payments and crypto network

Operational Resilience

A series of guides addressing the subject of Operational Resilience for UK authorised Electronic Money Institutions ("EMI") and Payment Institutions ("PI").

Guidance is provided for firms and is not intended as legal advice.

Guide 2: Operational Resilience - Important Business Services

Background

UK authorised EMI and PI businesses must adhere to the regulatory requirements defined in the Electronic Money Regulations 2011 ("EMR") and the Payment Service Regulations 2017 ("PSR") as well as and associated guidance from the UK's Financial Conduct Authority ("FCA") and relevant EBA Guidelines.

In March 2021 the FCA published their Policy Statement on Building Operational Resilience (PS21/3) which provides feedback on their previous consultation and the final operational resilience rules.

Firms should note that the FCA's rules and guidance on Operational Resilience came into force on 31 March 2022. The final implementation deadline is 31 March 2025 meaning that firms *"must be able to remain within their impact tolerances"* before that date.

Please refer to the first guide for an overview of the operational resilience requirements.

What approach does the FCA expect?

The FCA's Policy Statement outlines the approach that firms should take towards implementing operational resilience. The approach comprises a number of key steps that are summarised in the first guide; the first step in this process is to identify the '**important business services**'.

Identifying important business services

Firms must identify their important business services[1] which, if disrupted, could potentially cause **intolerable harm** to the customers of the firm's services or pose a risk to market integrity.

In the context of risk management, the term 'business function' is a common and well understood term. It is likely that the firm's business functions cover the same services that could be classified as 'important business services', however, the important business services are likely to be much broader and cover various supporting business functions which do not themselves meet the important business services definition, e.g. HR, marketing, business development, accounting, internal audit, etc.

The FCA suggest that an easy way to understand the difference is by viewing the concepts in the following way:

Important Business Service = Business Function + Assessment of 'Importance'.

It is also important to note the outward focus of the concept of 'important business services' (i.e. causing customer intolerable harm or posing a risk to market integrity) which contrasts to enterprise-wide risk management and business continuity management processes which have a focus on internal impacts within the firm. Viewing important business services from an outward perspective will help to differentiate them from internal business functions.

How to start identifying the important business services?

The process of identifying the important business services should consider the specific context of the firm's business model and can be undertaken in a manner that the firm considers most appropriate and effective.

The FCA have published a non-exhaustive list of factors for firms to consider when identifying their important business services – these are detailed in Appendix I. Note that the important business services should each be clearly identifiable as a separate service and not a collection of services.

The identification of all business services before proceeding to identify which ones are 'important' may be a helpful approach - noting that the operational resilience rules only require the identification of the important business services.

A useful approach would be top set out the factors in Appendix I and, considering the business activities / services and the rationale for customers to use the services, start to identify the key business services. Then proceed to filter out the non-important business services. To help start the process you could also refer to the examples provided in Appendix II, many of which will be common to all EMI / PI businesses.

The mapping exercise, see Guide 4, will latterly help to confirm the important business services that have been identified (and potentially identify additional ones).

[1] *An "important business service" is defined in the FCA's Glossary as a service provided by a firm, or by another person on behalf of the firm, to one or more clients of the firm which, if disrupted, could: 1. cause intolerable levels of harm to one or more of the firm's clients; or 2. pose a risk to the soundness, stability or resilience of the UK financial system or the orderly operation of financial markets.*

Reviewing important business services

The process of identifying important business services should take place whenever there is a material change to the firm's business or the market in which it operates. In any case, an annual review should be undertaken to ensure that the identified important business services are complete and up-to-date.

The FCA consider it necessary for firms to review their important business services at least once per year to ensure that no emerging vulnerabilities are overlooked, i.e. a review of the existing important business services would be undertaken considering the changes to the business, or market, during the course of the year rather than a full re-assessment process.

The FCA consider a 'material change', which would require a firm to review their important business services, to include:

- the firm beginning to carry out a new activity or ceasing to provide an existing activity, or
- the firm outsourcing a new / existing service to a third-party service provider, or
- changes to an existing service in terms of scale or potential impact.

The ongoing review of the important business services identified by the firm should be coordinated through the operation of the firm's Compliance Monitoring Programme (since operational resilience logically fits within the firm's overall compliance framework).

Appendix I – Factors to consider when identifying important business services

The FCA propose the following factors as guidance for firms to consider when identifying their important business services. The factors are not intended to be exhaustive or to restrict the approach that a firm decides is necessary to take when working to identify its important business services.

a. **a consideration of those potentially affected by disruption to the service (likely to cause consumer harm):**
   a. the nature of the customer base, including vulnerable customers who are more susceptible to harm from a disruption
   b. the ability of customers to obtain the service from other providers (substitutability, availability and accessibility)
   c. time criticality for customers receiving the service
   d. the size of the customer base to which the service is provided; and
   e. sensitivity of data held in the instance of a breach.
b. **a consideration of impact on the firm itself, where this could cause consumer harm or harm to market integrity:**
   a. impact on the firm's financial position and potential to threaten the firm's viability
   b. potential to cause reputational damage
   c. potential to cause legal or regulatory censure; and
   d. level of inherent conduct and market risk.
c. **a consideration of the impact on the UK financial system (likely to cause harm to market integrity):**
   a. the firm's potential to impact the soundness, stability or resilience of the UK financial system
   b. potential to inhibit the functioning of the UK financial system
   c. potential to cause knock-on effects for other market participants, particularly those that provide financial market infrastructure or critical national infrastructure the importance of that service to the UK financial system, which may include market share, sensitive customers (for example, government services or pension funds) and customer concentration.

Appendix II – Example important business services

A fictional EMI /PI operating model, aiming to be broadly representative of that seen within the industry was used to identify the following important business services.

E-Money Account / Payment Account	The provision of a payment or e-money account to the customer is central to the provision of payment / e-money services. The inability to offer an 'account' associated with a unique customer due to, for example, technology or security issues would be detrimental to the ability of the firm to provide its services. Any inability to provide a secure service, for example, where security breaches result in customer accounts being subject to unauthorized access or unauthorized payments being made would cause intolerable harm to customers and risk the viability of the firm.
Incoming Funding	The ability to receive, allocate and reconcile incoming payments to fund payment transactions and/or e-money purchase (in various currencies) is fundamental to the provision of services. Disruption to incoming payment flows would cause significant problems to the payment services and/or e-money services being provided by the firm and intolerable harm to its customers. Disruptions to incoming funding flows would have a significant adverse impact on the viability of the firm.
Outgoing Payments	The ability to process payments (in various currencies) as part of the payment or e-money services is fundamental to the provision of those services. An inability to process outgoing payments, as required by service users or in accordance with defined timescales, would cause intolerable harm.
Currency conversion	The ability to convert incoming funds flows from one currency into a different currency, as required by the customer, in order to complete the payment transaction, or the issuance, holding and spend of e-money is key to a multi-currency service. Currency conversion must use fair conversion rates and be performed in accordance with contractual timescales. The inability to undertake required currency conversion as part of the services offered would have a significant adverse impact on the viability of the firm.
Safeguarding customer funds	The safeguarding of customer funds is a key regulatory requirement and expectation of customers. Accurate records of all safeguarded funds must be kept and reconciliations performed on (at least) a daily basis to ensure that the amount of safeguarded funds is accurate. Failures in safeguarding arrangements represent a regulatory breach as well as risk customer funds. Failures in safeguarding arrangements could cause intolerable harm to customers.
Client Communications	Customer expect reliable and secure communications from the firm and the ability to make complaints, if required, that will be handled in accordance with a published process that adheres to regulatory requirements. The inability to support secure communications and processing of complaints could cause intolerable harm to customers.

Appendix III – Overview of Operational Resilience process