and obligations (but not to the information requirements in Part 5) will not apply where the liability is due to:
- abnormal and unforeseen circumstances beyond the person's control, where the consequences would have been unavoidable despite all efforts to the contrary; or
  - obligations under other provisions of Community or national law (for example, anti-money laundering legislation).

# 9 Capital resources and requirements

- 9.1 This chapter describes the capital resources and requirements for authorised PIs. It is not relevant to small PIs.
- 9.2 The chapter is set out as follows:
- Introduction.
  - Part I: Qualifying items.
  - Part II: Calculation of capital resources and meeting the capital requirements:
    - A – Initial capital.
    - B – Ongoing capital.
  - Part III: Worked examples.

## Introduction

- 9.3 The PSRs establish capital requirements for authorised PIs. Under the PSRs, authorised PIs are required to hold a minimum amount of capital. Capital is required to be held as a buffer, absorbing both unexpected losses that arise while the firm is a going concern as well as the first losses when the firm is wound up.
- 9.4 The parts of the PSRs that deal with the capital resources and requirements are regulations 6(3), 18, and Schedule 3. We have to maintain arrangements such as monitoring so that we can ascertain whether the capital requirements are being complied with as required. These are described in *Chapter 12 – Supervision*.
- 9.5 The term ‘capital resources’ describes what a firm holds as capital. ‘Capital requirements’ refers to the amount of capital that must be held by the firm for regulatory purposes. The capital requirements established by the PSRs are initial requirements which are a condition of authorisation and ongoing requirements. The items that may be used to meet the capital requirements are set out in Part I: Qualifying items. The authorised PI must hold at all times the capital amounts required, in the manner specified. The capital requirements set out in the PSRs are

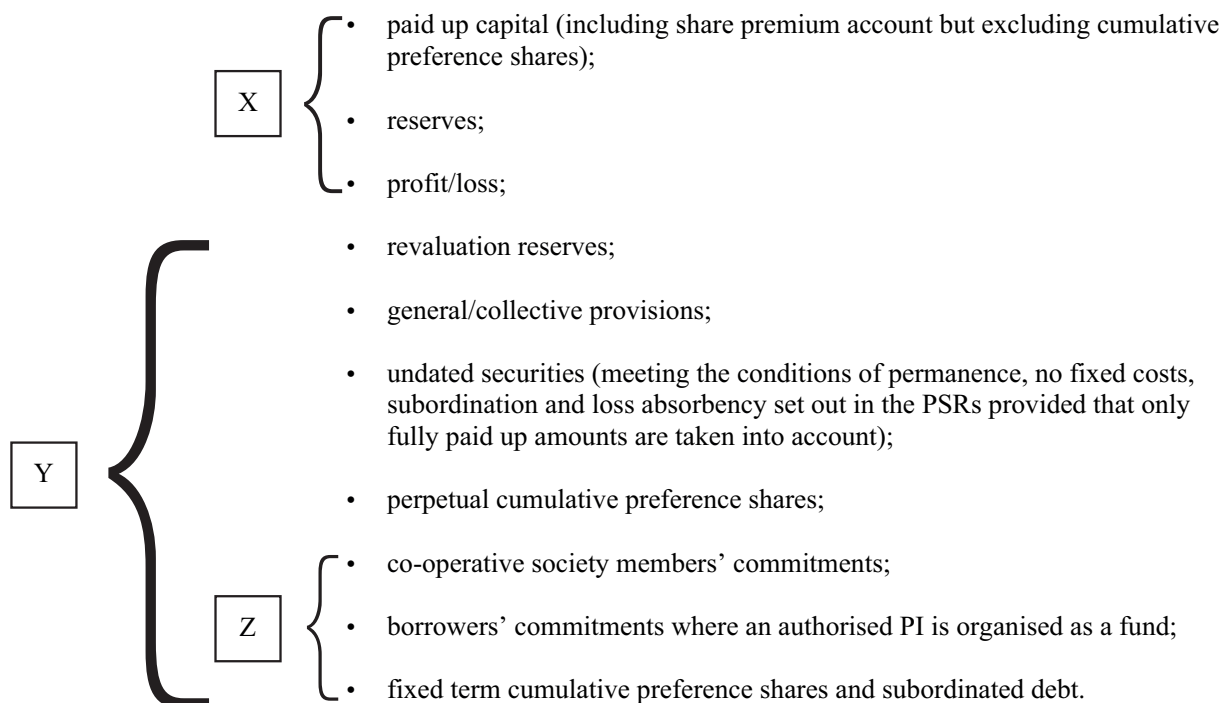
expressed in euro, as they are in the PSD. It is expected that firms will hold sufficient capital to ensure that the capital requirements are met, even in the event of exchange rate fluctuations. Here, we explain capital resources and capital requirements under the PSRs.

## Part I

### Qualifying items

9.6 Qualifying items that may be used to meet the capital requirements as well as the conditions under which these items qualify are set out in the PSRs (Part 2 of Schedule 3).

9.7 In brief, these qualifying items consist of:



9.8 The full definition of each qualifying item can be found in paragraph 3 of Part 2 of Schedule 3. Qualifying items are subject to deductions and limits discussed later. Firms must take these deductions and limits into account in good time, as they will apply immediately after authorisation.

9.9 An authorised PI must not include in its capital calculations any item also included in the capital calculations of an authorised PI, credit institution, investment firm, asset management company or insurance undertaking within the same group. Also, where an authorised PI carries out activities other than providing payment services, it must not include in its capital calculation items used in carrying out the other activities.

- 9.10 Paid up capital, reserves, profit/loss and revaluation reserves must be available to the authorised PI for unrestricted and immediate use to cover risks and losses as soon as these occur. They must also be net of foreseeable tax charges or be suitably adjusted in so far as such tax charges reduce the amount up to which these items may be applied to cover risks or losses. Also, capital must not include guarantees provided by the Crown or a local authority to a public PI.

## Part II

### A. Initial capital

- 9.11 The initial capital requirement is one of the conditions to be met at the application stage in order for the authorised PI to become authorised by us. The PSRs require that the authorised PI's capital must not at any time fall below the prescribed levels of initial capital for its business activity. The PSRs set out that the initial capital requirement of authorised PIs will be €20,000, €50,000 or €125,000 depending on the business activities carried out by the firm (see table below). Where more than one initial capital requirement applies to an authorised PI, it must hold the greater amount.

#### *Meeting initial capital requirements*

- 9.12 Qualifying items to be used to meet the initial capital requirement are:
- paid up capital (including share premium account but excluding cumulative preference shares);
  - reserves; and
  - profit/loss.

#### *Calculating initial capital requirements*

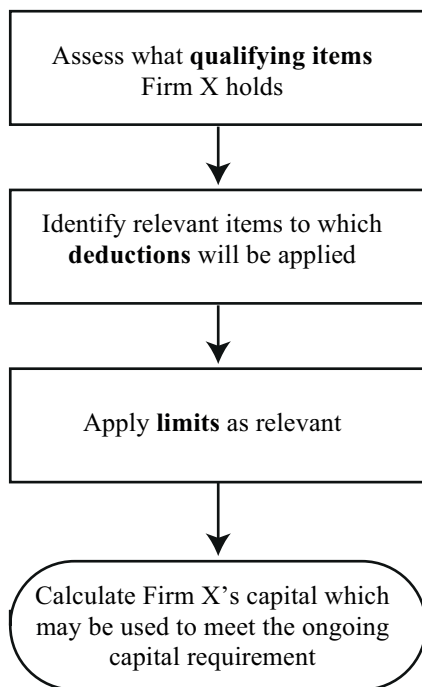
<b>Payment Services (see Schedule 1 to the PSRs)</b>	<b>Initial Capital Required</b>
Money remittance.	€ 20,000
Execution of payment transactions where payer's consent for execution is given via a telecommunication, digital or IT device and payment is made to the telecommunication, IT system or network operator acting only as an intermediary between the payment service user and the supplier of the goods or services.	€ 50,000
Payment institutions providing other services that is, those covered in paragraphs 1 (a) to (e) of Part 1, Schedule 1 of the PSRs.	€ 125,000

### B. Ongoing capital

- 9.13 The ongoing capital requirement is to be met by the authorised PI's capital resources using qualifying items as set out above. The ongoing capital held must not fall below the level of the initial capital requirement for the services provided.

### *Meeting the capital requirements*

9.14 An authorised PI, Firm X, would follow the process below to determine its ongoing capital resources.



### *Deductions*

9.15 The PSRs also set out deductions which must be made from capital.

9.16 In brief, the deductions from capital are:

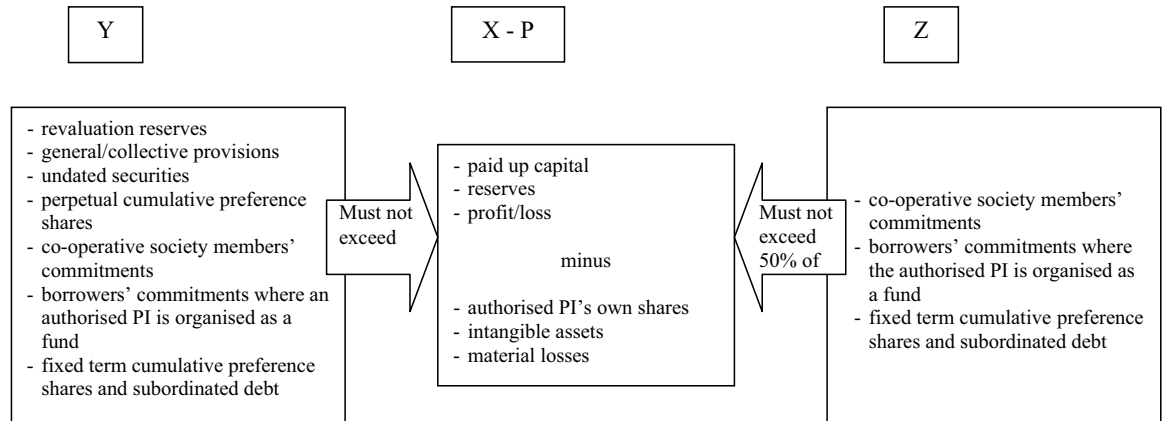
- P {
  - the authorised PI's own shares;
  - intangible assets;
  - material losses of the current financial year;
  
- Q {
  - material holdings (meaning holdings of shares in credit and financial institutions in excess of 10% of their capital) as well as the undated securities, cumulative preference shares, co-operative society members' commitments held in these institutions;
  - material holdings not already deducted as above where the amount exceeds 10% of the authorised PI's capital calculated before deduction of the other items grouped at Q on this list;
  - participations in insurance or reinsurance undertakings or insurance holding companies (IHCs); and
  - subordinated debt issued by those insurance or reinsurance undertakings or IHCs in which a participation is held.

9.17 Where material holdings are held temporarily for the purpose of a financial assistance operation, designed to reorganise and save the firm, we may direct that any or all of the items grouped as Q are not deducted from capital.

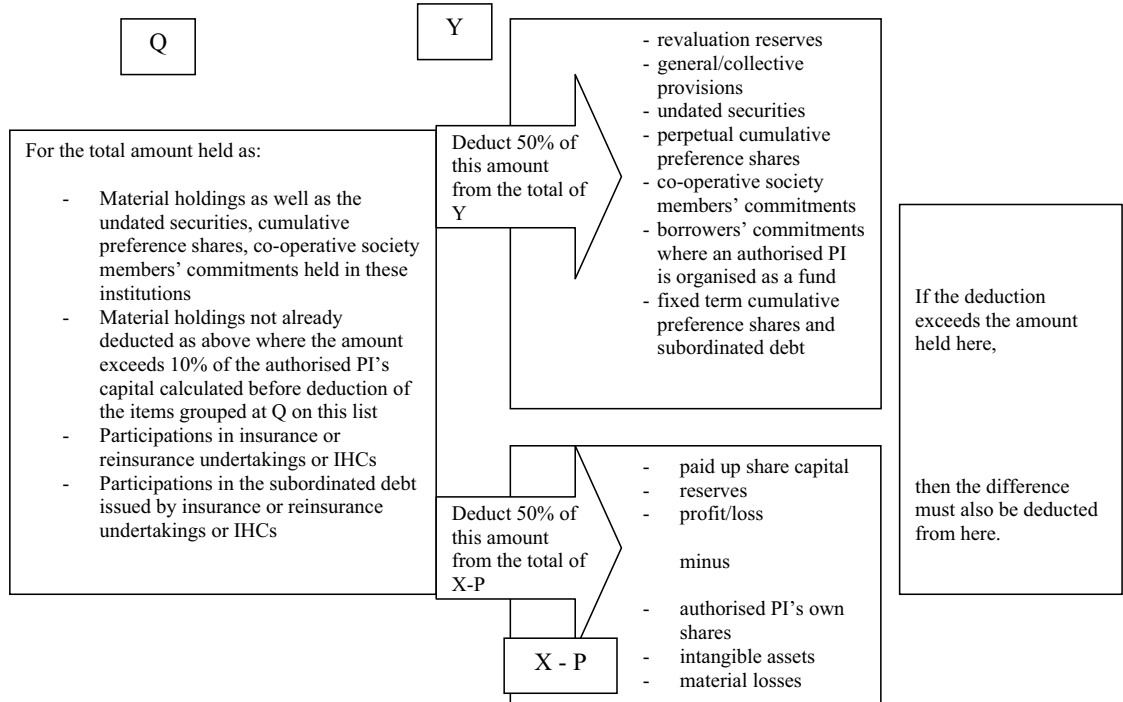
*Limits*

9.18 There are also limits on qualifying items which are set out in detail within the PSRs. Limits are to be applied as follows.

- Firstly,



- Then



**Calculation of ongoing capital requirements (or 'own funds')**

9.19 There are three methods of calculation of ongoing capital requirements. This section explains the three methods and the following section gives a worked example.

- 9.20 The authorised PI will be asked, in the application pack, to indicate which calculation method it wishes to. However, we must ultimately direct (based on our evaluation of the authorised PI) which method is to be used, taking into account the firm's preference. The ongoing capital requirement does not apply where a business is incorporated into the consolidated supervision of another business meeting the conditions of the Banking Consolidation Directive.

#### *Method A*

- 9.21 Calculation method A is based on the firm's fixed overheads. The calculation is 10% of the preceding year's fixed overheads. Although if there is a material change in the firm's business since the preceding financial year, we may decide that the requirement is higher or lower. Examples of material changes include the sale of parts of the business, a business acquisition and rapid growth (typically of a new business).
- 9.22 Fixed overheads are defined as including expenses that do not vary as a result of output volume or sales revenue, for example rent, insurance and office expenses. General accounting standards should be followed in valuing the specific expenses to be taken into account. Only expenses that are related to payment services should be taken into account when calculating the fixed overheads of firms which also provide services other than payment services (hybrid firms).

#### *Method B*

- 9.23 Method B is based on a scaled amount representing the firm's average monthly payment volume and then applies a scaling factor relevant to the type of payment services carried out (see the table below at 9.27 for the relevant scaling factor). Under this calculation method, the firm's ongoing capital requirement is the product of this scaling factor and the scaled average monthly payment volume. The scaled average monthly payment volume is one twelfth of the total amount of the PI's payment transactions executed in the previous year scaled in the following manner:
- a) 4% of the slice of the average monthly payment volume up to €5 million,  
plus
  - b) 2.5% of the slice of the average monthly payment volume above €5 million up to €10 million,  
plus
  - c) 1% of the slice of the average monthly payment volume above €10 million up to €100 million,  
plus
  - d) 0.5% of the slice of the average monthly payment volume above €100 million up to €250 million,  
plus
  - e) 0.25% of the average monthly payment volume above €250 million.



## *Method C*

9.24 Method C is based on the firm's income over the preceding year with a scaling factor applied. The firm's income is derived by applying a multiplication factor to income described as the 'relevant indicator' in the PSRs. Here, the income is the sum of the firm's interest income, interest expenses, commission and fees received as well as other operating income.

9.25 These are defined as:

- 'interest income' – interest received by the authorised PI from the investments it has made whether or not made from the users' funds.
- 'interest expenses' – interest payable by the authorised PI to its creditors or users where the funds stay on their payment accounts.
- 'commission and fees received' – these should be expressed in gross.
- 'other operating income' – is any other kind of income which in the case of a non-hybrid firm may be linked to payment services or ancillary services as set out at regulation 27.

9.26 The multiplication factor applied to the relevant indicator is:

- 10% of income up to €2.5 million.
- 8% of income between €2.5 million and €5 million.
- 6% of income between €5 million and €25 million.
- 3% of income between €25 million and €50 million.
- 1.5% of income above €50 million.

9.27 The scaling factor applied to methods B and C is based on the type of service provided, and is the higher of the following:

<b>Payment services (from paragraph 1 of Schedule 1)</b>	<b>Scaling Factor</b>
Money remittance.	0.5
Execution of payment transactions where payer's consent for execution is given via a telecommunication, digital or IT device and payment is made the telecommunications, IT system or network operator acting only as an intermediary between the payment service user and the supplier of the goods or services.	0.8
For a PI authorised to provide any other payment service.	1.0

9.28 When calculating the ongoing capital requirement, for PIs that have not completed a financial year of business, the figure for the preceding financial year should be taken as the projected figure the firm has submitted in its business plan when the PI made its application for authorisation (subject to any adjustments that we have required).

9.29 We may direct a PI to hold capital up to 20% higher or 20% lower than the outcome of its ongoing requirement calculation, based on our evaluation of the authorised PI. The evaluation may take into account risk management processes, risk

loss database or internal control mechanisms, if available and as we consider appropriate. We may make a reasonable charge for this evaluation. The details are set out in paragraphs 12 to 13 of Schedule 3.

### *Application of accounting standards*

- 9.30 Where there is a reference to an asset, liability, equity or income statement, the authorised PI must recognise that item and measure its value in accordance with the following (as applicable to the authorised PI for its external financial reporting):
- Financial Reporting Standards and Statements of Standard Accounting Practice issued or adopted by the Accounting Standards Board;
  - Statements of Recommended Practice, issued by industry or sectoral bodies recognised for this purpose by the Accounting Standards Board;
  - International accounting standards issued by the IASB;
  - International Standards on Auditing (UK and Ireland); and
  - The Companies Act 2006.
- 9.31 The exception is where the PSRs provide for a different method of recognition, measurement or valuation.

## Part III

9.32 This is a worked example showing Firm X's capital resources and capital requirements.

<b>Payment services firm: Firm X</b>			
<ul style="list-style-type: none"> <li>Firm X carries out one or more of the activities specified in paragraph 1(a) to 1(e) of Schedule 1</li> <li>Its payment volume in the prior 12 months was £96m. This is for all payment transactions in all currencies and not just those within the EEA</li> <li>The current EUR to GBP exchange rate is €1 = £0.80</li> <li>Its current balance sheet and income statement for the prior 12 months are set out below</li> </ul>			
<b>Current balance sheet (£,000)</b>		<b>Income statement for prior 12 months (£,000)</b>	
<b>Assets</b>			
Cash	1000	Commissions and fees received	1700
Property and equipment	8000	Other operating income	300
Intangible assets	600	<i>Net income</i>	<i>2000</i>
Investment in financial subsidiary	400		
Other investments	1000	Discretionary staff bonuses	140
Other assets	1000	Other variable expenditure	600
<i>Total assets</i>	<i>12000</i>	Fixed overheads	1000
<b>Liabilities</b>			
Unsubordinated creditors	7600	<i>Profit before taxation</i>	<i>260</i>
Specific provisions	2000	Taxation	60
10 year subordinated debt	400	<i>Profit for the financial year</i>	<i>200</i>
<i>Total liabilities</i>	<i>10000</i>		
<b>Equity</b>			
Called up ordinary share capital	80		
Share premium account	40		
Perpetual cumulative preference shares	200		
Revaluation reserve	40		
Profit and loss reserves (verified)	1640		
<i>Total equity</i>	<i>2000</i>		

## Calculation of the initial capital and meeting the initial capital requirement for Firm X

### Calculating the initial capital requirement

Paragraph 2 of Schedule 3 to the PSRs sets out the calculation of the initial capital requirement. For firms that conduct the services in paragraph 1 (a) to 1(e) of Schedule 1, the initial capital requirement is fixed at €125,000.

$$\begin{aligned}\text{Initial capital requirement of firm X in sterling} &= \text{€}125,000 * 0.8 \\ &= \text{£}100,000\end{aligned}$$

### Meeting the initial capital requirement

Paragraph 1 of Schedule 3 sets out the items of capital that can be included in 'initial capital' for the purposes of meeting the requirement. It only permits items grouped as X in the 'Qualifying Items' diagram above. In summary, the items which are permitted are:

- paid up capital
- profit/loss and reserves

Using the above and the balance sheet of firm X, its initial capital can be calculated as follows.

$$\begin{aligned}\text{Initial capital of firm X} &= \text{called up share capital} + \text{share premium account} + \text{profit/loss} \\ &= 80,000 + 40,000 + 1,640,000 \\ &= \text{£}1,760,000\end{aligned}$$

Paragraph 2 of Schedule 3 requires that applicants for authorisation have initial capital that exceeds the initial capital requirement. Firm X's initial capital of £1,760,000 exceeds its initial capital requirement of £100,000 and so it meets this requirement.

## Calculation of the ongoing capital requirement and meeting the ongoing capital requirement for Firm X

### Calculating the capital requirement

Paragraph 11 of Schedule 3 requires that PIs must hold capital to meet the capital requirement which must be calculated in accordance with Method A, Method B or Method C set out above.

#### Method A (Paragraph 16 of Schedule 3)

Under this method the firm's requirement is based on its prior year's fixed overheads. Using Firm X's prior year income statement:

Method A capital requirement:

10% of prior year's fixed overheads	$10\% * \text{£}1,000,000$	£100,000
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#### Method B (Paragraph 17 of Schedule 3)

Under method B the firm's requirement is based on its prior year's payment volume. This is the total volume of payment transactions in all currencies not just those within the EEA. Firm X had a payment volume of £96m in the prior 12 months and so its requirement under this method is calculated according to paragraph 17 of Schedule 3 as follows.

Method B capital requirement:

Annual payment volume converted from £ to €	$\text{£}96\text{m} \div 0.8$	€120m
Scaling factor for the type of payment services carried out by Firm X	1	
Average monthly payment volume	$\text{€}120\text{m} \div 12$	€10m
Application of the elements set out in the PSRs to the average monthly payment volume and the scaling factor	$(4\% \times \text{€}5\text{m}) + (2.5\% \times \text{€}5\text{m}) \times 1$	€325,000
Capital requirement converted from € to £	$\text{€}325,000 \times 0.8$	£260,000

#### Method C (paragraph 18 of Schedule 3)

Under method C the firm's requirement is based on their income in the prior year.

Method C capital requirement:

Income in prior 12 months	£2m	
Scaling factor	1	
Application of multiplication factor of 10% and scaling factor to income	$(10\% \times \text{£}2\text{m}) \times 1$	£200,000

### Meeting the capital requirement

Paragraphs 3 to 10 of Schedule 3 sets out the elements of capital that qualify for inclusion in capital, the limits applied to the inclusion of some of these items and the deductions that must be made. It is this definition of capital that must be used in meeting the capital requirement.

Using those paragraphs, the own funds for Firm X will be calculated as follows:

#### Qualifying items

Paid up share capital & share premium but excluding cumulative preference shares	80 + 40	120
Reserves and profit/loss		1,640
Revaluation reserves		40
Cumulative preference shares		200
Subordinated loan capital		400
Total Qualifying items	£120,000 + £1,640,000 + £40,000 + £200,000 + £400,000	£2.4m

#### Deductions

Intangible assets		600
Holdings in the shares of financial institutions		400
Total deductions	£600,000 + £400,000	£1.0m

#### Limits on qualifying elements

Paragraph 8 of Schedule 3 sets limits based on three separate amounts A, B and C. These amounts are calculated as follows:

A (total of items grouped as Y above)	40 + 200 + 400	640
B (total of items grouped as X above less total of items grouped as P above)	120 + 1640 - 600	1160
C (total of items grouped as Z above)		400

The limits in paragraph 8 are that A must not exceed B and C must not exceed 50% of B. If the limits are exceeded, then qualifying elements of capital need to be excluded in the capital calculation. For Firm X, neither of these limits are exceeded.

Capital for Firm X:

Capital (qualifying items minus deductions minus amounts excluded due to limits)	(£2.4m - £1.0m) - £0m	£1.4m
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Firm X therefore has capital in excess of the capital requirement calculated under method A (£100,000), B (£260,000) or C (£200,000).

# 10 Safeguarding

## Introduction

- 10.1 This chapter explains the safeguarding requirements that authorised PIs must comply with and that small PIs can choose to comply with.
- 10.2 All authorised PIs are required to comply with the safeguarding requirements in regulation 19. Small PIs can choose to comply with safeguarding requirements in order to offer the same protections over customer funds as authorised PIs must provide. If a small PI does choose to safeguard it will need to apply the same level of protections as are expected of an authorised PI, as described in this chapter. We will expect a small PI to tell us, if it is choosing to safeguard funds, in its application for registration and in annual reporting returns.
- 10.3 If a small PI decides to begin safeguarding funds after it has been registered, or alternatively, if a small PI which has advised us that it has chosen to safeguard at the time of registration decides that it will cease doing so, the FSA should be advised of this as soon as possible through the Customer Contact Centre ([fcc@fsa.gov.uk](mailto:fcc@fsa.gov.uk)).

## Purpose of safeguarding

- 10.4 The PSRs impose safeguarding requirements to protect customer funds received for the provision of a payment service where they are held by a PI overnight or longer. They do this by ensuring that those funds are either segregated from the PI's working capital and other funds, or are covered by an appropriate insurance policy or third party guarantee. On the insolvency of a PI, claims of payment service users are paid from the asset pool formed from these funds in priority to all other creditors (other than in respect of the costs of distributing the asset pool).

## What funds need to be safeguarded?

- 10.5 The requirement to safeguard applies to 'relevant funds'. These are sums received:
  - from, or for the benefit of, a payment service user for the execution of a payment transaction; and

- from a payment service provider for the execution of a payment transaction on behalf of a payment service user.
- 10.6 This means that safeguarding extends to funds that are not received directly from a payment service user, but includes, for example, funds received by a PI from another payment service provider for the PI's payment service user.
- 10.7 Funds relating to a particular payment transaction only need to be safeguarded if they exceed £50 (in which case the full amount must be safeguarded, not just the amount by which the funds exceed the £50 threshold). PIs may, however, choose to safeguard amounts beneath this threshold, in which case the insolvency protections will apply.
- 10.8 Some PIs also receive funds from the public in respect of other services. Examples include, a foreign exchange business that also provides money transmission services, or a telecommunications network operator which receives funds from the public both for the provision of its own services (for example airtime), and for onwards transmission to third parties. Such 'hybrid' businesses are only required to safeguard the funds received for the execution of a payment transaction. However, sometimes such hybrid businesses will not know the precise portion of customer funds attributable to the payment transaction and to the non-payment service provided, or the amount may be variable. In these circumstances, a PI may make a reasonable estimate on the basis of relevant historical data of the portion that is attributable to the execution of the payment transaction and so must be safeguarded. The firm would, if asked, need to supply us with evidence that the proportion actually safeguarded was representative. Relevant data might include the portion generally attributable to payment transactions by the customer in question or by similar customers generally.
- 10.9 In our view, a PI that is carrying out a foreign exchange transaction independently from its payment services (see further Q12 in PERG 15.2) does not need to safeguard funds received for the purpose of the foreign exchange transaction. Indeed, where a PI is using the segregation method of safeguarding (see below), the foreign exchange transaction funds will need to be segregated from the payment service transaction funds. Once the foreign exchange transaction has taken place, if the PI pays those funds on to a third party on behalf of its client, and this amounts to a payment service, the PI will need to safeguard the currency purchased in the foreign exchange transaction as soon as it receives it. To be clear, in our view in making a payment of currency to its customer in settlement of a foreign exchange transaction the FX firm will be acting as principal in purchasing the other currency from its customer. This does not constitute a payment service. Firms combining payment and non-payment services in this way will need to be clear in their prior information to customers when they are providing regulated payment services (and therefore funds will be safeguarded) and when they are not.
- 10.10 Firms which operate outside the EEA should note that transactions where both the payer and the payee are outside the EEA (for example a transfer between Japan and Hong Kong) are outside the scope of the safeguarding provisions of the PSRs, and as such funds received for these transactions should not be included in segregated funds.



- 10.11 It is important that the availability of an asset pool from which to pay the claims of payment service users in priority to other creditors in the event of the insolvency of a firm is not undermined by the firm improperly mixing funds, assets or proceeds received or held for different purposes. For example, if an account that a firm holds with a credit institution is used not only for holding funds received for the execution of payment transactions but also for holding funds received for other activities (such as foreign exchange) this is likely to corrupt the segregation and may result in the protection for payment service users in regulation 19 not applying. As a further illustration, a firm may safeguard funds received for the execution of payment transactions by covering them with an insurance policy or guarantee but if the account into which the proceeds of the insurance policy or guarantee are payable is also used for holding funds for other activities, or for holding the proceeds of another insurance policy taken out to safeguard funds received for another purpose, then this may mean that the proceeds are not considered to be an ‘asset pool’ subject to the special rules about the priority of creditors in the event of an insolvency.

### **How must funds be safeguarded?**

- 10.12 There are two ways in which a PI may safeguard relevant funds.

#### **The segregation method**

- 10.13 The first method requires the PI to segregate the relevant funds from all other funds it holds. This requirement applies as soon as funds are held by a PI.
- 10.14 If relevant funds continue to be held at the end of the business day after the day the PI received them, the PI must:
- deposit the relevant funds in a separate account it holds with an authorised credit institution; or
  - invest the relevant funds in secure, liquid assets approved by us and place those assets in a separate account with an authorised custodian.
- 10.15 An authorised credit institution includes UK banks and building societies authorised by us to accept deposits (including UK branches of third country credit institutions) and EEA firms authorised as credit institutions by their home state competent authorities. Authorised custodians include firms authorised by us to safeguard and administer investments and EEA firms authorised as investment firms under the Markets in Financial Instruments Directive (MiFID) and which hold investments under the standards in Article 13 MiFID.
- 10.16 The safeguarding account in which the relevant funds or equivalent assets are held must be named in a way that shows it is a safeguarding account (rather than an account used to hold money belonging to the PI).
- 10.17 The safeguarding account must not be used to hold any other funds or assets.

- 10.18 In our view, the effect of having to hold a separate account that only the PI may have any interest or right over the relevant funds or assets in that account (except as provided by regulation 19) is that PIs cannot share safeguarding accounts. For example, a corporate group containing several PIs cannot pool their respective relevant funds or assets in a single account. Each PI must therefore have its own safeguarding account. The PSRs do not, however, prevent PIs from holding more than one safeguarding account. If an account with an authorised credit institution is being used, it is important that the account is named in such a way that its purpose is clear, and that the PI has an acknowledgement from the account-holding credit institution or is otherwise able to demonstrate that the bank has no rights (for example, of set-off) over funds in that account.
- 10.19 In order to ensure it is clear what funds have been segregated and in what way, PIs must keep records of any:
- relevant funds segregated;
  - relevant funds placed in a deposit account; and
  - assets placed in a custody account
- 10.20 Regulation 19(5)(b) requires that any such assets are approved by the FSA as being secure and liquid. As the safeguarding provisions in the PSRs and EMRs are very similar, for consistency we intend to use a common approach for the PSRs and the EMRs in identifying suitable assets. We have approved the assets referred to below as liquid. On this basis, these assets are both secure and liquid, and payment institutions can invest in them and place them in a separate account with an authorised custodian in order to comply with the safeguarding requirement, if they are:
- items that fall into one of the categories set out in Table 1 of point 14 of Annex 1 to Directive 2006/49/EC(a) for which the specific risk capital charge is no higher than 0%; or
  - units in an undertaking for collective investment in transferable securities (UCITS), which invests solely in the assets mentioned previously.
- 10.21 A PI may request that we approve other assets. We will make our decision on a case by case basis, with the firm being required to demonstrate how the consumer protection objectives of safeguarding will be met by investing in the assets in question.
- 10.22 Authorised custodians include firms authorised by us to safeguard and administer investments and EEA firms authorised as investment firms under the Markets in Financial Instruments Directive (MiFID) and that hold investments under the standards in Article 13 of MiFID.

### **The insurance or guarantee method**

- 10.23 The second safeguarding method is to arrange for the relevant funds to be covered by an insurance policy with an authorised insurer, or a guarantee from an authorised insurer or an authorised credit institution. The policy or guarantee will need to cover

all relevant funds, not just funds held overnight or longer. It is important that the insurance policy or guarantee specifically covers the areas set out here.

- 10.24 The proceeds of the insurance policy or guarantee must be payable in an insolvency event (as defined in regulation 19) into a separate account held by the payment institution. That account must be named in a way that shows it is a safeguarding account (rather than an account used to hold money belonging to the PI). The account must not be used for holding any other funds, and no-one other than the PI may have an interest in or right over the funds in it (except as provided by regulation 19).
- 10.25 Neither the authorised credit institution nor the authorised insurer can be part of the corporate group to which the PI belongs.

### **Protection from the claims of other creditors**

- 10.26 Where a PI that has chosen to deposit customer funds in a bank account or invest them in secure, liquid assets, is placed in administration or ‘wound up’ these funds shall form part of the firm’s asset pool and the claims of the payment service user will be paid from the asset pool in priority to all other creditors. Regulation 19(11) ensures that, provided the funds have been safeguarded in accordance with one of the methods described above, the users’ funds are protected from the claims of other creditors. In this case the asset pool includes all individual customer funds below £50 that the PI has chosen to safeguard voluntarily.

### **Systems and controls**

- 10.27 PIs must maintain organisational arrangements that are sufficient to minimise the risk of the loss or diminution of relevant funds or assets through fraud, misuse, negligence or poor administration. This requirement is in addition to the general requirements on authorised PIs to have effective risk management procedures, adequate internal control mechanisms and to maintain relevant records, and applies to both authorised PIs and small PIs that voluntarily safeguard.
- 10.28 A PI’s auditor is required to tell us if it believes that there is or has been, may be or may have been, a breach of regulation 19 of material significance to us, including a breach of the organisational arrangements requirement.
- 10.29 In our view, arrangements that PIs should have in place include the following:
- PIs should exercise all due skill, care and diligence in selecting, appointing and periodically reviewing credit institutions, custodians and insurers involved in the firm’s safeguarding arrangements. PIs should take account of the expertise and market reputation of the third party and any legal requirements or market practices related to the holding of relevant funds or assets that could adversely affect payment service users’ rights or the protections afforded by regulation 19 (for example where the local law of a third country credit institution holding a safeguarding account would not recognise the priority afforded by regulation 19 to payment service users on insolvency). PIs should also consider, together with any other relevant matters:

- the need for diversification of risks;
  - the capital and credit rating of the third party;
  - the amount of relevant funds or assets placed, guaranteed or insured as a proportion of a third party's capital and (in the case of a credit institution) deposits; and
  - the level of risk in the investment and loan activities undertaken by the third party and its affiliates (to the extent that information is available).
- When it makes its decision on appropriateness, a PI should record the grounds for that decision.
  - PIs should have arrangements to ensure that relevant funds received by agents are safeguarded in accordance with regulation 19.
  - Where relevant funds are segregated in a different currency from that of receipt but the payment service user has not instructed the PI to convert it in this way, the PI should ensure that the amount held is adjusted regularly to an amount at least equal to the currency in which they have their liability to the payment service user using an appropriate exchange rate such as the previous day's closing spot exchange rate.
  - A PI's records should enable it, at any time and without delay, to distinguish relevant funds and assets held for one payment service user from those held for any other payment service user and from its own money. They should be sufficient to show and explain its transactions concerning relevant funds and assets. Records and accounts should be maintained in a way that ensures their accuracy and correspondence to the amounts held for payment service users.
  - A PI should carry out internal reconciliations of records and accounts of the entitlement of payment service users to relevant funds and assets with the records and accounts of amounts safeguarded. This should be done as often as necessary, and as soon as reasonably practicable after the date to which the reconciliation relates, to ensure the accuracy of the PI's records and accounts. Records should be maintained that are sufficient to show and explain the method of internal reconciliation and its adequacy.
  - A PI should regularly carry out reconciliations between its internal accounts and records and those of any third parties safeguarding relevant funds or assets. These should be performed as regularly as is necessary and as soon as reasonably practicable after the date to which the reconciliation relates to ensure the accuracy of its internal accounts and records against those of the third parties. In determining whether the frequency is adequate, the PI should consider the risks to which the business is exposed, such as the nature, volume and complexity of the business, and where and with whom the relevant funds and assets are held. A method of reconciliation that we believe is adequate is when a PI compares and identifies any discrepancies between:

- a) the balance on each safeguarding account as recorded by the PI with the balance on that account as set out on the statement or other form of confirmation issued by the firm that holds those accounts; and
  - b) the balance, currency by currency, on each payment service user transaction account as recorded by the PI, with the balance on that account as set out in the statement or other form of confirmation issued by the firm that holds the account.
- Where discrepancies arise as a result of reconciliations, PIs should identify the reason for the discrepancy and correct it as soon as possible by paying in any shortfall or withdrawing any excess, unless the discrepancy arises only due to timing differences between internal and external accounting systems. While a discrepancy cannot be resolved, PIs should assume that the records that show that a greater amount of relevant funds or assets should be safeguarded are correct.
  - Firms should notify us in writing without delay if in any material respect they have not complied with or are unable to comply with, the requirements in regulation 19 or if it cannot resolve any reconciliation discrepancies in the way described.

### **Effect of an insolvency event**

- 10.30 If an insolvency event (listed in regulation 19(15)) occurs in relation to an authorised PI or a small PI that is voluntarily safeguarding then, with one exception, the claims of payment services users will be paid from the relevant funds and assets that have been segregated (the 'asset pool') in priority to all other creditors. The exception is that expenses of the insolvency proceeding take priority so far as they are in respect of the costs of distributing the asset pool.
- 10.31 No right of set-off or security right can be exercised in respect of the asset pool, except to the extent that it relates to fees and expenses in relation to operating a safeguarding account.

# 11 Complaint handling

- 11.1 This chapter summarises the complaint handling requirements that apply to all payment service providers.

## **Introduction**

- 11.2 Complaint handling covers three distinct areas:
- how payment service providers handle the complaints they receive from customers;
  - the role of the FOS in dealing with complaints where customers are not satisfied with the company's response; and
  - our role in handling complaints from customers and other interested parties about alleged breaches of the PSRs.

## **Handling complaints from customers**

- 11.3 It is important that businesses have their own complaint-handling arrangements that should resolve most complaints. The FOS will not consider a complaint until the business concerned has had an opportunity to consider it.
- 11.4 Payment service providers are subject to our rules about how they handle complaints. These rules are set out in Chapter 1 of the [Dispute Resolution: Complaints sourcebook \(DISP\)](#) in our Handbook.
- 11.5 The rules cover a range of issues, including aiding consumer awareness, establishing internal complaint handling procedures, timeliness, the requirement for a final response letter, rules on referral of complaints to others and a requirement to cooperate with the FOS.
- 11.6 There are some 'frequently asked questions' about complaints handling on our website.
- 11.7 For firms such as banks, who fall under the FOS's jurisdiction for activities other than payment services, there is no difference in the arrangements except in respect of the consumer awareness rules (see below).

11.8 Firms that are only regulated by us in relation to payment services are not required to record complaints, report complaint statistics to us, or publish their complaints data. However, it is in firms' interests to retain records of complaints so these can be used to help the FOS if necessary. Firms that are regulated by us in relation to other activities must record and report on all complaints, including payment service complaints and publish a summary of their complaints data if they receive 500 or more complaints in any half-year reporting period.

### **Providing information about complaints procedures**

11.9 The PSRs require firms to provide information about the out-of-court complaint and redress procedures for the payment service user and the methods for having access to them (paragraph 7(b) of Schedule 4). This means informing payment service users about the firm's own complaints mechanism and the availability of the FOS. This information can be provided using the summary details required under DISP 1.2.

- For single payment transactions, this information must be made available 'in good time before the payment service user is bound by the single payment service contract'.
- For framework contracts, this information must be provided 'in good time before the payment service user is bound by the framework contract'.

11.10 In both cases, where the contract is concluded using distance means, the information can be provided immediately after conclusion of the contract if the method used to conclude the contract does not enable earlier provision.

11.11 However, these requirements are different in terms of content and timing from the requirement in DISP 1.2 for other types of business, which is that the firm should 'refer eligible complaints to the availability of these summary details at or immediately after the point of sale'. Where the activity does not involve a sale, this obligation applies at or immediately after the point when contact is first made with an eligible complainant.

11.12 So, payment service providers who also undertake other types of business regulated by the FSA will have to operate different arrangements for payment service users from those they operate for other customers. If they wish to, payment service providers can apply the requirements relating to payment service users to all their customers, since they satisfy the requirements set out in DISP 1.2 for other customers.

### **The FOS**

11.13 The FOS operates the out-of-court complaint and redress procedures for payment services required by the PSD.

11.14 The FOS is a statutory, informal dispute-resolution service, established under FSMA and operationally independent of the FSA. It operates as an alternative to the civil courts. Its role is to resolve disputes between individuals, micro-enterprises, small charities and trusts, and financial services firms quickly, without taking sides and

with minimum formality, on the basis of what is fair and reasonable in the circumstances of each case. In considering what is fair and reasonable, the FOS takes into account the relevant law, regulations, regulators' rules, guidance and standards, relevant codes of practice (such as the Remittances Customer Charter) and, where appropriate, what it considers to have been good industry practice at the relevant time.

11.15 There are three separate jurisdictions under the FOS.

- The compulsory jurisdiction (CJ). This covers all firms authorised or registered and regulated by us and all payment service providers with UK establishments.
- The consumer credit jurisdiction (CCJ). This covers businesses (other than those covered by the CJ) licensed by the Office of Fair Trading under the Consumer Credit Act 2006. Firms covered by the CCJ will move to the CJ when they become PIs. Firms using transitional arrangements that are currently within the CCJ will remain within it in relation to complaints that relate only to consumer credit activities, but will be within the CJ for complaints that relate partly or wholly to payment services.
- The voluntary jurisdiction (VJ). This covers financial services businesses that are not covered by the CJ or the CCJ but choose to join the VJ, for instance firms providing services in the UK from overseas.

11.16 Payment transactions provided by FSMA authorised persons such as banks are already covered by the FOS under the CJ, so the PSD brings consistency for consumers by bringing all payment transactions into the FOS's jurisdiction. Complaints about breaches of the Cross-Border Transfers in Euro Regulation<sup>3</sup> are also covered under the CJ.

11.17 Further information about the FOS's processes for handling complaints is available on the FOS's website [www.financial-ombudsman.org.uk/](http://www.financial-ombudsman.org.uk/).

11.18 There is also information specifically for smaller businesses [www.financial-ombudsman.org.uk/faq/smaller\\_businesses.html](http://www.financial-ombudsman.org.uk/faq/smaller_businesses.html).

### **Eligibility to bring complaints to the FOS**

11.19 Whether or not consumers can bring complaints about a payment service provider to the FOS depends on the type of firm and, in some cases, the date of the contract or service complained about.

- Authorised credit institutions and e-money issuers:
  - Complaints about payment services or contracts agreed prior to 1 November 2009 can be referred to the FOS (subject to time limits, see DISP 2.8).
- Other payment service providers:
  - Complaints about payment services or contracts agreed at any time can be

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3 [Regulation 924/2009]



brought against these firms in relation to acts or omissions that occurred on or after 1 November 2009 (again, subject to time limits, see DISP 2.8).

### **Is the complainant eligible?**

11.20 Access to the FOS is available to:

- consumers;
- micro-enterprises (see paragraph 11.25 below);
- small charities – annual income under £1 million at the time of the complaint; and
- small trusts – net asset value under £1 million at the time of the complaint.

11.21 A business may not bring a complaint about an activity that it conducts itself.

11.22 The full details of who is eligible to bring a complaint are set out in [DISP 2.7](#). If a firm is in any doubt about the eligibility of a complainant, it should treat the complainant as if it were eligible. If the complaint is referred to the FOS, it will determine eligibility by reference to appropriate evidence, such as accounts or VAT returns in the case of micro-enterprises.

11.23 A ‘micro-enterprise’ is an enterprise which:

- a) employs fewer than 10 people; and
- b) has a turnover or annual balance sheet that does not exceed €2 million.

When calculating turnover or balance sheet levels, the European Commission’s monthly accounting rate of the euro may be used (see paragraph 3.94).

11.24 For a complaint about payment services the complainant is eligible if it is a micro-enterprise either at the point of concluding the contract or at the time of the complaint. The point of this ‘dual test’ is to make it easier for firms to determine whether the complainant is eligible. Payment service providers should have arrangements in place to check whether their customers are micro-enterprises at the time of conclusion of the contract. But if this information is not easily available, the dual test would allow a complainant instead to rely on its status at the time of making the complaint.

11.25 For other activities covered by the FOS’s jurisdiction, the test for eligibility is whether the complainant is a micro-enterprise ‘at the time the complainant refers the complaint to the respondent’. This is in line with the eligibility tests for small charities and trusts.

11.26 The dual test means that where the complaint is about a number of issues, including payment services, the firm may only have to consider eligibility at the time the complaint was made. However, if the complainant was not eligible at the time the complaint was made and the case appears borderline, it will also be necessary to investigate the complainant’s status at the point of concluding the contract.

### **Transitional arrangements for small business complainants**

- 11.27 Until 1 November 2009, the small businesses with a group turnover of under £1 million per year were eligible to take complaints to the FOS. Implementation of the PSD has resulted in a change to the eligibility criteria, meaning that some small businesses that until that date had been eligible to take complaints to the FOS lost that right from 1 November 2009. In order to protect the position of these small businesses, the old eligibility test will apply, if necessary, for complaints about any policy or contract taken out before 1 November 2009 where the payment service provider was subject to the FOS's jurisdiction before that date.

### **Territorial scope of the compulsory jurisdiction**

- 11.28 The compulsory jurisdiction covers complaints about the payment services and ancillary activities of a firm carried on from an establishment in the UK. This includes EEA-authorized PIs' UK branches or agents.
- 11.29 The conduct of business requirements in the PSRs have limited application to payment transactions that are not made wholly within the EEA and using an EEA currency. For example, only the value dating and availability of funds requirements apply to a payment transaction that terminates or originates outside the EEA (a one leg transaction). However, eligible complainants are still able to take complaints about these payment transactions to the FOS.
- 11.30 The FOS determines complaints by reference to what is fair and reasonable in all the circumstances of the case, taking into account the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, good industry practice at the relevant time. So, although complaints about transactions within or outside the scope of the PSRs' conduct of business requirements are subject to the same overall test of fairness and reasonableness in all the circumstances of the case, the test takes account of the different regulatory position.

### **Cross-border disputes**

- 11.31 The FOS actively co-operates with other dispute resolution services in other EEA countries in resolving cross-border disputes. The FOS's membership of FIN-NET, the financial dispute resolution network of national out-of-court complaint schemes in the EEA, helps to facilitate this.

### **Complaints to the FSA**

- 11.32 We are required to operate procedures to allow payment service users and other interested parties to submit complaints about payment service providers' alleged breaches of the PSRs. This may be done by using the complaints form on our website. These complaints will be acknowledged and used to inform our regulatory activities (see Chapter 12). However, we do not operate a redress mechanism and so in replying to complainants, we will tell them – where appropriate – that they may be able to refer their complaint to the FOS.

## **Complaints about the FSA**

- 11.33 Anyone directly affected by the way in which the FSA has exercised its functions (other than its legislative functions) may lodge a complaint. To do so, please contact the Complaints Team by email ([complaints@fsa.gov.uk](mailto:complaints@fsa.gov.uk)) or by telephone (020 7066 9870).

# 12 Supervision

- 12.1 This chapter describes our approach to our responsibilities for supervising payment service providers.

## **Introduction**

- 12.2 We have designed our supervisory approach to be appropriate to the level of risk we believe the payment services market presents to consumers.
- 12.3 Our supervisory strategy is mainly ‘complaints-led’ in respect of the conduct of business rules (the rules are summarised in *Chapter 8 – Conduct of business*) applicable to all payment services providers. We explain what we mean by this below.
- 12.4 For authorised PIs, we use reporting as our tool to monitor compliance with the capital requirements (see *Chapter 9 – Capital resources and requirements*). These reports, which are required annually, also require information on authorised PIs’ safeguarding arrangements and the number of their agents, to provide confirmation that the necessary notification of any changes to these areas have been made to us. The reports are required within 30 days of a firm’s year end.
- 12.5 In respect of small PIs, we require an annual report of both the volume and the value of transactions carried out. This information enables us to make a report to the Commission (as we are required to do) and to ensure that the average monthly value of transactions undertaken by a firm has not risen above the level where it can remain a small PI. We also require information on the number of their agents and whether the firm is voluntarily safeguarding payment service user funds. The report covers the calendar year from 1 January to 31 December, and is due at the end of the following January.
- 12.6 In addition to the complaints-led and report-based prudential supervision described above, we may ask PIs to attend educational roadshows and make them subject to a periodic regulatory review every four years.

- 12.7 We encourage PIs to speak to us at the earliest opportunity if they anticipate any issues they may have in complying with the PSRs so that we can discuss with them an appropriate way forward.

## **Supervising compliance with the conduct of business rules**

- 12.8 We base our supervision of compliance with the conduct of business rules primarily on information such as complaints that we receive from payment service providers' customers and other interested parties.
- 12.9 When we receive a complaint alleging a breach of the conduct of business rules, we consider whether we need to take any supervisory action. In most cases, we expect simply to make the complainant aware of their right to take a complaint to the FOS if they are not satisfied with their payment service provider's response. We will not mediate between the firm and the complainant; this is the role of the FOS (see *Chapter 11 – Complaint handling*).
- 12.10 However, where a complaint to us about an alleged breach is significant or suggests a systemic problem, we are likely to follow up the complaint with supervisory action. This might involve, for example, a visit to the payment service provider concerned, or a request for a written explanation of the circumstances of the alleged breach.
- 12.11 It may be that, although individual complaints are not significant, over time a particular firm seems to be consistently non-compliant. This is likely to lead us to take supervisory action.
- 12.12 Where themes arise from the analysis of complaints, indicating an industry-wide problem on certain issues, we may undertake supervisory activity relating to that theme, such as visits to a number of firms to understand how they are managing the particular risk identified. Findings from such visits may lead both to specific action being required by certain firms and wider guidance being given to all firms.
- 12.13 In any case, where we are not satisfied that a payment service provider has dealt appropriately with the causes of the non-compliance, we will discuss the matter with our Enforcement division. *Chapter 14 – Enforcement* contains further details on enforcement.
- 12.14 We also analyse complaints made to the FOS about payment service providers and consider these in the same way as complaints made directly to us.
- 12.15 If the FOS refers a PI to us for non-compliance in settling an award made against it we will take supervisory action. Continued non-compliance in settling an award will result in a referral to our Enforcement division.

## **Information from auditors of authorised PIs**

- 12.16 The PSRs impose an obligation on the auditors of authorised PIs to report certain matters to us that they have become aware of in their capacity as auditor of that PI. For example, if the auditor reasonably believes that there is or has been a contravention of any of the requirements of the PSRs, they must report it to us (regulation 20).

- 12.17 On receipt of such information, we will review and follow up with the firm and/or the auditors as appropriate.

### **Credit institutions and other FSMA-regulated firms**

- 12.18 For those credit institutions and other FSMA regulated firms who are relationship managed because of their other regulated activities, we adopt the same complaints-led approach described above, but where payment services are a significant element of their activities, we consider those activities within the ongoing risk assessment and ARROW arrangements for those firms.
- 12.19 PIs that are part of a large FSMA-authorized group are likely to be supervised as part of their group's relationship management.

### **Supervising compliance with the authorisation and registration requirements and the capital requirements of authorised PIs**

- 12.20 We monitor compliance with authorisation, initial and ongoing capital requirements and registration requirements, by analysing the reports that we require firms to provide. These reports are described in *Chapter 13 – Reporting*.
- 12.21 The reports we receive are analysed and supervisory action considered where, for example, a shortfall in capital is identified. It is likely in such circumstances that we will contact the firm to hear their explanation of why they had breached the requirement and agree remedial action. If we are not satisfied with the response, we will consider cancelling their authorisation or registration.
- 12.22 In addition to analysing reports made to us by PIs, we also consider compliance with authorisation requirements in our complaints-led supervisory activity. We consider that the complaints-led approach helps us to identify key risks in relation to ongoing compliance with the authorisation and registration requirements. Complaints about breaches of the conduct of business rules are an indicator of whether a firm is maintaining appropriate arrangements in relation to governance, systems and controls, and internal controls.
- 12.23 A few firms may be sufficiently active in the payment services market to suggest that they pose a greater risk than most and that the impact on the market of any shortcomings at those firms would be significant. In these cases, the firm will have a closer supervisory relationship with us, working through a relationship manager who carries out a cycle of risk assessments (every one to four years) and a risk mitigation programme proportionate to the risks identified. In these cases, the focus of the relationship will primarily be the capital and safeguarding arrangements, rather than the conduct of business rules.

## **Changes in circumstances to authorisation or registration**

- 12.24 We must be notified of changes of certain details since authorisation or registration. These are described in *Chapter 4 – Changes in circumstances to authorisation and registration*.
- 12.25 Notifications must be made using the form provided on our website or, where a form is not provided, by written confirmation to the Customer Contact Centre.

## **Powers to require information, appoint persons to carry out investigations and carry out skilled persons reports**

- 12.26 We prefer to discharge our functions under the PSRs by working in open and cooperative relationship with payment service providers. We will look to obtain information in the context of that relationship unless it appears that obtaining information in that way will not achieve the necessary results, in which case we will make use of our statutory powers. These include the following.
- The power to require specified information in connection with our responsibilities under the PSRs.
  - The power to require a report from a skilled person, nominated or approved by us, on any matter that we require in connection with our responsibilities under the PSRs. Further information on our policy on the use of skilled persons and appointment and reporting process is contained in the supervision section of our Handbook (SUP), specifically at SUP 5.3 and 5.4.
  - If it appears that there is a good reason for doing so, we can appoint competent persons to conduct an investigation on our behalf.

## **Supervision under the Money Laundering Regulations 2007 (MLR)**

- 12.27 The PSD brings all payment service providers under the MLR. The majority are money service businesses, which remain registered and supervised by HMRC for the purposes of the MLR. We are responsible for PIs which are merchant acquirers and credit card issuers, who need to register with us for MLR purposes, unless licensed by the OFT as consumer credit providers. We will supervise these businesses in accordance with the strategy outlined in the Approach Document for the MLR, available on our website.

# 13 Reporting

- 13.1 We require PIs to provide us with annual reports to help us comply with our supervisory responsibilities under regulation 81 (see *Chapter 12 – Supervision*), the requirements for statutory accounting and audit information under regulation 20 and our own reporting requirements to the Commission. We also need data from authorised PIs to be able to calculate their periodic fee contributions.

## Authorised PIs

- 13.2 A summary of the reporting requirements for authorised PIs is shown in the two tables below.

<b>Report required – FSA056 (Authorised Payment Institution Capital Adequacy Return)</b> <b>Frequency: Annual.</b> <b>Submission date: Within 30 business days of firm’s Accounting Reference Date (ARD).</b> <b>Method of submission: GABRIEL</b>	
<b>Content</b>	<b>Purpose</b>
<b><i>Part One: Capital Requirement</i></b> Calculation of the capital requirement showing: <ul style="list-style-type: none"><li>the method used, A, B or C (see Chapter 8) to calculate the capital requirement (we confirm the method to use when we grant authorisation); and</li><li>financial information to evidence the actual requirement.</li></ul>	To confirm that the capital requirement is appropriately calculated.
<b><i>Part Two: Total Capital Resources</i></b> A breakdown of the authorised PI’s total capital resources is required.	To demonstrate that the capital requirement is being met or to show whether there is a capital resource deficit at the reporting date.



### **Part Three: Supplementary Information**

#### *Audited Accounts*

Confirmation required:

- whether, if incorporated, the authorised PI qualifies for the Companies House small firms audit exemption; and
- of the date, if the authorised PI is required to submit audited accounts, the firm's statutory accounts were most recently audited.

If the authorised firm is a 'hybrid firm' with an obligation to submit separate accounts for PSD business only confirmation is required of the date these were last sent to the FSA.

#### *Safeguarding of client assets*

Confirmation is required of how the authorised PI safeguards its clients' funds. The following safeguarding options are available:

- placed in a separate account with an authorised credit institution;
- invested in approved secure liquid assets held in a separate account with an authorised custodian;
- covered by an insurance policy with an authorised insurer;
- covered by a guarantee from an authorised insurer; or
- covered by a guarantee from an authorised credit institution.

#### *Number of agents*

Confirmation is required of the number of agents the authorised PI is responsible for and has registered at the reporting period end.

To confirm whether statutory accounts need to be audited and to indicate when the separate accounting information will be available.

To ensure Regulation 20 (the submission of payment service only accounts by 'hybrid firms') is met – see paragraphs 13.4 to 13.6.

To confirm that appropriate arrangements are in place. (See Chapter 10 – Safeguarding for further information).

To enable us to verify the information recorded on our register. If the number reported does not match the number of agents appearing on our register, then we may ask the firm for an explanation.

Separate 'Payment services business only' accounting information for authorised PIs that are 'hybrid firms'

(See paragraphs 13.4 to 13.6 below)

Frequency: Annual

Submission date:

- If the accounts are audited and filed with Companies House they should be sent to the FSA at the same time.
- If, as small firms, they are not required to file audited accounts with Companies House we expect the 'payment services business only' accounts to be sent to us within 9 months of PI's Accounting Reference Date (ARD).

Method of submission: in paper form

Content	Purpose
For authorised PIs carrying on business other than the provision of payment services separate accounting information must be sent to us showing the payment services business element only.	Requirement of the PSRs (Regulation 20).

## Small PIs

13.3 A summary of the reporting requirements for small PIs is shown in the table below.

**Report required – FSA057 Payment Services Directive Transactions**

**Frequency: Annual report covering 1 January to 31 December.**

**Submission date: To be submitted by the end of the following January.**

**Method of submission: GABRIEL**

Content	Purpose
Confirmation of the number and value of payment transactions (all transactions, including one leg).	<p>To enable the FSA to provide the Treasury with the necessary information so that it can report the total value of Small PI payment transactions to the Commission.</p> <p>To demonstrate that the PI is not exceeding the Small PI condition of registration that its monthly average total amount of payment transactions carried out over the preceding 12 months must not exceed €3 million.</p>

<p><i>Safeguarding of client assets</i></p> <p>Confirmation of whether the small PI has decided to voluntarily safeguard its clients' funds is required. If it has chosen to do this, further confirmation is required of which of the following safeguarding methods is used:</p> <ul style="list-style-type: none"> <li>• placed in a separate account with an authorised credit institution;</li> <li>• invested in approved secure liquid assets held in a separate account with an authorised custodian;</li> <li>• covered by an insurance policy with an authorised insurer;</li> <li>• covered by a guarantee from an authorised insurer; or</li> <li>• covered by a guarantee from an authorised credit institution.</li> </ul>	<p>To confirm that appropriate arrangements are in place if the small PI has chosen to safeguard. (See Chapter 10 – Safeguarding for further information)</p>
<p><i>Number of agents</i></p> <p>The authorised PI is required to confirm the number of agents it has registered at the reporting period end.</p>	<p>To enable us to verify the information recorded on our register. If the number reported does not match the number of agents appearing on our register, then we may ask the firm for an explanation.</p>

### **Separate payment services accounting information for 'hybrid' firms**

- 13.4 Most authorised PIs need to have their annual accounts audited but there is no obligation for those accounts to be submitted to us. However, regulation 20 requires that where an authorised PI is a 'hybrid' firm, carrying out activities other than the provision of payment services, it must provide to us separate accounting information in respect of its provision of payment services. The requirements for this are summarised in the relevant table in 13.2 above.
- 13.5 If the authorised PI is already required to have a statutory audit of its annual accounts, this information must be subject to an auditor's report prepared by the institution's statutory auditors or by an audit firm.
- 13.6 Firms should be aware that the activities other than the provision of payment services that are subject to separate accounting information in regulation 20 include, where they are not part of the payment service, the operational and closely related ancillary services included in regulation 27(1). These include:
- ensuring the execution of payment transactions;
  - foreign exchange services;
  - safekeeping activities; and
  - the storage and processing of the data.

## **Reporting process & late submission of returns**

- 13.7 For both authorised and small PIs, our electronic reporting system (GABRIEL) will monitor when the FSA056 and FSA057 returns are due to be submitted to us and issue a reminder to each PI one month before that date. Firms should then follow the instructions on the GABRIEL system to submit their returns electronically.
- 13.8 Where a hybrid firm (that is, a PI that conducts both payment services and non-payment services business) has to submit separate accounting information about its payment services, this must be done manually and not via GABRIEL. In this case, no electronic reminder will be sent to the firm.

## **Late submission of returns**

- 13.9 Firms must comply with the deadlines for sending regulatory data to us. Our normal data collection processes will apply<sup>4</sup> so firms failing to meet the reporting deadlines will be reminded to do so and be subject to an administrative charge of £250. This is in common with reporting by all FSA-authorised or registered firms, which is received and processed in the same way as returns from PIs will be.

## **The FSA's Annual Report to the Treasury**

- 13.10 Every year the Treasury must inform the European Commission of the number of natural and legal persons that are registered with us as small PIs and, on an annual basis, of the total amount of payment transactions executed as of 31 December in each calendar year. This information is taken from the FSA057 return.

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4 [www.fsa.gov.uk/Pages/Doing/Regulated>Returns/IRR/gabriel/faqs\\_general/index.shtml](http://www.fsa.gov.uk/Pages/Doing/Regulated>Returns/IRR/gabriel/faqs_general/index.shtml)

# 14 Enforcement

- 14.1 This chapter describes our enforcement approach. It will be relevant to payment service providers who are subject to our enforcement action.

## **Our enforcement approach**

- 14.2 Our approach to enforcing the PSRs mirrors our general approach to enforcement under the Financial Services and Markets Act 2000 (FSMA).<sup>5</sup> This approach is set out in Chapter 2 of the Enforcement Guide (EG).
- 14.3 We seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We also seek to ensure fair treatment when exercising our enforcement powers. Finally, we aim to change the behaviour of the person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and where appropriate, to remedy the harm caused by the non-compliance.

## **How are cases referred to the Enforcement division?**

- 14.4 When we consider whether to refer a case (whether under FSMA or the PSRs) to the Enforcement division for investigation, we take a number of criteria into account. We have framed the criteria as a set of questions. They take into account our statutory objectives, business priorities and other issues such as the response of the firm or individual to the issues we are considering for referral.
- 14.5 Not all the criteria will be relevant to every case and there may be other considerations which are not listed below that are relevant to a particular case. Staff from the referring department, the Enforcement division and, in some cases, from other areas of the FSA work together to decide whether to refer a case for investigation. The referral criteria include the following:

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<sup>5</sup> Any breaches of DISP will be enforced using the normal FSMA procedures.

- Is there actual or potential consumer loss/detriment?
- Is there evidence of financial crime or risk of financial crime?
- Are there issues that indicate a widespread problem or weakness at the firm?
- Is there evidence that the firm/individual has profited from the action or potential breaches?
- Has the firm failed to bring the actions or potential breaches to the attention of the FSA?
- What was the reaction of the firm/individual to the breach?

14.6 The criteria may change from time to time; more information can be found on our website.

### **What tools will we use when investigating payment service providers?**

14.7 Those firms familiar with FSMA will note that the PSRs allow us to use many of the powers of investigation we have under FSMA. The regulatory powers which the PSRs provide to us include the following:

- Information requirements: we may require information by serving written notice on a payment service provider or any person connected to a payment provider;
- Interviews: we may require individuals working at or connected to a payment provider to attend an interview and answer questions;
- Entry without a warrant: we may enter and inspect premises; and
- Search warrants: we may apply to the court for a search warrant to allow for the entry and searching of premises and the obtaining of documents.

### **What sanctions can we use when a payment service provider breaches the PSRs?**

14.8 The PSRs will allow us to impose penalties and censures for breaches of the PSRs and instigate criminal prosecutions against those who provide or claim to provide, payment services but are not authorised to do so. We can also order firms to provide restitution to their customers. We can cancel or place requirements on a PI's authorisation or registration where certain criteria, outlined in the PSRs, are met. In addition to serious breaches of the PSRs, examples of the circumstances where we may cancel an authorisation include, but are not limited to, persistent non-payment of fees and levies owed to the FSA, non-submission of an annual return and failing to provide current contact information to the FSA. Our policy in relation to how we impose penalties on firms which breach our rules can be found in DEPP. We recently adopted a new penalties policy. For more information, see: [www.fsa.gov.uk/pages/Library/Policy/Policy/2010/10\\_04.shtml](http://www.fsa.gov.uk/pages/Library/Policy/Policy/2010/10_04.shtml)

## **What process will we follow when imposing penalties or censures?**

- 14.9 Before imposing a penalty, we will inform the person or firm that we intend to do so. We will also tell them the reasons for imposing a penalty or censure and, where relevant, its amount. They will have at least 28 days to make representations to us, should they wish to do so. After this, we will make our decision whether or not to take the proposed action. If we decide to proceed, and if the decision is contested, there is a right to refer the matter to the Financial Services and Markets Tribunal, which is an independent judicial body. As with cases under FSMA, we may settle or mediate appropriate cases involving civil breaches of the PSRs. Both DEPP 6.7 and EG 5 contain further information on our settlement process and settlement discount scheme.
- 14.10 We may publish enforcement information about a firm on the register if we consider it appropriate to do so.

## **Where can I find more information?**

- 14.11 EG 19 sets out more detail on the use of enforcement powers in relation to the PSRs and Annex 1 of Chapter 2 of DEPP sets out who will make the decisions to use our disciplinary powers. Our website also includes further details.

# 15 Fees

- 15.1 We may levy fees in order to recover our costs of setting up the new payment services regime and for our ongoing costs of meeting our regulatory responsibilities under the PSRs. This chapter summarises our fees structure for payment service providers.
- 15.2 The framework is described in greater detail in Handbook Notice 87 (April 2009) and in the consolidated policy statement on fees that we published in June 2009, PS09/8. Chapter 8 of the paper sets out the application fees, while chapter 21 discusses the arrangements for periodic (annual) fees.
- 15.3 Our proposed fee rates for 2010/11 are set out in our Consultation Paper on Regulatory fees and levies, published in February 2010 (CP10/5). We will provide feedback on the comments received and set the final rates in a consolidated policy statement in June 2010.

## **Fees for applications and variations of permission**

- 15.4 Our application fees came into force from 1 May 2009. Firms that need to be authorised by or registered with us in order to provide payment services after 1 November 2009 have to pay an application fee when they submit their application.
- 15.5 The application fee for small PIs is £500. It is £1,500 and £5,000 for authorised PIs, depending on the activities for which they are seeking authorisation. For any payment service provider seeking authorisation with more than 2,500 agents, we levy a £12,500 application fee, rising to £25,000 if there are more than 5,000 agents.
- 15.6 Firms are authorised or registered to provide specific types of payment services. If a firm wants to apply for a variation of these services, it must apply to us. Our proposed fees for such an application are set out in the Handbook Notice 87.



## **Periodic fees**

- 15.7 CP10/5 describes the tariff base for the periodic (annual) fees PIs will be paying in fee-blocks G.2 – G.5 and sets out proposed rates for 2010/11. Small PIs are liable to a flat fee of £400. Authorised PIs pay a variable periodic fee based on their payment services income, with a minimum annual rate of £400.
- 15.8 Firms already authorised under FSMA and paying fees in the A1 fee-block are allocated to fee-block G.2 for their payment services activities and subject to a periodic fee based on the existing A.1 fee-block tariff data they already submit.
- 15.9 The annual fees consultation is carried out in two stages. Any proposed changes to the structure of the fees are included in the October fees policy consultation paper (CP) for implementation in the following financial year. In the February CP we consult on proposed periodic fee rates and any changes to application fees that will be levied in the following financial year. The final rules covering any structural changes and the final fee rates are confirmed in our consolidated policy statement published in June.

## **Payment services fees proposal for the FOS**

- 15.10 Payment service providers are subject to the jurisdiction of the FOS. The FOS charges an annual levy to firms in its jurisdiction, which we collect on its behalf, as well as case fees for the fourth and subsequent cases referred to the FOS each year.
- 15.11 There is a new fee-block for payment service providers coming under our regulatory remit for the first time as a result of the PSRs. For authorised PIs, we are using income from payment services activities as a tariff base in line with the calculation for the FSA's periodic fee tariff base. For small PIs and small e-money issuers, there is a flat fee of £75 a year.
- 15.12 Payment service providers already subject to the FOS will continue to contribute to the general levy through their existing industry fee blocks.

# 16 Access to payment systems

- 16.1 This chapter is relevant to all PIs who wish to access payment systems and to operators of payment systems. It has been written by the Office of Fair Trading, as the competent authority for Part 8 of the PSRs.

## **Part 8 and the Office of Fair Trading (OFT)**

- 16.2 Part 8 of the PSRs concerns access to payment systems in the UK. Its key aim is to ensure that authorised PIs and small PIs are allowed access to payment systems in the UK on an even playing field. Because access to payment systems is essential to the operation of many PIs, it is important that there are no unnecessary barriers to participation. Part 8 sets out the requirements for ensuring that any rules or conditions governing access are objective, proportionate and non-discriminatory, and that they do not restrict access more than is necessary to ensure the safety and stability of the system. It also prohibits certain types of rules or conditions that could:
- restrict effective participation in other payment systems;
  - discriminate between different authorised PIs, or different small PIs, in relation to the rights, obligations or entitlements of participants in the payment system; or
  - impose any restrictions on the basis that a person is not of a particular institutional status.
- 16.3 As the UK's consumer and competition authority, the OFT aims to make markets work well for consumers. A key part of making markets work well is to ensure that firms can access markets without any unnecessary barriers. Therefore, the responsibility for enforcing Part 8 falls to the OFT.

## **Access to payments systems**

- 16.4 Part 8 only applies to rules on access to a payment system by authorised PIs and small PIs. Rules that prevent, restrict or inhibit access are only allowed insofar as they are necessary to protect the system against specific risks, or to protect the

financial and operational stability of the system and can be applied in a way that is objective, proportionate and non-discriminatory. Rules that discriminate against individual PIs, or groups of PIs, or that restrict participation in other payment systems, are not allowed.

- 16.5 Part 8 does not apply to payment systems that are designated as systemically important under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 – which includes CHAPS, Bacs and the Faster Payments system (which was designated as systemically important on 27 August 2010). Part 8 also does not apply to so-called proprietary three party payment systems, which are not membership-based systems or to payment systems that serve one group of companies where one company enjoys control over others in the group (such as a group of banks). There are currently a number of payment systems in the UK that must comply with Part 8 including the UK’s ATM system LINK; and the Visa and MasterCard credit and debit card systems.

## **Powers of the OFT**

- 16.6 If the OFT suspects that a rule breaches the Part 8 access requirements, it can carry out an investigation, including requiring documents and information to be provided to it. Refusing to provide the information that the OFT requests can lead to a court order requiring the information to be provided. If the OFT finds that a rule breaches the Part 8 access requirements, it can impose a fine of an amount it considers appropriate on such person (or persons) as it considers appropriate. It may also give such directions as it considers appropriate to such person or persons as it considers appropriate. The directions can:
- require the person to change any rule or condition so that it no longer contravenes the law; and
  - relate to the conduct of a person in implementing any rule or condition.
- 16.7 Anyone who thinks that a payment system which must comply with Part 8 has a rule that prevents, restricts or inhibits access beyond what is necessary to safeguard against specific risks or to protect the financial and operational stability of the payment system, or grants access on terms that are not objective, proportionate and non-discriminatory (or otherwise breaches the access requirements in Part 8) can contact the OFT at the address given at the end of this chapter.

## **Appeals**

- 16.8 Appeals by ‘relevant persons’ against directions made by the OFT, or the levels of fines will be heard by the Competition Appeals Tribunal.

## Approach of the OFT

- 16.9 The OFT will pay close attention to the context of any potentially restrictive rules on access. Before making a decision that a rule falls foul of the access requirements in Part 8, the OFT will conduct an investigation and if the rule could have an effect on the financial and operational stability of the system, they will consult with the Bank of England and the FSA. The OFT will normally also consider liaising with the Payments Council, the body with responsibility for setting the strategy for the UK payments industry for schemes that come under its umbrella. Part of the Payments Council's responsibility is to ensure that access to payment systems within its membership is open. Payment systems that come under the umbrella of the Payments Council include LINK and Faster Payments. Before taking any decision that rules fall foul of the Part 8 access requirements, the OFT will give notice of its concerns to the person (or persons) it considers are responsible for the contravention.
- 16.10 There are a number of ways that access to a payment system can be restricted in a way that might fall foul of the Part 8 access requirements. Some non-exhaustive examples are below.
- 16.11 It is likely that the OFT would find a rule unnecessarily restrictive if that rule does not play an important part in the stable and secure operation of a system. For instance, a rule that had the effect of denying access to PIs who aggressively marketed themselves at the expense of other members of the system could be considered unnecessarily restrictive if it did not contribute to the stability and security of the system. A rule that prevented one organisation from processing payments for another would have to be necessary to the stability or security of the system in order for it to be acceptable.
- 16.12 The OFT might find a rule disproportionate if it did not take into account the relevant differences between members of a system. For instance, a rule that said that all members of a system would have to pay the same fees, regardless of usage of the system, could be disproportionate. A system that made allowance for different levels of usage, perhaps by having a sliding scale of fees for membership might be more proportionate. This wouldn't necessarily prevent a system from having a fixed element to its pricing.
- 16.13 Rules insisting that users of the system use one particular supplier of services could be restrictive. Instead, a rule that says that suppliers of a service must meet certain criteria, based on their ability to supply a safe, secure service, is more likely to be acceptable. This makes it more likely that users of a service will have a choice of suppliers for, for instance, processing payments.

## **Guidance**

- 16.14 The OFT has published a Question and Answer document on its website: [www.offt.gov.uk](http://www.offt.gov.uk). If you have any specific queries you can contact the OFT:

Tel: 0207 211 8000

Post: Payment Systems Team

Office of Fair Trading

Fleetbank House

2-6 Salisbury Square

London

EC4Y 8JX



# Useful links

Web links are provided below to useful information resources.

## Legislation

[Payment Services Directive](#)

[Payment Services Regulations 2009](#)

[Payment Services \(Amendments\) Regulations 2009](#)

[Electronic Money Regulations 2011](#)

## FSA Handbook

Our Handbook is an extensive document that sets out the FSA's rules and guidance for financial services. There are a few areas of the Handbook that contain rules applicable to payment services. These are as follows:

- [Glossary](#)  
Provides definitions of terms used elsewhere in the Handbook. Clicking on an italicised term in the Handbook will open up the Glossary definition.
- [General Provisions \(GEN\) – GEN 5](#)  
Includes an explanation of the terms of license which allows authorised PIs to use our logo in certain circumstances.
- [Fees manual \(FEES\)](#)  
Contains fees provisions for funding the FSA and the FOS relevant to payment service providers.

- Banking: Conduct of Business sourcebook (BCOBS)

From 1 November 2009, banks and building societies are also be required to comply with the conduct of business rules for retail banking in this new module of the Handbook.

- Supervision manual (GEN) – SUP 9

Describes how people can seek individual guidance on regulatory requirements and the reliance they can place on guidance received.

## **Decision Procedure and Penalties Manual (DEPP)**

Contains the procedures we must follow for taking decisions in relation to enforcement action and setting penalties.

- Dispute Resolution: Complaints sourcebook (DISP)

Contains the obligations on payment institutions for their own complaint handling procedures. It also sets out the rules concerning customers' rights to complain to the FOS. Banks, building societies and authorised e-money issuers already have to comply with our complaints handling requirements.

The Handbook website also contains the following regulatory guides that are relevant to payment service providers:

- Enforcement Guide (EG)

Describes our approach to exercising the main enforcement powers given to us under FSMA and the PSRs.

- Perimeter Guidance manual (PERG) – PERG 15

Contains guidance aimed at helping businesses consider whether they need to be separately authorised or registered for the purposes of providing payment services in the UK.

- Unfair Contract Terms Regulatory Guide (UNFCOG)

Explains our powers under the Unfair Terms in Consumer Contracts Regulations 1999 and our approach to exercising them.

## **Complaint handling**

- Dispute Resolution: Complaints sourcebook (DISP)
- Frequently asked questions about complaints handling.
- Information about the FOS's processes for handling complaints.
- Information from the FOS specifically for smaller businesses.



## **FSA reporting system for firms**

- GABRIEL is our regulatory reporting system for the collection, validation and storage of regulatory data.

## **Money Laundering Regulations 2007 (MLR)**

- Information from HMRC about compliance with the MLR.



# Useful contact details

## **Financial Services Authority (FSA)**

25 The North Colonnade  
Canary Wharf  
London, E14 5HS

Contact Centre  
0845 606 9966

Consumer Helpline  
0845 606 1234

## **Financial Ombudsman Service**

South Quay Plaza  
183 Marsh Wall  
London, E14 9SR

0845 080 1800 or 020 7964 0500

## **Her Majesty's Revenue and Customs (HMRC)**

National Advice Service  
Written Enquiries Section  
Alexander House  
Victoria Avenue  
Southend  
Essex, SS99 1BD

0845 010 9000

## **The Office of Fair Trading (OFT)**

Payment Systems team

Office of Fair Trading

Fleetbank House

2-6 Salisbury Square

London, EC4Y 8JX

0207 211 8000

# Status disclosure sample statements

The following are suggested statements for payment service providers to include in their contracts and correspondence with customers. It is not mandatory to use these exact statements, but it is important that customers are made aware of the payment service provider's authorisation status.

Note that regulation 40 requires, with respect to framework contracts, that the customer is provided with the information specified in Schedule 4. This includes 'details of the payment service provider's regulators, including any reference or registration number of the payment service provider'.

There is also a requirement with respect to individual payment service contracts in regulation 36 (2) (e) that the payment service provider provides such information specified in Schedule 5 'as is relevant to the single payment service contract in question'. We consider that details of the regulator will be relevant information and would expect firms to make reference to their regulated status.

Firms which require authorisation under both FSMA and the PSRs should make a reference to both authorisations.

## **Authorised PIs**

[Name] is authorised by the Financial Services Authority under the Payment Service Regulations 2009 [register reference] for the provision of payment services.

## **Small PIs**

[Name] is registered with the Financial Services Authority under the Payment Service Regulations 2009 [register reference] for the provision of payment services.

## **EEA Authorised PIs**

Authorised by [name of Home State regulator] and regulated by the Financial Services Authority for the conduct of payment services business in the UK.

## **Small E-money Issuers**

[Name] has been issued with a small e-money issuer's certificate and is regulated for the provision of payment services by the Financial Services Authority.

# Members of PSD Stakeholder Liaison Group

American Express

British Bankers Association (BBA)

Building Societies Association (BSA)

Citibank

Electronic Money Association (EMA)

HM Revenue and Customs

International Association of Money Transfer Networks (IAMTN)

Mastercard

Mobile Broadband Group

Money Gram

Payments Council

Post Office Ltd

Royal Bank of Scotland

UK Money Transmitters Association (UKMTA)

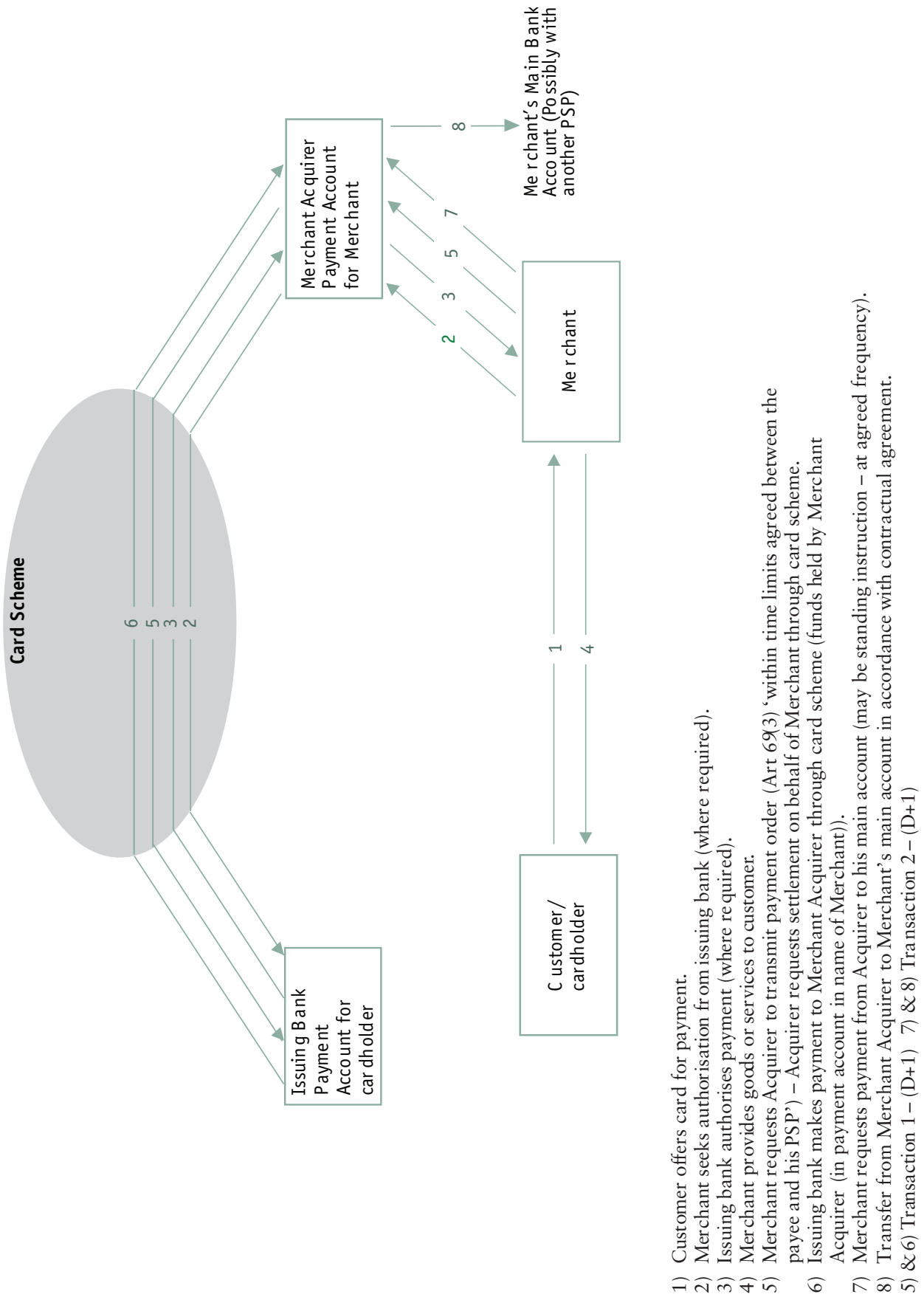
Visa Europe

Western Union





# Merchant acquiring transactions



## Four-party card scheme

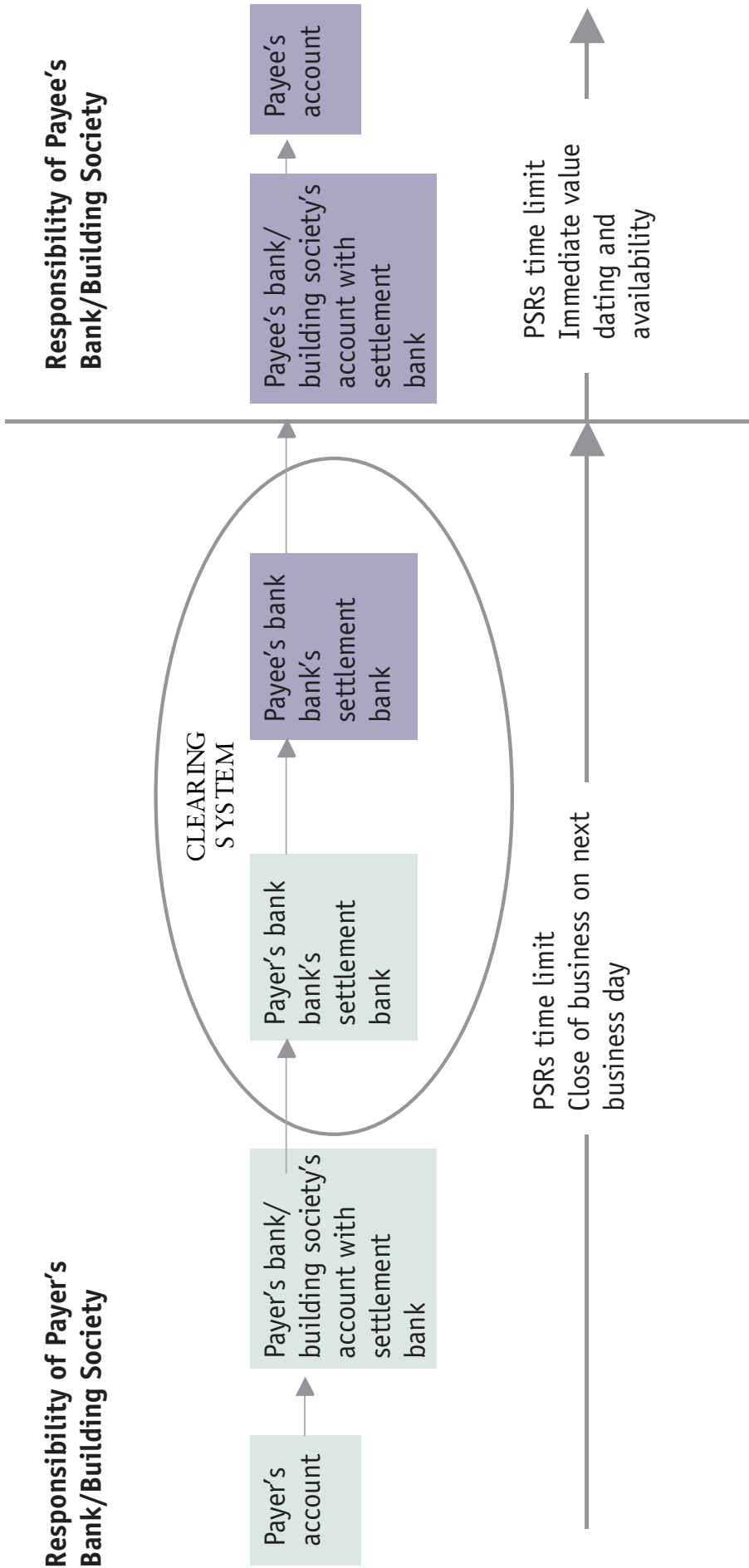
1. The above diagram sets out the elements involved in a card transaction with a Merchant accessing the relevant card scheme through a Merchant acquirer. It shows a model under which the Merchant acquirer operating a payment account in the name of the Merchant can hold funds due to a Merchant for a period to allow for chargebacks under the card scheme, before they are remitted to the Merchant's main operational bank account. This annex illustrates that the existing model can continue while still complying with the requirements of the Payment Services Directive in respect of execution time.
2. Under this model, the card issuer authorising the payment is not the beginning of the transaction. Rather, the first payment transaction begins when the Merchant acquirer, as the payee's (Merchant's) PSP, transmits the payment order to the payer's PSP (the card issuer). Under Article 69(3) this must be 'within the time limits *agreed* between the payee and his payment service provider.' So this allows them to agree how frequently such claims are made.
3. The point when the payer's PSP receives this payment order for the purposes of the execution time provisions in the PSRs will be the point at which the card issuer receives the claim. That card issuer is then responsible under regulation 70(1) to get the funds to the Merchant acquirer's account by the end of the following business day (D+1).
4. Regulations 70(5) and 73(1) then require the Merchant acquirer, as the payee's (Merchant's) PSP, to value date and make available the funds to the payee's payment account immediately. Under the model set out above, this will be the payment account it operates in its books for the Merchant. This is shown in points 5 and 6 in the diagram above. Our understanding is that Merchant acquirers already effectively run such accounts for the Merchants for whom they operate, although they are not currently labelled as payment accounts, in that they will have details of all the Merchant's transactions, and transfers to the Merchant's main operational bank account on its books.
5. In general terms there is nothing in the PSD which prevents firms from operating accounts which have some restrictions, such as minimum balances, or notice periods. In addition, given that there will be a standing instruction to transfer the funds to the Merchant's main bank account, this may be taken as a future dated instruction to transfer the funds '*on a specific day, or at the end of a certain period or on the day on which the payer has set funds at his payment service provider's disposal*' (regulation 65(4)). In this way, the funds are already the subject of a payment order, thus fulfilling the requirement that the funds are 'at the payee's disposal'.
6. So the transfer of the funds from the Merchant's payment account with the Merchant acquirer to the Merchant's main operational bank account will be a separate payment transaction. This is shown in points 7 and 8 above.
7. The funding of the cardholder's payment account is completely separate from the above process, so we have not included it.

8. We are aware that there a number of bureaux or aggregators providing merchant acquiring services in the UK whose position is not reflected in the models described above. We are currently in discussions with the card schemes and the UK industry bodies to clarify where responsibilities lie in the event of a breach by such a provider.

### **Merchant Acquiring in Three-Party Schemes**

9. A three-party card scheme is a card scheme offered by the card issuer, where both the card holder and the merchant are customers of the card issuer. Examples of such schemes are those offered by American Express and Diners Club. These schemes differ from the four-party schemes such as Visa and Master Card in that there is no need for interbank settlement, because both customers (cardholder and Merchant) hold accounts with the card issuer.
10. Transactions under a three-party card scheme are payment transactions under the PSRs, being the act of transferring funds from the payer to the payee.
11. Our understanding is that there are a number of possible organisational structures which a three-party card scheme can take, which may impact upon the particular requirements of the PSRs. Payment service providers operating three-party card schemes are therefore encouraged to contact us at an early stage to discuss their particular circumstances.

# The Payment Process



# Glossary of terms

Many of the terms used in this document are defined in regulation 2 of the PSRs and are not repeated here. The following information is to understand this document more easily.

## **Financial Services and Markets Act 2000**

This is the legislation that gives the FSA its statutory powers.

## **Small charity**

For the purposes of this document, a small charity is one with an annual income of less than £1 million. Such small charities are treated in the same way as consumers under the PSRs. This is the definition used in the PSRs, but note that the term ‘charity’ is used there instead.

## **Micro-enterprise**

This is an enterprise whose annual turnover and/or balance sheet total does not exceed €2 million (or sterling equivalent) and employs fewer than 10 people.

‘Enterprise’ means any person engaged in an economic activity, irrespective of legal form and includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.

In determining whether an enterprise meets the tests for being a micro-enterprise, account should be taken of the enterprise’s ‘partner enterprises’ or ‘linked enterprises’ (as those terms are defined in the European Commission’s Micro-enterprise Recommendation (2003/361/EC)). An enterprise includes, in particular, a sole trader and family businesses, and partnerships or associations regularly engaged in an economic activity. For example, where one firm holds a majority shareholding in a second firm, if the first firm does not meet the tests for being a micro-enterprise then nor will the second.

## **One leg transactions**

Payment transactions where either the payer or the payee's payment service provider is located outside the EEA.

## **E-money issuers**

In this document, references to e-money issuers are, unless otherwise stated, references to non-bank e-money issuers. This includes both e-money institutions who are authorised by the FSA and small e-money issuers who hold a small e-money issuer certificate issued by the FSA.

## **Financial Services and Markets Tribunal**

The Financial Services and Markets Tribunal is an independent judicial body established under section 132 of the Financial Services and Markets Act 2000 (FSMA). It hears references arising from decision notices (for example, where the FSA decides to reject authorisation applications) and supervisory notices (for example, where the FSA decides to impose a requirement on a payment institution's authorisation or registration) issued by the FSA.

## **Corporate opt-out**

Payment service providers may agree with business customers (that is, payment service users who are not consumers, small charities or micro-enterprises) to vary the information they provide from that specified in the PSRs, and, in certain cases, agree different terms in relation to rights and obligations. This is referred to as the 'corporate opt-out'.



# Abbreviations and Acronyms

## **BCOBS**

The Banking: Conduct of Business sourcebook of the FSA's Handbook

## **Commission**

European Commission

## **Contact Centre**

The FSA's Customer Contact Centre (see *Annex 2 – Useful links*)

## **DISP**

The Dispute resolution: complaints sourcebook of the FSA's Handbook

## **EEA**

European Economic Area, comprising the Member States of the European Union, plus Iceland, Liechtenstein and Norway

## **E-Money Regulations**

The Electronic Money Regulations 2011

## **FOS**

The Financial Ombudsman Service

## **Handbook**

The FSA's Handbook of Rules and Guidance, available at <http://fsahandbook.info/>

## **HMRC**

HM Revenue and Customs

**MLR**

Money Laundering Regulations 2007 (SI 2007/2157)

**PERG**

The FSA's Perimeter Guidance

**OFT**

Office of Fair Trading

**PIs**

Payment Institutions

**PSP**

Payment Service Provider

**FSMA**

The Financial Services and Markets Act 2000.

**PSRs**

The Payment Services Regulations 2009 (SI 2009/209)

The Payment Services (Amendments) Regulations 2009 (SI 2009/2475)



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